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DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 173610. October 1, 2012]

TOWN AND COUNTRY ENTERPRISES, INC., *petitioner, vs.* **HONORABLE NORBERTO J. QUISUMBING, JR., *ET AL.,*** *respondents.*

[G.R. No. 174132. October 1, 2012]

TOWN AND COUNTRY ENTERPRISES, INC., *petitioner, vs.* **METROPOLITAN BANK AND TRUST CO.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; CORPORATE REHABILITATION CONTEMPLATES A CONTINUANCE OF CORPORATE LIFE AND ACTIVITIES IN AN EFFORT TO RESTORE AND REINSTATE THE CORPORATION TO ITS FORMER POSITION OF SUCCESSFUL OPERATION AND SOLVENCY, THE PURPOSE BEING TO ENABLE THE COMPANY TO GAIN A NEW LEASE ON LIFE AND ALLOW ITS CREDITORS TO BE PAID THEIR CLAIMS OUT OF THEIR EARNINGS.— Corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former

position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. A principal feature of corporate rehabilitation is the Stay Order which defers all actions or claims against the corporation seeking corporate rehabilitation from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings. Under Section 24, Rule 4 of the *Interim Rules of Procedure on Corporate Rehabilitation* which was in force at the time TCEI filed its petition for rehabilitation *a quo*, the approval of the rehabilitation plan also produces the following results: a. The plan and its provisions shall be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled; b. The debtor shall comply with the provisions of the plan and shall take all actions necessary to carry out the plan; c. Payments shall be made to the creditors in accordance with the provisions of the plan; d. Contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply to the extent that they do not conflict with the provisions of the plan; and e. Any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the plan is successfully implemented.

2. ID.; ID.; ID.; THE STAY ORDER ISSUED BY THE REHABILITATION COURT IN SEC CASE NO. 023-02 CANNOT APPLY TO THE MORTGAGE OBLIGATIONS OWING TO RESPONDENT BANK WHICH HAS ALREADY BEEN ENFORCED EVEN BEFORE PETITIONER'S FILING OF ITS PETITION FOR CORPORATE REHABILITATION ON OCTOBER 1, 2002.— Considering that Metrobank acquired ownership over the mortgaged properties upon the expiration of the redemption period on 6 February 2002, TCEI is also out on a limb in invoking the Stay Order issued by the Rehabilitation Court on 8 October 2002 and the approval of its rehabilitation plan on 29 March 2004. An essential function of corporate rehabilitation is, admittedly, the Stay Order which is a mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a

management committee or rehabilitation receiver. The Stay Order issued by the Rehabilitation Court in SEC Case No. 023-02 cannot, however, apply to the mortgage obligations owing to Metrobank which had already been enforced even before TCEI's filing of its petition for corporate rehabilitation on 1 October 2002.

3. ID.; ID.; ID.; CONSEQUENCES OF THE STAY ORDER DOES NOT APPLY TO RESPONDENT BANK WHICH ALREADY ACQUIRED OWNERSHIP OF THE SUBJECT REALTIES EVEN BEFORE PETITIONER CORPORATION FILED ITS PETITION FOR REHABILITATION *A QUO*.— In upholding the RTC's denial of its motion for the cancellation of the certificates of title issued in favor of Metrobank, TCEI, finally, argues that the CA erroneously gave more premium to the *ex-parte* proceedings for the issuance of a writ of possession over those in the corporate rehabilitation case which, being *in rem*, binds the whole world. Aside from the fact that this matter had already been addressed in the 30 January 2004 Decision earlier rendered in CA-G.R. SP No. 76147, TCEI loses sight of the fact, that the proceedings in corporate rehabilitation cases are also summary and non-adversarial and do not impair the debtor's contracts or diminish the status of preferred creditors. Concededly, the issuance of the Stay Order suspends the enforcement of all claims against the debtor, whether for money or otherwise, and whether such enforcement is by court action or otherwise, effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings. This does not, however, apply to Metrobank which already acquired ownership over the subject realties even before TCEI filed its petition for rehabilitation *a quo*.

4. CIVIL LAW; LAW ON EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135); THE MORTGAGOR LOSES ALL INTEREST OVER THE FORECLOSED PROPERTY AFTER THE EXPIRATION OF THE REDEMPTION PERIOD AND THE PURCHASER BECOMES THE ABSOLUTE OWNER THEREOF WHEN NO REDEMPTION IS MADE.— Having purchased the subject realties at public auction on 7 November 2001, Metrobank undoubtedly acquired ownership over the same when TCEI failed to exercise its right of redemption within the three-

month period prescribed under the foregoing provision. With ownership already vested in its favor as of 6 February 2002, it matters little that Metrobank caused the certificate of sale to be registered with the Cavite Provincial Registry only on 10 April 2002 and/or executed an affidavit consolidating its ownership over the same properties only on 25 April 2003. The rule is settled that the mortgagor loses all interest over the foreclosed property after the expiration of the redemption period and the purchaser becomes the absolute owner thereof when no redemption is made. By the time that the Rehabilitation Court issued the 8 October 2002 Stay Order in SEC Case No. 023-02, it cannot, therefore, be gainsaid that Metrobank had long acquired ownership over the subject realties.

5. ID.; ID.; ID.; WRIT OF POSSESSION; THE RIGHT OF THE PURCHASER TO THE POSSESSION OF THE FORECLOSED PROPERTY BECOMES ABSOLUTE AFTER THE REDEMPTION PERIOD, WITHOUT A REDEMPTION BEING EFFECTED BY THE PROPERTY OWNER.— The CA cannot be faulted for upholding the RTC's grant of a writ of possession in favor of Metrobank on 11 January 2005. If the purchaser at the foreclosure sale, upon posting of the requisite bond, is entitled to a writ of possession even during the redemption period under Section 7 of Act 3135, as amended, it has been consistently ruled that there is no reason to withhold said writ after the expiration of the redemption period when no redemption is effected by the mortgagor. Indeed, the rule is settled that the right of the purchaser to the possession of the foreclosed property becomes absolute after the redemption period, without a redemption being effected by the property owner. Since the basis of this right to possession is the purchaser's ownership of the property, the mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.

6. ID.; ID.; ID.; ID.; ISSUANCE OF WRIT OF POSSESSION IS A MINISTERIAL FUNCTION WHICH CANNOT BE HINDERED BY AN INJUNCTION OR AN ACTION FOR THE ANNULMENT OF THE MORTGAGE OR THE FORECLOSURE ITSELF.— A similar dearth of merit may be said of TCEI's claim that the subject properties were in *custodia legis* upon the issuance of the Stay Order and the approval of the rehabilitation plan fails to persuade. As early

as 7 February 2002 or three months after the foreclosure sale on 7 November 2001, Metrobank acted well-within its rights in applying for a writ of possession, the issuance of which has consistently been held to be a ministerial function which cannot be hindered by an injunction or an action for the annulment of the mortgage or the foreclosure itself. While it is true that the function ceases to be ministerial where the property is in the possession of a third party claiming a right adverse to that of the judgment debtor, the rehabilitation receiver's power to take possession, control and custody of TCEI's assets is far from adverse to the latter. A rehabilitation receiver is an officer of the court who is appointed for the protection of the interests of the corporate investors and creditors. It has been ruled that there is nothing in the concept of corporate rehabilitation that would *ipso facto* deprive the officers of a debtor corporation of control over its business or properties.

7. ID.; ID.; ID.; ID.; RESPONDENT BANK'S ACQUISITION OF THE SUBJECT PROPERTIES WOULD STILL PASS MUSTER EVEN IF TESTED ALONGSIDE THE LONGER REDEMPTION PERIOD PROVIDED UNDER ACT 3135.— Neither are we inclined to hospitably entertain TCEI's harping on the supposed primacy of the one-year redemption period provided under Act 3135 over the three-month redemption period provided under the second paragraph of Section 47 of RA 8791 where the property being sold pursuant to an extrajudicial foreclosure is owned by a juridical person. As may be gleaned from the record, Metrobank's acquisition of the subject properties would still pass muster even if tested alongside the longer redemption period provided under Act 3135. Having purchased the same properties at public auction on 7 November 2001, Metrobank was issued a 13 December 2001 certificate of sale which it caused to be registered on 10 April 2002. Despite the shorter redemption period provided under RA 8791, Metrobank also executed an affidavit of consolidation of ownership over the subject realties on 25 April 2003 or after the lapse of the one-year redemption period provided under Act 3135. Not having exercised its right of redemption in the intervening period, TCEI cannot be heard to complain about the cancellation of its titles and the issuance of new ones in favor of Metrobank on 26 June 2003. In *Union Bank of the Philippines v. Court of Appeals*, the Court ruled

that, after the purchaser's consolidation of title over foreclosed property, the issuance of a certificate of title in his favor is ministerial upon the Register of Deeds.

APPEARANCES OF COUNSEL

Tabalingcos & Associates for petitioner.

Perez & Calima Law Offices for respondent.

D E C I S I O N

PEREZ, *J.*:

These consolidated Rule 45 Petitions for Review on *Certiorari* primarily assail the 30 November 2005 Decision rendered by the Fourth Division of the Court of Appeals (CA) in CA-G.R. CV No. 84464[1] and the 24 May 2006 Decision rendered by said Court's Sixteenth Division in CA-G.R. SP No. 90311.[2]

There is no dispute regarding the fact that petitioner Town & Country Enterprises, Inc. (***TCEI***) obtained loans in the aggregate sum of ₱12,000,000.00 from respondent Metropolitan Bank & Trust Co. (***Metrobank***).[3] To secure the prompt payment of the loan, TCEI executed in favor of Metrobank a thrice amended Deed of Real Estate Mortgage[4] over twenty parcels of land registered in its name and/or its corporate officers, petitioners Spouses Reynaldo and Lydia Campos (***Spouses Campos***), under Transfer Certificates of Title (TCT) Nos. T-361540, T-361541, T-361542, T-361543, T-361544, T-261545, T-361546, T-361547, T-361548, T-361565, T-361566, T-361567, T-361568,

[1] Penned by Justice Ruben T. Reyes and concurred in by Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman.

[2] Penned by Justice Eliezer R. De Los Santos and concurred in by Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

[3] Original Records, LRC Case No. 2128-02, Promissory Note No. 497652, p. 12.

[4] Real Estate Mortgage and its Amendments, *id*. at 13-19.

T-361569, T-361570, T-361571, T-361572, T-361573, T-361574 and T-743815, all of the Cavite Provincial Registry of Deeds.[5] For failure of TCEI to heed its demands for the payment of the loan, Metrobank caused the real estate mortgage to be extrajudicially foreclosed and the subject realties to be sold at public auction on 7 November 2001 in accordance with Act No. 3135. As highest bidder, Metrobank was issued the corresponding Certificate of Sale[6] which was registered with the Cavite Provincial Registry of Deeds on 10 April 2002.[7]

In view of TCEI's further refusal to heed its demands to turn over actual possession of the properties, Metrobank filed on 23 September 2002 the petition for issuance of a writ of possession docketed as LRC Case No. 2128-02 before the Regional Trial Court (***RTC***), Branch 21, in Imus, Cavite, presided over by public respondent judge, the Hon. Norberto J. Quisumbing, Jr.[8] Metrobank invoked its right to said writ of possession under Section 7 of Act No. 3135. Claiming difficulty in servicing its obligations as a consequence of the Asian financial crisis, on the other hand, TCEI filed on 1 October 2002 the petition for declaration of a state of suspension of payments, with approval of a proposed rehabilitation plan, which was docketed as SEC Case No. 023-02 before the same court, sitting as a Special Commercial Court (***Rehabilitation Court***).[9] With the issuance of a Stay Order on 8 October 2002 in the corporate rehabilitation case,[10] TCEI filed on 21 October 2002 a motion to suspend the proceedings in LRC Case No. 2128-02 which was granted by respondent judge in the Order dated 2 December

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[5] TCTs in the name of TCEI and the Spouses Campos, *id*. at 20-76.

[6] 13 December 2001 Certificate of Sale, *id*. at 77-84.

[7] *Id*. at 21.

[8] Metrobank's 8 August 2002 *Ex-Parte* Petition for Writ of Possession, *id*. at 3-9.

[9] Original Records, SEC Case No. 023-02, Vol. I, TCEI's 28 August 2002 Petition for Corporate Rehabilitation, pp. 4-13.

[10] Original Records, Vol. II, 8 October 2002 Stay Order, pp. 268-271.

2002.[11] Aggrieved by the denial of its motion for reconsideration of the same order, Metrobank filed the Rule 65 petition for *certiorari* which was docketed before the CA as CA-G.R. SP No. 76147.[12]

On 30 January 2004, the CA's then Fifth Division rendered the Decision[13] in CA-G.R. SP No. 76147, directing respondent judge "to continue with the proceedings in [LRC Case No. 2128-02] and eventually to issue the required writ of possession in favor of [Metrobank] over the foreclosed properties." The foregoing directive was anchored on the second paragraph of Section 47 of Republic Act (RA) No. 8741.[14] Finding the Rehabilitation Plan submitted by TCEI feasible, on the other hand, the rehabilitation court issued the Order dated 29 March 2004 in SEC Case No. 023-02,[15] the decretal portion of which states:

> CONSIDERING THE FOREGOING, the Court hereby approves the Rehabilitation Plan of [TCEI] thereby granting [TCEI] a moratorium of five (5) years from today in the payment of all its obligations, together with the corresponding interests, to its creditor banks, subject to the modification that the interest charges shall be reduced from 36% to 24% per annum. After the five-year grace period, [TCEI] shall commence to pay its existing obligations with its creditor banks monthly within a period of three (3) years.
>
> [TCEI] is enjoined to comply strictly with the provisions of the Rehabilitation Plan, perform its obligations thereunder and take all actions necessary to carry out the Plan, failing which, the Court shall either, upon motion, *motu proprio* or upon the recommendation

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[11] Original Records, LRC Case No. 2128-02, 2 December 2002 Order, *id*. at 123.

[12] *Rollo*, G.R. No. 173610, pp. 119-120.

[13] Penned by Justice Mercedes Gozo-Dadole and concurred in by Justices Eugenio S. Labitoria and Rosemari D. Carandang.

[14] *Rollo*, G.R. No. 173610, CA's 30 January 2004 Decision in CA-G.R. SP No. 76147, pp. 117-125.

[15] Original Records, SEC Case No. 023-02, Vol. IV, RTC's 29 March 2004 Order, pp. 605-613.

of the Rehabilitation Receiver, terminate the proceeding pursuant to SECTION 27, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.

The Rehabilitation Receiver is directed to strictly monitor the implementation of the Plan and submit a quarterly report on the progress thereof.

SO ORDERED.[16]

On 11 January 2005, the RTC issued in LRC Case No. 2128-02 an order granting Metrobank's petition for issuance of a writ of possession and directing the Clerk of Court to issue the writ therein sought.[17] Aggrieved, TCEI and the Spouses Campos perfected the appeal which was docketed before the CA as CA-G.R. CV No. 84464, on the ground that it had been denied due process *a quo* and that the writ of possession issued is contrary to the rules on corporate rehabilitation.[18] On 30 November 2005, the CA's then Fourth Division rendered the first assailed Decision, affirming the RTC's appealed 11 January 2005 Order. In denying the appeal, the CA ruled that, as purchaser of the foreclosed properties, Metrobank was entitled to the writ of possession without delay since, under Section 8 of Act No. 3135, the remedy of the mortgagor is to set aside the sale and the writ of possession within 30 days after the purchaser was placed in possession and, if aggrieved from the resolution thereof, to appeal in accordance with Section 14 of Act No. 496, otherwise known as the *Land Registration Act*. Likewise finding that the proceedings before the RTC were *ex parte* by nature, the CA decreed that TCEI and the Spouses Campos were not denied due process and that the appealed order is not reviewable since only one party sought relief *a quo*.[19] Dissatisfied with the denial

[16] *Id.* at 612-613.

[17] Original Records, LRC Case No. 2128-02, RTC's 11 January 2005 Order, p. 335.

[18] CA *rollo*, CA-G.R. CV No. 84464, 10 May 2005 Appellants' Brief of TCEI and Spouses Campos, pp. 13-55.

[19] CA's 30 November Decision in CA-G.R. CV No. 84464, *id*. at 318-330.

of the motion for reconsideration of the foregoing decision in the CA's Resolution dated 26 July 2006,[20] TCEI and the Spouses Campos filed the Rule 45 petition for review now docketed before us as G.R. No. 173610.[21]

In the meantime, TCEI discovered that its certificates of titles were already cancelled as of 26 June 2003, with the issuance of TCT Nos. T-1046369, T-1046370, T-1046371, T-1046372, T-1046373, T-1046374, T-1046375, T-1046376, T-1046377, T-1046378, T-1046379, T-1046380, T-1046381, T-1046382, T-1046383, T-1046384, T-1046385, T-1046386, T-1046387 and T-1046388[22] in the name of Metrobank which had consolidated its ownership over the subject properties on 25 April 2003.[23] Maintaining that the transfers of title were invalid and ineffective, TCEI filed its 4 November 2004 motion which was styled as one to direct the Register of Deeds to "bring back the titles in [its] name." TCEI argued that Metrobank's act of transferring said titles to the latter's name amounted to contempt absent modification of the 8 October 2002 Stay Order and approval by the Rehabilitation Court.[24] The motion was, however, denied in the Rehabilitation Court's 2 June 2005 Order, on the ground that Metrobank's right to exercise any act of dominion over the foreclosed properties had already been recognized in the CA's 30 January 2004 Decision in CA-G.R. SP No. 76147.[25]

Insisting that the transfers of title in Metrobank's name was violative of the Stay Order issued in SEC Case No. 023-02, TCEI filed the 17 June 2005 Rule 43 petition for review which

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[20] CA's 26 July 2006 Resolution *id*. at 348-349.

[21] *Rollo*, G.R. No. 173610, 17 August 2006 Petition filed by TCEI and Spouses Campos, pp. 10-56.

[22] *Rollo*, G.R. No. 174132, Metrobank's TCTs, pp. 70-89.

[23] Original Records, LRC Case No. 2128-02, Metrobank's 25 April 2003 Affidavit of Consolidation, p. 333.

[24] Original Records, Vol. IV, SEC Case No. 023-02, TCEI's Motion to Direct the Register of Deeds to Bring Back the Titles in the name of the Petitioner, pp. 647-650.

[25] Rehabilitation Court's 2 June 2005 Order, *id*. at 692-693.

was docketed before the CA as CA-G.R. SP No. 90311.[26] On 24 May 2006, said court's Sixteenth Division rendered the second assailed decision, dismissing TCEI's petition for lack of merit on the ground that Metrobank was already the owner of the foreclosed properties by the time the Stay Order was issued on 8 October 2002. For this purpose, the CA took appropriate note of the fact that, in the 30 January 2004 Decision in CA-G.R. SP No. 76147, Metrobank's ownership of the foreclosed properties was considered consolidated for failure of TCEI to exercise its right of redemption within three months from the foreclosure sale or the registration of the certificate of sale in accordance with Sec. 47 of Republic Act (RA) No. 8791.[27] Considering that said 30 January 2004 Decision had already attained finality, the CA also ruled that the determinations therein made already amounted to *res judicata* and that, as a consequence, TCEI's petition for review was equivalent to forum shopping.[28] TCEI's motion for reconsideration was likewise denied for lack of merit in the CA's Resolution dated 14 August 2006,[29] hence its Rule 45 petition for review now docketed before us as G.R. No. 174132.[30]

In G.R. No. 173610, ***petitioners*** TCEI and the Spouses Campos seek the reversal of the CA's 30 November 2005 Decision in CA-G.R. CV No. 84464 on the following grounds:

> ***1. The Order granting the Writ of Possession in favor of Metrobank is invalid and unenforceable considering that the properties of TCEI are now in the possession of the rehabilitation receiver in view of the earlier judgment of approval of the Petition for Corporate Rehabilitation in SEC Case No. 023-02.***

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[26] CA *rollo*, CA-G.R. SP No. 90311, TCEI's 17 June 2005 Petition for Review, pp. 2-29.

[27] *An Act Providing for the Regulation of the Organization and Operation of Banks, Quasi-Banks, Trust Entities and for Other Purposes*.

[28] CA *rollo*, CA-G.R. SP No. 90311, CA's 24 May 2006 Decision, pp. 315-323.

[29] CA's 14 August 2006 Resolution, *id*. at 379.

[30] *Rollo*, G.R. No. 174132, TCEI's 28 September 2006 Petition, pp. 10-44.

2. ***The Rehabilitation Receiver is considered a Third-Party in possession of the properties adversely against Metrobank for the benefit of the creditors and the debtor.***

3. ***Possession of the Rehabilitation Receiver by virtue of a final judgment in a Rehabilitation Proceeding must be respected as among the exemptions why the Petition for Writ of Possession must be denied or must not be implemented.***

4. ***TCEI, Spouses Campos and Metrobank agreed that Act 3135 will be applicable in case of foreclosure sale. Section 47 of the General Banking Act, Republic Act 8791, is not applicable. While the Certificate of Sale was issued in 10 April 2002 there was no transfer until 26 June 2003 when the Stay Order was already effective.***

In G.R. No. 174132, on the other hand, the setting aside of the CA's 24 May 2006 Decision in CA-G.R. SP No. 90311 is urged by TCEI on the following grounds:

1. ***The Register of Deeds cannot legally transfer the titles subject matter of the Petition for Rehabilitation in favor of Metrobank on 26 June 2003 in view of the existence of the Stay Order on 8 October 2002 prohibiting the enforcement of claims and the subsequent judgment approving the Rehabilitation Plan in favor of Petitioner.***

2. ***The Register of Deeds should cancel the titles issued to Metrobank on 26 June 2003 and re-issue titles in favor of TCEI as the same was made in violation of the Stay Order and the Rehabilitation Proceedings as the Decision therein binds the whole world being a proceeding in rem.***

3. ***The Decision of the CA failed to take into consideration the far reaching effects of a Petition for Rehabilitation as against a Motion for Issuance of a Writ of Possession which is ex-parte and not a judicial proceeding.***

We find both petitions bereft of merit.

Corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation

and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.[31] A principal feature of corporate rehabilitation is the Stay Order which defers all actions or claims against the corporation seeking corporate rehabilitation from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings.[32] Under Section 24, Rule 4 of the *Interim Rules of Procedure on Corporate Rehabilitation* which was in force at the time TCEI filed its petition for rehabilitation *a quo*, the approval of the rehabilitation plan also produces the following results:

a. The plan and its provisions shall be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled;

b. The debtor shall comply with the provisions of the plan and shall take all actions necessary to carry out the plan;

c. Payments shall be made to the creditors in accordance with the provisions of the plan;

d. Contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply to the extent that they do not conflict with the provisions of the plan; and

e. Any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the plan is successfully implemented.

In addition to the issuance of the Stay Order in SEC Case No. 023-02 on 8 October 2002, petitioners call attention to the fact that the Rehabilitation Court approved TCEI's rehabilitation

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[31] *Castillo v. Uniwide Warehouse Club, Inc.*, G.R. No. 169725, 30 April 2010, 619 SCRA 641, 646.

[32] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 150592, 20 January 2009, 576 SCRA 471, 477.

plan in the Order dated 29 March 2004. Considering that orders issued by the Rehabilitation Court are immediately executory under Section 5, Rule 3 of the *Interim Rules*,[33] petitioners argue that the subject properties were placed in *custodia legis* upon approval of TCEI's rehabilitation plan and that the grant of the writ of possession in favor of Metrobank was tantamount to taking said properties away from the rehabilitation receiver. Petitioners maintain that the rehabilitation receiver, as an officer of the court empowered to take possession, control and custody of the debtor's assets,[34] should have been considered a third person whose possession of the foreclosed properties was an exception to the rule that the grant of a writ of possession is ministerial. For these reasons, petitioners claim that the writ of possession issued in favor of Metrobank is invalid and unenforceable.[35]

The dearth of merit in petitioners' position is, however, evident from the fact that, Metrobank had already acquired ownership over the subject realties when TCEI commenced its petition for corporate rehabilitation on 1 October 2002. Although Metrobank concededly invoked Act No. 3135 in seeking the extrajudicial foreclosure of the mortgages executed by TCEI, the second paragraph of Section 47 of RA 8791 – the law in force at said time – specifically provides as follows:

Section 47. *Foreclosure of Real Estate Mortgage.* – x x x

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the

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[33] SEC. 5. *Executory Nature of Orders.*— Any order issued by the court under these Rules is immediately executory. A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court. The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court: *Provided, however,* that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner.

[34] Section 14 (s), Rule 4, *Interim Rules on Corporate Rehabilitation.*

[35] *Rollo,* G.R. No. 173610, pp. 28-46.

right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

Having purchased the subject realties at public auction on 7 November 2001, Metrobank undoubtedly acquired ownership over the same when TCEI failed to exercise its right of redemption within the three-month period prescribed under the foregoing provision. With ownership already vested in its favor as of 6 February 2002, it matters little that Metrobank caused the certificate of sale to be registered with the Cavite Provincial Registry only on 10 April 2002 and/or executed an affidavit consolidating its ownership over the same properties only on 25 April 2003. The rule is settled that the mortgagor loses all interest over the foreclosed property after the expiration of the redemption period and the purchaser becomes the absolute owner thereof when no redemption is made.[36] By the time that the Rehabilitation Court issued the 8 October 2002 Stay Order in SEC Case No. 023-02, it cannot, therefore, be gainsaid that Metrobank had long acquired ownership over the subject realties.

Viewed in the foregoing light, the CA cannot be faulted for upholding the RTC's grant of a writ of possession in favor of Metrobank on 11 January 2005. If the purchaser at the foreclosure sale, upon posting of the requisite bond, is entitled to a writ of possession even during the redemption period under Section 7 of Act 3135,[37] as amended, it has been consistently ruled that

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[36] *Oliveros v. Presiding Judge, RTC, Branch 24, Biñan, Laguna*, G.R. No. 165963, 3 September 2007, 532 SCRA 109, 118.

[37] SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion

there is no reason to withhold said writ after the expiration of the redemption period when no redemption is effected by the mortgagor. Indeed, the rule is settled that the right of the purchaser to the possession of the foreclosed property becomes absolute after the redemption period, without a redemption being effected by the property owner. Since the basis of this right to possession is the purchaser's ownership of the property, the mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.[38]

Considering that Metrobank acquired ownership over the mortgaged properties upon the expiration of the redemption period on 6 February 2002, TCEI is also out on a limb in invoking the Stay Order issued by the Rehabilitation Court on 8 October 2002 and the approval of its rehabilitation plan on 29 March 2004. An essential function of corporate rehabilitation is, admittedly, the Stay Order which is a mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver.[39] The Stay Order issued by the Rehabilitation Court in SEC Case No. 023-02 cannot, however, apply to the mortgage obligations owing to Metrobank which had already been enforced even before TCEI's filing of its petition for corporate rehabilitation on 1 October 2002.

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in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[38] *Spouses Tansipek v. Philippine Bank of Communications*, 423 Phil. 727, 734 (2001) citing *Laureano v. Bormaheco, Inc.*, 404 Phil. 80, 86 (2001).

[39] *Veterans Philippine Scout Security Agency, Inc. vs. First Dominion Prime Holdings, Inc.*, G.R. No. 190907, 23 August 2012.

In *Equitable PCI Bank, Inc v. DNG Realty and Development Corporation*,[40] the Court upheld the validity of the writ of possession procured by the creditor despite the subsequent issuance of a stay order in the rehabilitation proceedings instituted by the debtor. In said case, Equitable PCI Bank (*Equitable*) foreclosed on 30 June 2003 the mortgage executed in its favor by DNG Realty and Development Corporation (DNG) and was declared the highest bidder at the 4 September 2003 public auction of the property. On 21 October 2003, DNG also instituted a petition for corporate rehabilitation which resulted in the issuance of a Stay Order on 27 October 2003. Having caused the recording of the Certificate of Sale on 3 December 2003, on the other hand, Equitable executed an affidavit of consolidation of its ownership which served as basis for the issuance of a new title in its favor on 10 December 2003. Equitable subsequently filed an action for the issuance of a writ of possession on 17 March 2004 which was eventually granted on 6 September 2004. In affirming the validity of the certificate of sale, certificate of title and writ of possession issued in favor of Equitable, the Court ruled as follows:

> In RCBC, we upheld the extrajudicial foreclosure sale of the mortgage properties of BF Homes wherein RCBC emerged as the highest bidder as it was done before the appointment of the management committee. Noteworthy to mention was the fact that the issuance of the certificate of sale in RCBC's favor, the consolidation of title, and the issuance of the new titles in RCBC's name had also been upheld notwithstanding that the same were all done after the management committee had already been appointed and there was already a suspension of claims. Thus, applying *RCBC v. IAC* in this case, since the foreclosure of respondent DNG's mortgage and the issuance of the certificate of sale in petitioner EPCIB's favor were done prior to the appointment of a Rehabilitation Receiver and the Stay Order, all the actions taken with respect to the foreclosed mortgage property which were subsequent to the issuance of the Stay Order were not affected by the Stay Order. Thus, *after the redemption period expired without respondent redeeming the foreclosed property, petitioner becomes the absolute owner of the property and it was within its right to ask for the consolidation of*

[40] G.R. No. 168672, 9 August 2010, 627 SCRA 125.

title and the issuance of new title in its name as a consequence of ownership; thus, it is entitled to the possession and enjoyment of the property. (Italics supplied)

A similar dearth of merit may be said of TCEI's claim that the subject properties were in *custodia legis* upon the issuance of the Stay Order and the approval of the rehabilitation plan fails to persuade. As early as 7 February 2002 or three months after the foreclosure sale on 7 November 2001, Metrobank acted well-within its rights in applying for a writ of possession, the issuance of which has consistently been held to be a ministerial function which cannot be hindered by an injunction or an action for the annulment of the mortgage or the foreclosure itself.[41] While it is true that the function ceases to be ministerial where the property is in the possession of a third party claiming a right adverse to that of the judgment debtor,[42] the rehabilitation receiver's power to take possession, control and custody of TCEI's assets is far from adverse to the latter. A rehabilitation receiver is an officer of the court who is appointed for the protection of the interests of the corporate investors and creditors.[43] It has been ruled that there is nothing in the concept of corporate rehabilitation that would *ipso facto* deprive the officers of a debtor corporation of control over its business or properties.[44]

Neither are we inclined to hospitably entertain TCEI's harping on the supposed primacy of the one-year redemption period provided under Act 3135 over the three-month redemption period provided under the second paragraph of Section 47 of RA 8791 where the property being sold pursuant to an extrajudicial foreclosure is owned by a juridical person. As may be gleaned from the record, Metrobank's acquisition of the subject properties

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[41] *Chailease Finance Corporation v. Spouses Ma*, 456 Phil. 498, 503 (2003).

[42] *Philippine National Bank v. Court of Appeals*, 424 Phil. 757, 769 (2002).

[43] *Siochi Fishery Enterprises, Inc. v. Bank of the Philippine Islands*, G.R. No. 193872, 19 October 2011, 659 SCRA 817, 829.

[44] *Umale v. ASB Realty Corporation*, G.R. No. 181126, 15 June 2011, 652 SCRA 215, 228.

would still pass muster even if tested alongside the longer redemption period provided under Act 3135. Having purchased the same properties at public auction on 7 November 2001, Metrobank was issued a 13 December 2001 certificate of sale which it caused to be registered on 10 April 2002. Despite the shorter redemption period provided under RA 8791, Metrobank also executed an affidavit of consolidation of ownership over the subject realties on 25 April 2003 or after the lapse of the one-year redemption period provided under Act 3135.

Not having exercised its right of redemption in the intervening period, TCEI cannot be heard to complain about the cancellation of its titles and the issuance of new ones in favor of Metrobank on 26 June 2003. In *Union Bank of the Philippines v. Court of Appeals*,[45] the Court ruled that, after the purchaser's consolidation of title over foreclosed property, the issuance of a certificate of title in his favor is ministerial upon the Register of Deeds, thus:

> In real estate mortgage, when the principal obligation is not paid when due, the mortgage has the right to foreclose the mortgage and to have the property seized and sold with a view to applying the proceeds to the payment of the principal obligation. Foreclosure may be effected either judicially or extrajudicially. In a public bidding during extra-judicial foreclosure, the creditor-mortgagee, trustee, or other person authorized to act for the creditor may participate and purchase the mortgaged property as any other bidder. Thereafter the mortgagor has one year within which to redeem the property from and after registration of sale with the Register of Deeds. In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed or mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate of title in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled. Thus, upon failure to redeem foreclosed realty, consolidation of title becomes a matter of right on the part of the auction buyer, and the issuance of a certificate of title in favor of the purchaser becomes ministerial upon the Register of Deeds.

[45] 370 Phil. 837, 846-847 (1999).

In upholding the RTC's denial of its motion for the cancellation of the certificates of title issued in favor of Metrobank, TCEI, finally, argues that the CA erroneously gave more premium to the *ex-parte* proceedings for the issuance of a writ of possession over those in the corporate rehabilitation case which, being *in rem*, binds the whole world. Aside from the fact that this matter had already been addressed in the 30 January 2004 Decision earlier rendered in CA-G.R. SP No. 76147, TCEI loses sight of the fact, that the proceedings in corporate rehabilitation cases are also summary and non-adversarial[46] and do not impair the debtor's contracts[47] or diminish the status of preferred creditors.[48] Concededly, the issuance of the Stay Order suspends the enforcement of all claims against the debtor, whether for money or otherwise, and whether such enforcement is by court action or otherwise, effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.[49] This does not, however, apply to Metrobank which already acquired ownership over the subject realties even before TCEI filed its petition for rehabilitation *a quo*.

WHEREFORE, premises considered, both petitions for review on *certiorari* are **DENIED** for lack of merit.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Brion,* and *Perlas-Bernabe, JJ.,* concur.

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[46] Sec.1, Rule 3, *Interim Rules of Procedure on Corporate Rehabilitation* and *2008 Rules of Procedure on Corporate Rehabilitation*; Sec. 3, Chapter I, R.A. 10142, *The Financial Rehabilitation and Insolvency Act (FRIA) of 2010*.

[47] *Bank of Philippine Islands v. Securities and Exchange Commission*, G.R. No. 164641, 20 December 2007, 541 SCRA 294, 302.

[48] *Supra* note 44.

[49] *Philippine Airlines v. Spouses Kurangking*, 438 Phil. 375, 381 (2002).

[*] As per Special Order No. 1308 dated 21 September 2012.

EN BANC

[A.M. No. RTJ-11-2289. October 2, 2012]
(Formerly A.M. OCA IPI No. 11-3656-RTJ)

RE: ANONYMOUS LETTER DATED AUGUST 12, 2010, COMPLAINING AGAINST JUDGE OFELIA T. PINTO, REGIONAL TRIAL COURT, BRANCH 60, ANGELES CITY, PAMPANGA

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; EXPECTED TO DEMONSTRATE MASTERY OF THE PRINCIPLES OF LAW, KEEP ABREAST OF PREVAILING JURISPRUDENCE AND DISCHARGE THEIR DUTIES IN ACCORDANCE THEREWITH.—** "To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence." Judges are also "expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith". Judges are "likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith." The records clearly show that the conduct exhibited by Judge Pinto deviated from these exacting standards.

2. **ID.; ID.; ID.; EVEN GRANTING THAT RESPONDENT JUDGE HAD BEEN MOTIVATED BY GOOD INTENTIONS LEADING HER TO DISREGARD THE LAWS AND RULES OF PROCEDURE, SAID PERSONAL MOTIVATIONS CANNOT RELIEVE HER FROM THE ADMINISTRATIVE CONSEQUENCES OF HER ACTIONS AS THEY AFFECT HER COMPETENCY AND CONDUCT AS A JUDGE IN THE DISCHARGE OF HER OFFICIAL FUNCTIONS.—** Judge Pinto should have respected the final decision of a higher court, instead of replacing it with her own decision. We have previously ruled that a judge cannot amend a final decision, more so where the decision was promulgated by an appellate court. As aptly observed by

the OCA: Judge Pinto ought to know her place in the judicial ladder. In *Lamberto P. Villaflor vs. Judge Romanito A. Amatong* (A.M. No. MTJ-00-1333, November 15, 2000), the High Court could not have been more emphatic, thus: "Inferior courts must be modest enough to consciously realize the position that they occupy in the interrelation and operation of the integrated judicial system of the nation. Occupying as (she) does a court much lower in rank than the Court of Appeals, (Judge Ofelia Tuazon Pinto) owes respect to the latter and should, of necessity, defer to the orders of the higher court. The appellate jurisdiction of a higher court would be rendered meaningless if a lower court may, with impunity, disregard and disobey it.

3. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW OR INCOMPETENCE CANNOT BE EXCUSED BY A CLAIM OF GOOD FAITH.— We have previously held that when a law or a rule is basic, judges owe it to their office to simply apply the law. "Anything less is gross ignorance of the law." There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious." It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption. Gross ignorance of the law or incompetence cannot be excused by a claim of good faith. In this case, Judge Pinto's utter disregard to apply settled laws and rules of procedure constitutes gross ignorance of the law which merits administrative sanction.

4. ID.; ID.; ID.; RESPONDENT JUDGE'S PREVIOUS INFRACTIONS CONSIDERED IN IMPOSING THE SUPREME PENALTY OF DISMISSAL FROM THE SERVICE.— We note that this is not the first time that we found Judge Pinto administratively liable. We found her liable in two other administrative cases. In *Pineda v. Pinto*, the Court reprimanded Judge Pinto for charges of gross inefficiency and neglect of duty. In *Marcos v. Pinto*, we found Judge Pinto liable of simple misconduct and imposed a fine in the amount of ₱10,000.00 for charges of gross ignorance of the law, partiality and knowingly rendering an unjust judgment/order. In both cases, we sternly warned Judge Pinto that a repetition of the same or similar act shall be dealt with more severely. Judge Pinto's continued failure to live up to the exacting standards

of her office is clear. Her escalating violations, taken collectively, raise the question of her competency in continuing to perform the functions of a magistrate. Bearing this in mind and the warnings she earlier received from the Court, we find the imposition of the supreme penalty of dismissal from the service justified.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; REOPENING OF A CRIMINAL CASE; MAY ONLY BE AVAILED OF AT ANY TIME BEFORE FINALITY OF THE JUDGMENT OF CONVICTION.— Judge Pinto had no jurisdiction to entertain the motion filed by the accused-movant to reopen Criminal Case No. 91-937 because the CA's decision, which affirmed the accused-movant's conviction, had become final and executory. Judge Pinto's conduct was contrary to the clear language of Section 24, Rule 119 of the 2000 Revised Rules of Criminal Procedure which provides that the reopening of a criminal case may only be availed of "at any time before finality of the judgment of conviction:" Sec. 24. *Reopening*. — At any time before finality of the judgment of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. In other words, a motion to reopen a criminal case is not the proper procedural recourse when there is already a final judgment of conviction. This rule is consistent with the doctrine of finality of judgment which Judge Pinto failed to apply. "The doctrine of finality of judgment, which is grounded on fundamental considerations of public policy and sound practice, dictates that at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law." In this case, the final decision of the CA should have been given effect.

6. ID.; ID.; JUDGMENTS; A JUDGE CANNOT AMEND A FINAL DECISION, MORE SO WHERE THE DECISION WAS PROMULGATED BY AN APPELLATE COURT; RESPONDENT JUDGE SHOULD HAVE RESPECTED THE FINAL DECISION OF A HIGHER COURT, INSTEAD OF REPLACING IT WITH HER OWN DECISION.— In the first place, even granting that there is an available procedural remedy to question the final decision of the CA, such procedural recourse is beyond the scope of Judge Pinto's judicial authority.

> The matter of the accused-movant's denial of due process, as the case may be, should have been brought up to the CA or with the Court in an appropriate petition. Judge Pinto cannot relax mandatory rules to justify the award of judicial reliefs that are beyond her judicial authority to give. Even granting that Judge Pinto had been motivated by good intentions leading her to disregard the laws and rules of procedure, these personal motivations cannot relieve her from the administrative consequences of her actions as they affect her competency and conduct as a judge in the discharge of her official functions.

D E C I S I O N

***PER CURIAM*:**

An anonymous letter-complaint dated August 12, 2010 was filed before the Office of the Court Administrator (OCA) against Judge Ofelia T. Pinto, Presiding Judge of the Regional Trial Court, Branch 60, Angeles City, Pampanga. Judge Pinto was charged with dishonesty, violation of the Anti-Graft and Corrupt Practices Act, Gross Misconduct in violation of the Code of Judicial Conduct, and knowingly rendering an unjust judgment in connection with the ***reopening of a criminal case whose decision was already final and executory and subject of an entry of judgment in the Court of Appeals (CA)***. The anonymous letter-complaint narrated that despite the finality of the decision in Criminal Case No. 91-937, Judge Pinto granted the motion filed by the convicted accused (at large) to reopen the case and to adduce evidence in his behalf.

Subsequently, the OCA required Judge Pinto to comment on the anonymous letter-complaint. Judge Pinto alleged that the outright denial of the motion to reopen the case was improper, without violating the accused's opportunity to be heard, given the exculpatory evidence presented and considering the lack of objection by the public prosecutor and the private complainant who were properly notified of the motion. Judge Pinto also alleged that even granting that her acts were indeed erroneous, they were done in the exercise of her adjudicative functions which

cannot be made subject of a disciplinary, civil or criminal action absent fraud, dishonesty and corruption on her part.

The Recommendation of the OCA

The OCA found the anonymous letter-complaint meritorious. The OCA observed that Judge Pinto misapplied the law despite the clear wordings of Section 24, Rule 119 of the 2000 Revised Rules of Criminal Procedure. The OCA also found that Judge Pinto subsequently disregarded the final and executory decision of the CA, a higher court, when she dismissed the criminal case against the accused-movant. The OCA recommended, thus —

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1. The Anonymous Complaint dated 12 August 2010 be **RE-DOCKETED** as a regular administrative matter; and
2. Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga, be **HELD GUILTY** of Gross Ignorance of the Law and Procedure and be SUSPENDED from service without salary and other benefits for a period of Six (6) Months (*Sec. 8[9.], in relation to Sec. 11[A(2.)], Rule 140, id.*) with a **STERN WARNING** that a repetition of the same or similar infraction shall be dealt with utmost severity. [emphases and italics supplied]

In the Resolution dated August 3, 2011, the Court re-docketed the anonymous letter-complaint and required the parties to manifest if they were willing to submit the matter for resolution on the basis of the pleadings filed. In response, Judge Pinto filed a Manifestation and a Supplemental Comment where she stressed her good faith and honest intention to prevent a miscarriage of justice, which led her to disregard the mandatory character of the rule on the reopening of criminal cases. She offered her sincere apologies to the Court and pleaded for compassion and understanding.

The Court's Ruling

Except for the recommended penalty, we agree with the findings of the OCA.

"To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence."[1] Judges are also "expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith".[2] Judges are "likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith."[3] The records clearly show that the conduct exhibited by Judge Pinto deviated from these exacting standards.

Judge Pinto had no jurisdiction to entertain the motion filed by the accused-movant to reopen Criminal Case No. 91-937 because the CA's decision, which affirmed the accused-movant's conviction, had become final and executory. Judge Pinto's conduct was contrary to the clear language of Section 24, Rule 119 of the 2000 Revised Rules of Criminal Procedure which provides that the reopening of a criminal case may only be availed of "at any time before finality of the judgment of conviction:"

> Sec. 24. Reopening. — At any time before finality of the judgment of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. [italics supplied]

In other words, a motion to reopen a criminal case is not the proper procedural recourse when there is already a final judgment of conviction. This rule is consistent with the doctrine of finality of judgment which Judge Pinto failed to apply. "The doctrine of finality of judgment, which is grounded on fundamental considerations of public policy and sound practice, dictates that

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[1] *Judge Cabatingan Sr. (Ret.) v. Judge Arcueno*, 436 Phil. 341, 347 (2002), citing Rule 1.01, Canon 1, Code of Judicial Conduct.

[2] *Ibid*., citing *Cortes v. Catral*, A.M. No. RTJ-97-1387, September 10, 1997, 279 SCRA 1.

[3] *Ibid*., citing *Carpio v. De Guzman*, Adm. Matter No. MTJ-93-850, October 2, 1996, 262 SCRA 615; and *Borromeo v. Mariano*, 41 Phil. 322 (1921).

at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law."[4] In this case, the final decision of the CA should have been given effect.

Moreover, Judge Pinto should have respected the final decision of a higher court, instead of replacing it with her own decision.[5] We have previously ruled that a judge cannot amend a final decision, more so where the decision was promulgated by an appellate court.[6] As aptly observed by the OCA:

> Judge Pinto ought to know her place in the judicial ladder. In *Lamberto P. Villaflor vs. Judge Romanito A. Amatong* (A.M. No. MTJ-00-1333, November 15, 2000), the High Court could not have been more emphatic, thus: "Inferior courts must be modest enough to consciously realize the position that they occupy in the interrelation and operation of the integrated judicial system of the nation. Occupying as (she) does a court much lower in rank than the Court of Appeals, (Judge Ofelia Tuazon Pinto) owes respect to the latter and should, of necessity, defer to the orders of the higher court. The appellate jurisdiction of a higher court would be rendered meaningless if a lower court may, with impunity, disregard and disobey it.[7] (italics supplied)

In the first place, even granting that there is an available procedural remedy to question the final decision of the CA, such procedural recourse is beyond the scope of Judge Pinto's judicial authority. The matter of the accused-movant's denial of due process, as the case may be, should have been brought up to the CA or with the Court in an appropriate petition. Judge Pinto cannot relax mandatory rules to justify the award of judicial reliefs that are beyond her judicial authority to give.

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[4] *Engr. Tupaz v. Hon. Apurillo*, 487 Phil. 271, 279 (2004), citing *Mercury Drug Corporation v. Court of Appeals*, G.R. No. 138571, July 13, 2000, 335 SCRA 567, 578.

[5] *Almendra v. Judge Asis*, 386 Phil. 264, 271 (2000).

[6] *Ibid*.

[7] OCA's Recommendation, p. 4.

Even granting that Judge Pinto had been motivated by good intentions leading her to disregard the laws and rules of procedure, these personal motivations cannot relieve her from the administrative consequences of her actions as they affect her competency and conduct as a judge in the discharge of her official functions.

We have previously held that when a law or a rule is basic, judges owe it to their office to simply apply the law. [8] "Anything less is gross ignorance of the law."[9] There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious."[10] It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption.[11] Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.[12]

In this case, Judge Pinto's utter disregard to apply settled laws and rules of procedure constitutes gross ignorance of the law which merits administrative sanction. Section 8 (9), Rule 140 of the Rules of Court classifies gross ignorance as a serious charge with the following imposable penalties:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

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[8] *Conquilla v. Bernardo*, A.M. No. MTJ-09-1737, February 9, 2011, 642 SCRA 288, 297.

[9] *Ibid*., citing *Cabico v. Dimaculangan-Querijero*, A.M. No. RTJ-02-1735, April 27, 2007, 522 SCRA 300.

[10] *Judge Cabatingan Sr. (Ret.) v. Judge Arcueno, supra* note 1, at 350.

[11] *Ibid*.

[12] *De los Santos-Reyes v. Montesa, Jr*., Adm. Matter No. RTJ-93-983, August 7, 1995, 247 SCRA 85, 95.

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[13]

We note that this is not the first time that we found Judge Pinto administratively liable. We found her liable in two other administrative cases. In *Pineda v. Pinto,* [14] the Court reprimanded Judge Pinto for charges of gross inefficiency and neglect of duty. In *Marcos v. Pinto*,[15] we found Judge Pinto liable of simple misconduct and imposed a fine in the amount of ₱10,000.00 for charges of gross ignorance of the law, partiality and knowingly rendering an unjust judgment/order.

In both cases, we sternly warned Judge Pinto that a repetition of the same or similar act shall be dealt with more severely. Judge Pinto's continued failure to live up to the exacting standards of her office is clear.[16] Her escalating violations, taken collectively, raise the question of her competency in continuing to perform the functions of a magistrate.[17] Bearing this in mind and the warnings she earlier received from the Court, we find the imposition of the supreme penalty of dismissal from the service justified.

WHEREFORE, premises considered, Judge Ofelia T. Pinto, Presiding Judge of the Regional Trial Court, Branch 60, Angeles City, Pampanga, is found **GUILTY** of Gross Ignorance of the Law and is hereby **DISMISSED FROM THE SERVICE**, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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[13] RULES OF COURT, Rule 140, Section 11.

[14] A.M. No. RTJ-04-1851, October 13, 2004, 440 SCRA 225.

[15] A.M. No. RTJ-09-2180, July 27, 2010, 625 SCRA 652.

[16] *Fernandez v. Hamoy*, A.M. No. RTJ-04-1821, August 12, 2004, 436 SCRA 186, 194, insofar as it applies *mutatis mutandis*.

[17] *Ibid*.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Peralta, Bersamin, del Castillo, and *Abad, JJ.,* on official leave.

SECOND DIVISION

[A.M. No. RTJ-12-2321. October 3, 2012]

SPOUSES JESUS G. CRISOLOGO and NANNETTE B. CRISOLOGO, *complainants, vs.* **JUDGE GEORGE E. OMELIO, Regional Trial Court, Branch 14, Davao City,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; CHARGE OF GROSS IGNORANCE OF THE LAW; DISMISSED; RESPONDENT JUDGE DID NOT COMMIT UNDUE INTERFERENCE WITH THE PROCEEDINGS OF A CO-EQUAL AND COORDINATE COURT CONSIDERING THAT SECTION 16, RULE 39 OF THE RULES OF COURT ALLOWS THE INSTITUTION OF A SEPARATE ACTION BY A THIRD PARTY CLAIMANT WHO SEEKS TO PROTECT HIS INTEREST IN AN EXECUTION PROCEEDING.— As correctly pointed out by the Investigating Justice, Section 16, Rule 39 of the Rules of Court allows for the institution of a separate action by a third-party claimant who seeks to protect his interests in an execution proceeding. x x x In *Naguit v. Court of Appeals,* the Court considered Naguit, whose exclusive property was executed for the debts of her husband, a stranger to the case against the husband. Naguit was allowed to institute

a separate action to vindicate her right of ownership over her exclusive property, which action was not considered an encroachment upon the jurisdiction of a co-equal and coordinate court. x x x Consistent with *Naguit v. Court of Appeals*, JEWM can be considered a third-party claimant and stranger to the case, because, despite not being the judgment obligor, JEWM's properties are being executed for So Keng Koc's liabilities. The Rules of Court allow JEWM to vindicate its claim to the properties in a separate action. The court exercising jurisdiction over the separate action, which in this case is RTC, Branch 14, may issue an injunction, enjoining the execution of JEWM's properties in satisfaction of So Keng Koc's liabilities. For this reason, we dismiss the Sps. Crisologo's charge against Judge Omelio for gross ignorance of the law due to interference with the proceedings of a co-equal and coordinate court.

2. ID.; ID.; ID.; ID.; A WRIT OF PRELIMINARY INJUNCTION CAN BE ISSUED BASED ON A VERIFIED APPLICATION, PROVIDED THERE IS NOTICE AND HEARING; RESPONDENT JUDGE IS GIVEN A WIDE LATITUDE OF DISCRETION IN ISSUING THE WRIT AFTER THE HEARING, ESPECIALLY WHEN A CLEAR AND UNMISTAKABLE RIGHT TO THE ISSUANCE OF THE INJUNCTIVE WRIT CAN BE GLEANED FROM THE AFFIDAVITS OR THE VERIFIED APPLICATION AND ITS SUPPORTING DOCUMENTS.— Although the general rule is that a sampling of evidence is required to be submitted during the hearing on the motion for preliminary injunction, there are also instances when the writ of preliminary injunction can be issued based on the verified application, provided there is notice and hearing. x x x In this case, Sps. Crisologo charge Judge Omelio with gross ignorance of the law for issuing the writ of preliminary injunction without an evidentiary hearing and in the absence of a clear and positive ground. The Rules of Court, however, provide that a temporary restraining order may be issued not only based on affidavit, but also based simply on the verified application and its supporting documents, provided there is notice and hearing. Judge Omelio is given a wide latitude of discretion in issuing the writ of preliminary injunction after the hearing, especially when a clear and unmistakable right to the issuance of the injunctive writ can

be gleaned from affidavits or the verified application and its supporting documents, considering the peculiar circumstances of this case.

3. ID.; ID.; ID.; ID.; A CLEAR AND UNMISTAKABLE RIGHT TO THE ISSUANCE OF THE WRIT OF INJUNCTION COULD BE EASILY GATHERED FROM EXAMINING THE SUBMITTED PLEADINGS AND THEIR SUPPORTING DOCUMENTS EVEN WITHOUT REQUIRING THE PARTIES TO PRESENT TESTIMONIAL EVIDENCE DURING THE HEARING.— With no factual issues or disputes, the issues raised by counsels before Judge Omelio were purely legal in nature, which could be resolved from an examination of the verified application and its supporting documents. A clear and unmistakable right to the issuance of the writ of injunction in favor of JEWM could easily be gathered from examining the submitted pleadings and their supporting documents. For this reason, we find Judge Omelio not guilty of gross ignorance of the law in issuing a writ of preliminary injunction without requiring the parties to present testimonial evidences during the hearing. Judge Omelio already received documentary evidences as supporting documents in the verified application and accorded both counsels the opportunity to be heard in oral arguments before him during the hearing. We find that the hearing conducted by Judge Omelio in the motion for issuance of the writ of preliminary injunction was adequate and compliant with the Rules of Court. For this reason, we reverse the Investigating Justice's finding of guilt in this charge, including the recommended penalty of fine of ₱30,000.00. We dismiss this charge of gross ignorance of the law for issuing a writ of preliminary injunction without evidentiary hearing for lack of merit.

4. ID.; ID.; ID.; RESPONDENT JUDGE'S FAILURE TO EFFECT PROPER SERVICE OF SUMMONS UPON THE DEFENDANTS JOHN AND JANE DOES AND SPS. CRISOLOGO CONSTITUTES GROSS IGNORANCE OF THE LAW.— Judge Omelio's failure to effect proper service of summons upon the defendants John and Jane Does in the complaint constitutes gross ignorance of the law. The rules and procedures on summons are very elementary, that non-observance and lack of knowledge on

them constitute gross ignorance of the law, especially for judges who are supposed to exhibit more than just a cursory acquaintance with the procedural rules. For failing to cause the proper service of summons upon defendants John and Jane Does and Sps. Crisologo, we find Judge Omelio guilty of gross ignorance of the law.

5. ID.; ID.; ID.; RESPONDENT JUDGE'S REFUSAL TO RECOGNIZE COMPLAINANTS AS INDISPENSABLE PARTIES IN THE DISPUTED CASE CONSTITUTES GROSS IGNORANCE OF THE LAW.— Parties with liens annotated on the certificate of title are entitled to notice in an action for cancellation of their liens. The Court, in *Southwestern University v. Laurente,* adopted the following reasoning of the lower court: The Court is in accord with his contention (that *if there should be notice, it should be limited to the parties annotated in the certificate of title itself, and should not be extended to subsequent parties who, even granting that they acquired the interests of these persons annotated in the certificate of title, failed to have their rights accordingly annotated in said certificate of title*) of petitioner Southwestern University, and maintains that inasmuch as the law specifically provides notice to parties in interest, such notice if any, should be limited to the parties listed or annotated on the certificate of title. x x x. In this case, it is not disputed that Sps. Crisologo's liens were annotated at the back of JEWM's certificates of title. The cancellation of Sps. Crisologo's liens without notice to them is a violation of their right to due process. Consistent with *Southwestern University v. Laurente,* Judge Omelio should be penalized for failing to recognize Sps. Crisologo as indispensable parties and for requiring them to file a motion to intervene, considering that a simple perusal of the certificates of title would show Sps. Crisologo's adverse rights because their liens are annotated at the back of the titles. For this reason, we find Judge Omelio guilty of gross ignorance of the law for refusing to recognize Sps. Crisologo as indispensable parties in the disputed case.

6. ID.; ID.; ID.; GRANTING A CONTENTIOUS MOTION IN VIOLATION OF THE THREE-DAY NOTICE OF HEARING RULE ON MOTIONS CONSTITUTES GROSS IGNORANCE OF THE LAW.— A motion to render judgment

based on the pleadings is a litigious motion because the grant of such motion will eliminate trial and the case will be considered submitted for decision. For this reason, service to the adverse parties of such litigious motion should be made at least three days before the date of the hearing, as mandated by Section 4, Rule 15 of the Rules of Court. In this case, Judge Omelio granted a contentious motion which contained a defective notice of hearing. The notice of hearing was defective because it was only served two (2) days before the hearing date, instead of the mandatory three-day notice rule. Such motion should have been considered a mere scrap of paper. Judge Omelio should have denied the motion on the ground that it violated the three-day notice rule, without prejudice to JEWM's re-filing of said motion in accordance with the Rules. In *Almeron v. Judge Sardido,* the Court held: [M]embers of the judiciary are supposed to exhibit more than just a cursory acquaintance with the statutes and procedural rules, more so with legal principles and rules so elementary and basic that not to know them, or to act as if one does not know them, constitutes gross ignorance of the law. In this case, Judge Omelio granted a litigious motion, in violation of the elementary three-day notice rule on motions. Applying *J. King & Sons Co., Inc. v. Judge Hontanosas, Jr.*, Judge Omelio is considered guilty of gross ignorance of the law for granting the defective motion. The three-day notice rule on motions is so elementary, that not knowing and observing it, especially in litigious and contentious motions, constitute gross ignorance of the law. For this reason, we find Judge Omelio guilty of gross ignorance of the law for granting a contentious motion that was in violation of the three-day notice rule on motions.

7. ID.; ID.; ID.; FAILURE TO NOTIFY COMPLAINANTS OF THE CANCELLATION OF THE ANNOTATION OF SALE ON THE SUBJECT TITLES WHERE THE LATTER ARE BUYERS LIKEWISE CONSTITUTES GROSS IGNORANCE OF THE LAW.— Judge Omelio's decision in the indirect contempt complaint ordered the cancellation in TCT Nos. T-325675 and T-325676 of the annotation of the Sheriff's Certificate of Sale in favor of the Sps. Crisologo. Although the case was an indirect contempt complaint, it can still be considered a petition to cancel annotations because of

its prayer. As provided in Section 112 of Act No. 496 and *Southwestern University v. Laurente*, notice is required to be given to parties whose annotations appear on the back of the certificate of title in an action for cancellation of annotations on the certificate of title. In this case, however, no summons or notices were issued to Sps. Crisologo. Only the Register of Deeds and Sheriff Medialdea were impleaded. Judge Omelio should have notified the Sps. Crisologo of the indirect contempt complaint because it included the prayer for cancellation of the annotation of sale on the subject titles, where the latter are buyers. Failure to notify the Sps. Crisologo constitutes gross ignorance of the law.

8. ID.; ID.; ID.; THE INSTANT CASE IS THE SECOND TIME RESPONDENT JUDGE ISSUED AN ORDER WHICH FAILS TO NOTIFY OR SUMMON THE INDISPENSABLE PARTIES; RESPONDENT WAS STERNLY WARNED THAT A REPETITION OF THE SAME OR SIMILAR ACT WILL MERIT A STIFFER PENALTY.— This is not the first time Judge Omelio has rendered a decision affecting third parties' interests, without even notifying the indispensable parties. In the first disputed case, *JEWM Agro-Industrial Corporation v. Register of Deeds, Sheriff Medialdea, John & Jane Does and all persons acting under their directions*, Judge Omelio failed to cause the service of proper summons upon the John and Jane Does impleaded in the complaint. Even when Sps. Crisologo voluntarily appeared in court to be recognized as the John and Jane Does, Judge Omelio refused to acknowledge their appearance and ordered the striking out of Sps. Crisologo's pleadings. For this reason, the Investigating Justice recommended admonishing Judge Omelio for failing to recognize the Sps. Crisologo as indispensable parties in that case. Here, in the indirect contempt complaint entitled *JEWM Agro-Industrial Corporation v. Sheriff Robert Medialdea and Register of Deeds for the City of Davao,* which included a prayer for cancellation of annotations on the titles, Judge Omelio once again failed to notify the Sps. Crisologo, the lienholders who would be affected by the cancellation of the annotation. Worse, Judge Omelio granted the prayer for cancellation of the annotations of Sps. Crisologo's Sheriff's Certificate of Sale without notifying them of the complaint. Clearly, the cancellation

of the annotation of the sale without notifying the buyers, Sps. Crisologo, is a violation of the latter's right to due process. Since this is the second time that Judge Omelio has issued an order which fails to notify or summon the indispensable parties, we find Judge Omelio guilty of gross ignorance of the law, with a warning that repetition of the same or similar act will merit a stiffer penalty in the future.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint filed by Spouses Jesus G. Crisologo and Nannette B. Crisologo (Sps. Crisologo) against Judge George E. Omelio (Judge Omelio) of the Regional Trial Court, Branch 14, Davao City. In their Complaint-Affidavit, Sps. Crisologo charged Judge Omelio with the following: (a) gross ignorance of the law and interference with the proceedings of a co-equal and coordinate court in issuing a writ of preliminary injunction which frustrates the execution of a final and executory decision of RTC, Branch 15; (b) gross ignorance of the law and grave abuse of discretion for issuing a writ of preliminary injunction without an evidentiary hearing and in the absence of a clear and positive ground; and (c) gross ignorance of the law, grave abuse of discretion, gross dereliction of duty and manifest bias for refusing to recognize them as indispensable parties, and giving due course to an action where the plaintiff merely impleads the indispensable parties as John Does and Jane Does despite full knowledge of their identities.[1]

In the Supplement to the Affidavit-Complaint and Reply, Sps. Crisologo charged Judge Omelio with gross ignorance of the law for granting the contentious Motion to Render Judgment Granting Plaintiff the Relief Prayed for with Memorandum Attached, which was filed on 6 December 2010, but set for hearing on 8 December 2010, in violation of the three-day notice

[1] *Rollo,* p. 1.

requirement under Section 4, Rule 15 of the Rules of Court.[2] In their Memorandum, Sps. Crisologo likewise charged Judge Omelio with manifest bias for: (a) proceeding with the case despite non-compliance with the rules on summons; (b) cancelling the registration of sale where Sps. Crisologo are buyers in another case without due process; and (c) issuing two conflicting orders, with one showing prejudgment.[3]

In response, Judge Omelio filed his Comment and Counter-complaint, claiming that the present administrative complaint was intended to harass him for unfavorable rulings he made against the Sps. Crisologo.[4] Judge Omelio prayed that the case be dismissed and Sps. Crisologo and their counsel be administratively punished.[5]

The Facts

The Report of the Investigating Justice of the Court of Appeals of Cagayan de Oro provides the factual antecedents of this case:

> The case involves the following properties:
>
> Transfer Certificate of Title (TCT) No. T-325675
>
> *i. A parcel of land (lot 650-B-2-A-2, Psd-11-058939 being portion of lot 650-B-2-A, Psd-11-021976), situated in the Barrio of Bud-Bud, City of Davao, Island of Mindanao. Bounded on the NE., along line 2-3 by lot 3465-A-1, Psd-11-021976; on SE., along line 2-3 by lot 650-B-2-B, Psd-11-021976; the SW., along line 4-1 by lot 650-A, (LRC) Psd-123024; on the NW., along the line 1-2 by lot 650-B-2-A-1 of the subd. plan. xxx xxx*
>
> Transfer Certificate of Title (TCT) No. T-325676
>
> *ii. A parcel of land (lot 3465-A-1-B, Psd-11-058938 being portion of lot 3465-A-1, Psd-11-021976), situated in the Barrio of Bud-Bud, City of Davao, Island of Mindanao.*

[2] *Id.* at 226.

[3] *Id.* at 391, 411.

[4] *Id.* at 193.

[5] *Id.* at 194.

> *Bounded on the NE., along line 2-3-4 by lot 3254-B, (LRC) Psd-104282; on the SE., along line 4-5 by lot 3465-A-2, Psd-11-021976; on the SW., along line 5-1 by lot 650-B-2-A, Psd-11-021976; on the NW., along the line 1-2 by lot 3465-A-1-A of the subd. plan. xxx xxx*

Both aforesaid properties were originally owned by So Keng Koc under TCT Nos. T-292597 and T-292600, respectively. So Keng Koc was the defendant [in] a number of cases, to wit:

(a) Civil Case No. 26,513-98 entitled SY SEN BEN vs. SO KENG KO[C];

(b) Civil Case No. 26,534-98 entitled EMMA SENG and ESTHER SY vs. SO KENG KO[C];

(c) Civil Case Nos. 26,810-98 and 26,811-98 entitled NANNETE B. CRISOLOGO and JESUS CRISOLOGO vs. SO KENG KO[C], *et al.*;

(d) Civil Case No. 26,792-98 entitled RENE ALVAREZ LIM vs. SO KENG KO[C], *et al.*;

(e) Civil Case No. 26,857-98 entitled LERLIN AGABIN vs. SO KENG KO[C], *et al.*;

(f) Civil Case No. 27,029-98 entitled EVANGELINE JUSAY vs. SO KENG KO[C], *et al.*

Accordingly, notices of levy on attachment were issued in the aforesaid cases. The levies were annotated at the back of the TCT Nos. T-292597 and T-292600, in the following order:

"Annotations on TCT No. T-292597:

1. Entry Nos. 1121176 and 1121177 for Civil Case No. 26,513-98 on September 8, 1998;

2. Entry Nos. 1121178 and 1121179 for Civil Case No. 26,534-98 on September 8, 1998;

3. Entry Nos. 1127625 and 1127626 for Civil Case No. 26,810-98 on October 7, 1998;

4. Entry Nos. 1127627 and 1127629 for Civil Case No. 26,811-98 on October 7, 1998;

5. Entry No. 1169654 for Civil Case No. 26,792-98 on July 12, 1999;

6. Entry No. 1169655 for Civil Case No. 27,029-99 on July 12, 1999;

7. Entry No. 1169656 for Civil Case No. 26,857-98 on July 12, 1999.

"Annotations on TCT No. T-292600:

i. Entry Nos. 1121176 and 1121177 for Civil Case No. 26,513-98 on September 8, 1998;

ii. Entry Nos. 1121178 and 1121179 for Civil Case No. 26,534-98 on September 8, 1998;

iii. Entry Nos. 1127625 and 1127626 for Civil Case No. 26,810-98 on October 7, 1998;

iv. Entry Nos. 1127627 and 1127629 for Civil Case No. 26,811-98 on October 7, 1998;

v. Entry No. 1169654 for Civil Case No. 26,792-98 on July 12, 1999;

vi. Entry No. 1169655 for Civil Case No. 27,029-99 on July 12, 1999;

vii. Entry No. 1169656 for Civil Case No. 26,857-98 on July 12, 1999."

Sy Ben and So Keng Koc, parties in *Civil Case No. 26,513-98*, entered into a Compromise Agreement which the RTC, Br. 8 approved and made the basis of its Decision dated October 19, 1998. The pertinent portion of the Decision states:

> *"The parties filed a Compromise Agreement on October 15, 1998 which is quoted as follows:*
>
> 1. *xxx xxx xxx*
>
> 3. *As settlement of the aforecited claim of the plaintiff, defendants bind themselves to convey the properties of defendant So Keng Koc in favor of the plaintiff and/or his authorized representative;*

4. Upon execution of this Compromise Agreement, So Keng Koc shall execute the requisite deeds of transfer in favor of the plaintiff or his authorized representative, the following properties of the defendant, So Keng Koc as follows:

TITLE NO.	*SQUARE METER*	*MARKET VALUE*
T-206276	*156 square meter(s)*	*624,000.00*
T-59197	*5,292 square meter(s)*	*1,111,320.00*
T-195366	*600 square meters*	*960,000.00*
T-292597	*13,078 square meters*	*1,617,390.00*
T-80758	*542 square meters*	*325,200.00*
T-80757	*600 square meters*	*297,020.00*
T-292600	*9,654 square meters*	*1,333,980.00*

as FULL and FINAL settlement of the obligations of the defendants in instant case in favor of the herein plaintiff;

5. xxx xxx xxx.

WHEREFORE, finding the aforequoted Compromise Agreement to be in order and not otherwise contrary to law, morals and public policy, the same is hereby approved and judgment is hereby rendered in accordance with its terms and conditions, without pronouncement as to costs.

Parties are hereby directed to comply with the terms and conditions of the aforequoted agreement failure of which execution shall issue upon motion seasonably filed."

Consequently, the subject properties were sold to one Nilda T. Lam on August 26, 1999. New titles were subsequently issued – TCT Nos. T-316182 and T-316181. Eventually, these properties were sold to JEWM Agro-Industrial Corporation, thus, the TCT Nos. T-325675 and T-325676 were issued in JEWM's name. Entry Nos. 1127625 and 1127626 for Civil Case No. 26,810-98 and Entry Nos. 1127629 and 1127627 for Civil Case No. 26,811-98, all inscribed on October 7, 1998, were carried over to TCT Nos. T-325675 and T-325676.

Meanwhile, the complainant-spouses Crisologo obtained a favorable judgment in Civil Case Nos. 26,810-98 and 26,811-98. The same became final and executory on March 3, 2010. Pursuant thereto and upon the instance of the complainant-spouses, a Writ

of Execution was issued by RTC, Branch 15 on June 15, 2010. The Writ reads:

"xxx xxx xxx

WHEREAS, on appeal, the Honorable Court of Appeals modified this court's decision as follows:

WHEREFORE, in view of the foregoing, the instant appeal is partially GRANTED. Accordingly, the assailed Decision of the Regional Trial Court, 11th Judicial Region, Branch 15, Davao City dated July 1, 1999 is hereby MODIFIED in the sense that appellant's loan obligations are subject to an interest of twelve percent (12%) per annum, to be computed from December 16, 1997 (for Case No. 26,810-98) and September 23, 1998 (for case No. 26,811-98) until fully paid, and that the award for exemplary damage[s] is hereby DELETED.

xxx xxx xxx

WHEREAS, on July 6, 2010, defendants-appellants filed a Petition for Review on *certiorari* to the Supreme Court which was DENIED by the Honorable Supreme Court per its Resolution dated August 17, 2009 and an Entry of Judgment dated March 3, 2010 was issued declaring the said resolution to be final, unappealable and executory;

WHEREAS, on June 9, 2010, the court issued an Order granting the Motion for Issuance of Writ of Execution;

THEREFORE, you are commanded to implement the writ for the satisfaction of the judgment in the decision in accordance with the Rules of Court xxx xxx xxx."

Subsequently, a Notice of Sale was issued by Sheriff Robert M. Medialdea, Sheriff IV, Regional Trial Court on the subject properties: (1) Lot 650-B-2-A-2 covered by TCT No. T-325675, a derivative of TCT No. T-292597; and (2) Lot 3465-A-1-B covered by TCT No. T-325676, a derivative of TCT No. T-292600.

As the foregoing properties are already in JEWM's name, JEWM, through its representative, filed an Affidavit of Third-Party Claim and an Urgent Motion *Ad Cautelam* before RTC, Branch 15. These were denied by the said court in its Order dated August 26, 2010 stating in part that *it cannot issue a restraining order directing the*

sheriff to exclude the subject properties on the basis of AD CAUTELAM motions and affidavit[s] of third party claim as these were not the proper mode of action prescribed by the Rules of Court to seek injunctive relief from the court.

Aggrieved, JEWM filed a complaint for Cancellation of Lien, with Application for Writ of Preliminary Injunction against the Register of Deeds, Davao City, Sheriff Robert Medialdea, JOHN and JANE DOES, and all persons acting under their directions on September 16, 2010[.] The case was docketed as Civil Case No. 33,557-2010; and was subsequently raffled to RTC-Branch 14, Davao City.

On September 22, 2010, Atty. Rene Andrei Q. Saguisag, Jr., representing herein complainant-spouses, entered his appearance and manifested that spouses Crisologo are parties in interest in Civil Case No. 33,557-2010. He argued that the issuance of the writ of injunction would interfere with the proceedings of a co-equal court, RTC, Branch 15, which ordered the execution of the decision in Civil Case Nos. 26,810-98 and 26,811-98. He also posited that there exist[s] no cause for the issuance of the writ as the bond they posted in Civil Case Nos. 26,810-98 and 26,811-98 is substantial enough to cover any damage JEWM might sustain by reason of the implementation of the Writ of Execution.

Atty. Saguisag also filed in open court a Very Urgent Manifestation (*ad cautelam*) and he signified his clients' intention to file a proper motion to intervene. Thus, on September 27, 2010, herein complainant-spouses filed an Omnibus Motion reiterating their positions manifested during the hearing on the issuance of a preliminary writ of injunction.

In addition, complainant-spouses posited that JEWM failed to present evidence of damage it would suffer or the amount of damage it would sustain. They stressed that the subject properties are still encumbered, and whoever buys encumbered property purchases the same subject to the attachment thereon. They also argued that they are the John and Jane Does referred to in Civil Case No. 33,557-2010, because the annotations JEWM sought to cancel include their liens. They insisted that they are indispensable parties, being John and Jane Does of Civil Case No. 33-557-2016, hence, intervention is no longer necessary.

The RTC, Branch 14, issued an Order dated September 27, 2010 directing the issuance of a preliminary writ of injunction enjoining the Register of Deeds, Davao City, Sheriff Robert Medialdea, John and Jane Does and all persons acting in their respective stead from enforcing the first and second notices of auction sale in so far as TCT Nos. T-325675 and T-325676 are concerned. After JEWM posted the required bond of Php500,000.00, a Writ of Preliminary Injunction was issued on October 5, 2010, to quote:

> "After a careful scrutiny and analysis on the evidence thus far shown by the plaintiff-applicant, the court is of its considered view and so hold to grant the ancillary relief for preliminary writ of injunction applied for.
>
> WHEREFORE, let [the] preliminary writ of injunction issue xxx xxx xxx during the pendency or until final adjudication on the merit of this case, or until final order from this Court."

Dissatisfied, herein complainant-spouses filed a Motion for Reconsideration and a Very Urgent Omnibus Motion on October 4, 2010 asking the RTC, Branch 14 to resolve the Omnibus Motion filed on September 27, 2010, the Very Urgent Omnibus Motion, and for the reconsideration of the Order dated September 27, 2010. The same was denied and ordered stricken off the records by RTC, Branch 14 in its Order dated November 9, 2010.

On October 15, 2010, complainant-spouses filed this present case before the Office of the Court Administrator.

> Complainant-spouses Crisologo principally aver the following:
>
> 1. They are plaintiffs in a collection suit docketed as Civil Case Nos. 26,810-98 and 26-811-98 raffled to RTC, Branch 15, Davao City. They obtained a favorable judgment which had become final and executory on March 3, 2010. Accordingly, a Writ of Execution dated June 15, 2010 was issued for the satisfaction of said final judgment. Notice of Sale and publication requirements were allegedly complied with. The Notice included two (2) properties covered by Transfer Certificates of Title (TCTs) Nos. 325675 and 325676, which contained annotations, to wit:
>
> xxx xxx xxx

2. The subject properties are now in the name of JEWM but were formerly owned by SO KENG KOC and attached by order of the RTC, Branch 15, Davao City as early as 1998 in Civil Case Nos. 26,810-98 and 26,811-98;

3. JEWM filed an Affidavit of Third Party Claim and a Motion to Exclude the Subject Properties from the Auction Sale, but were all denied by RTC, Branch 15 in its Order dated August 25, 2010. Instead, the court directed the sheriff to proceed with the sale on August 26, 2010;

4. The auction sale was, however, rescheduled to October 7, 2010 because the sheriff, accordingly, orally demanded the posting of a bond in accordance with Section 16, Rule 39 of the Rules of Court;

5. JEWM filed an action for cancellation of liens with prayer for the issuance of a preliminary injunction on September 16, 2010 involving two (2) aforesaid properties covered by Transfer Certificates of Title (TCTs) Nos. 325675 and 325676;

6. The issuance of the Writ of Preliminary Injunction enjoining the execution of a final and executory judgment of RTC Branch 15, a co-equal and coordinate court was without an evidentiary hearing;

7. Respondent Judge's refusal to recognize complainants as indispensable parties being lien holders of the subject properties was tainted with manifest bias and partiality.

They prayed that respondent Judge be held administratively liable, his actions allegedly constitute gross ignorance of the law, grave abuse of discretion and gross dereliction of duty and manifest bias.

On January 3, 2011, complainant-spouses again filed a Very Urgent Manifestation (*ad cautelam*) stating that they cannot be declared in default as they were not yet served with summons.

The Office of the Court Administrator in its 1st Indorsement dated January 10, 2010 required respondent Judge to submit his Comment to the instant Affidavit-Complaint. In his Comment dated February 8, 2011, he vehemently denied the material allegations in the affidavit-complaint. He contends that to constitute gross ignorance of the law, he must be moved by bad faith, fraud, dishonesty or corruption which complainant-spouses allegedly failed to adduce.

Furthermore, respondent Judge avers that he did not interfere with the proceedings of a co-equal and coordinate court, RTC, Branch 15, when he issued the Writ of Preliminary Injunction. The subject properties had already been made to satisfy the first annotated levy on attachment – the Entry Nos. 1121176 and 1121177 made on September 8, 1998 for Civil Case No. 26,513-98 filed before RTC, Branch 8, Davao City pursuant to a final judgment in said case.

In addition, JEWM is not a party to Civil Case Nos. 26,810-98 and 26,811-98 both entitled "Nannette B. Crisologo and Jesus Crisologo vs. Robert Allan Limso and So Keng Koc, *et al*." He asserts that complainant-spouses did not file a proper Motion to Intervene with Pleading-in-Intervention in observance of the requirements laid down in Rule 19 of the Rules of Court. He stresses that while he granted the assailed injunction and denied the appearance of the complainants, the same did not constitute gross ignorance of the law. He likewise points out Supreme Court's proscription on the filing of an administrative complaint before exhaustion of judicial remedies against questioned errors of a judge in the exercise of its jurisdiction. He also filed a Counter-Complaint where he emphasized the exhaustion of judicial remedies as pre-requisite to the filing of an administrative case. He prayed that complainant-spouses and their counsel be administratively punished for knowingly and unjustly filing the alleged unfounded administrative complaint against him.

In a Resolution dated September 12, 2011, the Second Division of the Supreme Court resolved to refer the instant administrative complaint to a Justice of the Court of Appeals, Cagayan de Oro City for investigation, report and recommendation within sixty (60) days from receipt of the records thereof.[6]

Report of the Investigating Justice of the Court of Appeals

After notice and hearing, the Investigating Justice of the Court of Appeals of Cagayan de Oro City recommended the following:

IN VIEW OF THE FOREGOING, it is respectfully recommended that:

[6] Report, pp. 2-17.

a) The charge of interference with proceedings of a co-equal and coordinate court be dismissed for lack of merit;

b) As to the issuance of a Writ of Preliminary Injunction without conducting an evidentiary hearing, respondent Judge George E. Omelio be ordered to pay a FINE in the amount of ₱30,000.00 with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely; and

c) Anent the charge of refusing to recognize the complainants as indispensable parties, respondent Judge be ADMONISHED to be more careful and diligent in the discharge of his judicial functions.[7]

On the charge of interference with the proceedings of a co-equal and coordinate court in issuing a writ of preliminary injunction which frustrates the execution of a final and executory decision, the Investigating Justice found that there was no interference. Section 16, Rule 39 of the Rules of Court allows third-party claimants of properties under execution, such as JEWM Agro Industrial Corp. (JEWM) in this case, to vindicate their claims to the property in a separate action with another court, which in the exercise of its own jurisdiction, may issue a temporary restraining order.[8]

On the charge of issuing a writ of preliminary injunction without evidentiary hearing, the Investigating Justice found Judge Omelio guilty. Judge Omelio claimed that Sps. Crisologo were not able to adduce evidence to prove that he was moved by corruption in issuing the injunctive relief. The Investigating Justice, however, found no merit in this argument because lack of malicious intent cannot completely free a respondent judge from liability. The Investigating Justice found that Judge Omelio conducted a summary hearing on 22 September 2010 and issued the writ of preliminary injunction on the same day, despite the absence of any testimonial or documentary evidence. For this reason, the Investigating Justice found Judge Omelio grossly

[7] *Id.* at 28-29.

[8] *Id.* at 19-21.

ignorant of the law and recommended a fine of thirty thousand pesos (₱30,000.00) as appropriate penalty.[9]

On the third issue of refusing to recognize Sps. Crisologo as indispensable parties, the Investigating Justice recommended admonishing Judge Omelio for failure to notify the Sps. Crisologo, as well as to order that they be impleaded. Judge Omelio argued that Sps. Crisologo should have filed the proper Motion to Intervene. He further claimed that the Sps. Crisologo failed to show they are the persons in control of the subject property or under the direct orders of defendants Register of Deeds and Sheriff Medialdea. However, the Investigating Justice, citing *Gonzales v. Judge Bersamin*,[10] ruled that notice was required to be given to parties whose annotations appear on the back of the certificate of title in an action for cancellation of the annotations.[11] For this reason, the Investigating Justice recommended admonishing Judge Omelio for his failure to notify the Sps. Crisologo and to order that they be impleaded in the petition for cancellation of liens annotated on the certificate of title.

The Issues

In contrast to the three issues resolved by the Investigating Justice, Sps. Crisologo raised seven issues in their Affidavit-Complaint, Supplement to Affidavit-Complaint and Reply, and Memorandum enumerating the charges against Judge Omelio, as follows:

1. Gross ignorance of the law and interference with the proceedings of a co-equal and coordinate court in issuing a writ of preliminary injunction which frustrates the execution of a final and executory decision;[12]

2. Gross ignorance of the law and grave abuse of discretion for issuing a writ of preliminary injunction without an

[9] *Id.* at 22-25.

[10] 325 Phil. 120 (1996).

[11] Report, pp. 25-28.

[12] *Rollo*, p. 1.

evidentiary hearing and in the absence of a clear and positive ground;[13]

3. Gross ignorance of the law, grave abuse of discretion, gross dereliction of duty and manifest bias for refusing to recognize Sps. Crisologo as indispensable parties, and giving due course to an action where the plaintiff merely impleads the indispensable parties as John Does and Jane Does despite full knowledge of their identities;[14]

4. Manifest bias for granting a contentious motion despite violation of the three-day notice rule;[15]

5. Manifest bias for proceeding with the case despite non-compliance with the rules on summons;[16]

6. Manifest bias for cancelling the registration of sale where Sps. Crisologo are buyers in another case without due process;[17] and

7. Manifest bias in issuing two conflicting orders, with one showing prejudgment.[18]

The Ruling of this Court

We adopt the recommendation of the Investigating Justice with respect to the charges on: (a) interference with the proceedings of a co-equal and coordinate court; and (b) refusing to recognize Sps. Crisologo as indispensable parties.

We reverse the recommendation of the Investigating Justice with respect to the charge on issuance of the writ of preliminary injunction without an evidentiary hearing and dismiss this charge for lack of merit. The Rules of Court allow the issuance of the

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[13] *Id.*

[14] *Id.*

[15] *Id.* at 226, 411.

[16] *Id.* at 411.

[17] *Id.*

[18] *Id.*

writ of preliminary injunction based on the verified application, for as long as there is notice and hearing.

We find Judge Omelio guilty of gross ignorance of the law for the following acts: (a) granting a contentious motion that was in violation of the three-day notice rule; (b) not complying with the rules on summons; and (c) rendering a decision in an indirect contempt case that cancels an annotation of a certificate of sale without notifying the buyer, in violation of the latter's right to due process.

We dismiss for lack of merit the charge of issuing conflicting orders.

Non-interference with the proceedings of a co-equal and coordinate court

As correctly pointed out by the Investigating Justice, Section 16, Rule 39 of the Rules of Court allows for the institution of a separate action by a third-party claimant who seeks to protect his interests in an execution proceeding:

SEC. 16. *Proceedings where property claimed by third person.*— If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. **Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a**

separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

x x x (Emphasis supplied)

In *Naguit v. Court of Appeals*,[19] the Court considered Naguit, whose exclusive property was executed for the debts of her husband, a stranger to the case against the husband. Naguit was allowed to institute a separate action to vindicate her right of ownership over her exclusive property, which action was not considered an encroachment upon the jurisdiction of a co-equal and coordinate court:

In the case at bar, petitioner filed an independent action for the annulment of the certificate of sale issued in favor of private respondent, contending that the property levied upon and sold to private respondent by virtue of the writ of execution issued in Criminal Case No. 90-2645 was her exclusive property, not that of the judgment obligor. Pursuant to our ruling in Sy v. Discaya, petitioner is deemed a stranger to the action wherein the writ of execution was issued and is therefore justified in bringing an independent action to vindicate her right of ownership over the subject property.

Contrary to the stand taken by the trial court, the filing of such an independent action cannot be considered an encroachment upon the jurisdiction of a co-equal and coordinate court. The court issuing the writ of execution may enforce its authority only over properties of the judgment debtor; thus, the sheriff acts properly only when he subjects to execution property undeniably belonging to the judgment debtor. If the sheriff levies upon the assets of a third person in which the judgment debtor has no interest, then he is acting beyond the limits of his authority and is amenable to control and correction by a court of competent jurisdiction in a separate and independent action. This is in consonance with the well-established principle that no man shall be affected by any proceeding to which he is a stranger. Execution of a judgment can only be issued against a party to the action, and not against one who has not yet had his day in court.[20]

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[19] 400 Phil. 829 (2000).

[20] *Id.* at 66-67.

Consistent with *Naguit v. Court of Appeals*,[21] JEWM can be considered a third-party claimant and stranger to the case, because, despite not being the judgment obligor, JEWM's properties are being executed for So Keng Koc's liabilities. The Rules of Court allow JEWM to vindicate its claim to the properties in a separate action. The court exercising jurisdiction over the separate action, which in this case is RTC, Branch 14, may issue an injunction, enjoining the execution of JEWM's properties in satisfaction of So Keng Koc's liabilities. For this reason, we dismiss the Sps. Crisologo's charge against Judge Omelio for gross ignorance of the law due to interference with the proceedings of a co-equal and coordinate court.

Issuance of a writ of preliminary injunction without an evidentiary hearing

Section 5, Rule 58 of the Rules of Court provides for the procedure in issuing preliminary injunctions:

SEC. 5. *Preliminary injunction not granted without notice; exception.*—No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from **facts shown by affidavits or by the verified application** that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two

[21] *Supra* note 19.

(72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders. (Emphasis supplied)

This provision provides for the general rule that writs of preliminary injunction shall only be issued with hearing and prior notice to the party or person sought to be enjoined. Should great or irreparable injury result to the applicant based on affidavits or the verified application before the matter can be heard with prior notice to the parties, the court may issue a temporary restraining order effective for a period of 20 days. Within the 20-day period, the court must notify the other party and order him to show cause why injunction should not be granted.

The Investigating Justice found that a summary hearing was conducted on 22 September 2010. In the hearing, there was no presentation of witnesses to substantiate the allegations in the complaint or identification of documentary exhibits for evidentiary purposes. Without testimonial and documentary evidence, the Investigating Justice deemed the applicant of the injunctive writ to have failed to establish a clear and unmistakable right as pre-condition for the issuance of the writ of injunction. For

this reason, the Investigating Justice found Judge Omelio guilty of "gross ignorance of the basic and simple procedure of requiring an evidentiary hearing in application for the issuance of an injunctive writ" and recommended the penalty of a fine of ₱30,000.00.[22]

We disagree. Although the general rule is that a sampling of evidence is required to be submitted during the hearing on the motion for preliminary injunction, there are also instances when the writ of preliminary injunction can be issued based on the verified application, provided there is notice and hearing.

In *Humol v. Judge Clapis*,[23] an administrative case was filed against respondent judge therein for issuing an injunction without the parties presenting or offering their respective evidences during the hearing. In fact, the issuance of the injunctive writ was based merely on testimonies of resource persons invited by the court, with counsels not being given the opportunity to cross-examine the resource persons.[24] Despite the absence of the applicant's offer of evidence in the hearing on the motion for issuance of preliminary injunction, the Court dismissed the charge of impropriety exhibited by the judge because the issue on the propriety of the issuance of the writ of injunction was judicial in nature and cannot be threshed out in an administrative action.[25] Errors or irregularities committed by the judge in rendering his decision should be remedied first through a motion for reconsideration, appeal, special civil action for *certiorari*, prohibition or *mandamus*, motion for inhibition or petition for change of venue.[26]

In this case, Sps. Crisologo charge Judge Omelio with gross ignorance of the law for issuing the writ of preliminary injunction without an evidentiary hearing and in the absence of a clear

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[22] Report, pp. 22-23.

[23] A.M. No. RTJ-11-2285, 27 July 2011, 654 SCRA 406.

[24] *Id.* at 411.

[25] *Id.* at 418-419.

[26] *Id.*

and positive ground. The Rules of Court, however, provide that a temporary restraining order may be issued not only based on affidavit, but also based simply on the verified application and its supporting documents, provided there is notice and hearing. Judge Omelio is given a wide latitude of discretion in issuing the writ of preliminary injunction after the hearing, especially when a clear and unmistakable right to the issuance of the injunctive writ can be gleaned from affidavits or the verified application and its supporting documents, considering the peculiar circumstances of this case.

This case concerns the cancellation of liens on the transfer certificates of title, involving issues which can be comprehended by the judge based on a cursory examination of the verified application and its supporting documents. During the hearing on 22 September 2010 (which is a requirement in the issuance of a writ of preliminary injunction), both counsels were given the opportunity to argue their case before Judge Omelio.[27] Neither counsel raised the issue of authenticity of the titles, subject of the case. **Both counsels were in agreement with regard to the facts**: **(a) that there were several liens over the properties**;[28] **(b) that the property held by JEWM was a derivative title in satisfaction of the first lien**;[29] **and (c) that the Sps. Crisologo were executing JEWM's property based on the second lien**.[30] With no factual issues or disputes, the issues raised by counsels before Judge Omelio were purely legal in nature, which could be resolved from an examination of the verified application and its supporting documents. A clear and unmistakable right to the issuance of the writ of injunction in favor of JEWM could easily be gathered from examining the submitted pleadings and their supporting documents.

For this reason, we find Judge Omelio not guilty of gross ignorance of the law in issuing a writ of preliminary injunction

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[27] *Rollo*, pp. 68-98.

[28] *Id.* at 86.

[29] *Id.* at 82-84.

[30] *Id.* at 77-79.

without requiring the parties to present testimonial evidences during the hearing. Judge Omelio already received documentary evidences as supporting documents in the verified application and accorded both counsels the opportunity to be heard in oral arguments before him during the hearing. We find that the hearing conducted by Judge Omelio in the motion for issuance of the writ of preliminary injunction was adequate and compliant with the Rules of Court. For this reason, we reverse the Investigating Justice's finding of guilt in this charge, including the recommended penalty of fine of ₱30,000.00. We dismiss this charge of gross ignorance of the law for issuing a writ of preliminary injunction without evidentiary hearing for lack of merit.

Manifest bias for proceeding with the case despite non-compliance with the rules on summons

Another indispensable requirement for the issuance of a writ of preliminary injunction is the service of summons upon defendants, in accordance with Section 5, Rule 58 of the Rules of Court. The disputed case is entitled *JEWM Agro-Industrial Corporation v. Register of Deeds, Sheriff Medialdea, John & Jane Does and all persons acting under their directions*, which prayed for the cancellation of liens annotated at the back of TCT Nos. T-325675 and T-325676.

The liens annotated at the back of a certificate of title can be cancelled through: (a) a petition with the land registration court, under Section 112 of Act No. 496;[31] or (b) an ordinary civil action filed against the parties whose liens are sought to be cancelled.[32] In a petition under Section 112 of Act No. 496, notice to the lienholder is a jurisdictional requirement. In an ordinary civil action, service of summons to the lienholder is a jurisdictional requirement. In case the lienholder is unknown, such as what the plaintiff claimed in the disputed case, service of summons for unknown defendants should strictly be complied

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[31] *PNB v. International Corporate Bank*, 276 Phil. 551, 558-559 (1991).

[32] *In Re: Petition for Cancellation of Encumbrances Annotated on TCT Nos. 22120 and 22121, Registry of Deeds of Nueva Ecija*, No. L-27358, 20 February 1981, 102 SCRA 747, 752.

with. Otherwise, the judgment cannot be considered binding on the unknown defendants.

Rule 14 of the Rules of Court provides for the procedure on summons:

> SECTION 1. *Clerk to issue summons*. - Upon the filing of the complaint and the requisite legal fees, the clerk of court shall forthwith issue the corresponding summons to the defendants.
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> xxx xxx xxx
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> SEC. 14. *Service upon defendant whose identity or whereabouts are unknown*. - In any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order.

In this case, service of summons was made only upon the Register of Deeds and Sheriff Robert Medialdea.[33] The notice of hearing for the preliminary injunction was likewise served only upon defendants Register of Deeds and Sheriff Robert Medialdea.[34] No procedure for service of summons was observed upon the John and Jane Does impleaded in the complaint. Judge Omelio's Order dated 19 November 2010 declared only defendants Register of Deeds and Sheriff Robert Medialdea in default. The Order was silent on the declaration of default of the John and Jane Does.[35]

Sps. Crisologo claim that the case should not have proceeded because no summons were made upon the John and Jane Does impleaded in the complaint. Since defendants John and Jane Does are unidentified persons, summons must be made with leave of court and by publication.[36] Judge Omelio, on the other

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[33] *Rollo,* p. 35.

[34] *Id.* at 34.

[35] *Id.* at 233.

[36] *Id.* at 391.

hand, claims that the requirements for service of summons are not applicable where the parties claiming entitlement to summons have already appeared in court during the hearing of the petition.[37]

As a general rule, jurisdiction cannot be acquired over the defendant without service of summons, even if he knows of the case against him. Jurisdiction, however, can be acquired without service of summons, if the defendant voluntarily submits to the jurisdiction of the court by appearing through his counsel in filing the appropriate pleadings.[38] In this case, Judge Omelio claims that service of summons to unknown defendants can be dispensed with because Sps. Crisologo voluntarily appeared and submitted themselves to the jurisdiction of the court. However, Judge Omelio's argument on voluntary appearance presents a conflicting position in relation to his actions during the pendency of the case. On 9 November 2010, despite the Sps. Crisologo's voluntary appearance, Judge Omelio issued an Order striking the omnibus motion and all pleadings filed by Sps. Crisologo, who claim to be defendants under John and Jane Does, due to lack of legal standing.[39] Judge Omelio claims that Sps. Crisologo must file the necessary pleading-in-intervention in order to be recognized in court. Judge Omelio's stubborn refusal to recognize Sps. Crisologo in the case reflects an appearance of partiality in favor of JEWM.

Judge Omelio's failure to effect proper service of summons upon the defendants John and Jane Does in the complaint constitutes gross ignorance of the law. The rules and procedures on summons are very elementary, that non-observance and lack of knowledge on them constitute gross ignorance of the law, especially for judges who are supposed to exhibit more than just a cursory acquaintance with the procedural rules. For failing to cause the proper service of summons upon defendants John and Jane Does and Sps. Crisologo, we find Judge Omelio guilty of gross ignorance of the law.

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[37] *Id.* at 344.

[38] *Habaña v. Vamenta, Jr.*, 144 Phil. 650, 663-664 (1970).

[39] *Rollo*, pp. 231-232.

Refusal to recognize Sps. Crisologo as indispensable parties

Section 2, Rule 3 of the Rules of Court provides:

SEC. 2. *Parties in interest*. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

In this case, Sps. Crisologo, through their counsel, were pleading before Judge Omelio to recognize their entry of appearance as real parties in interest under defendants John and Jane Does in the hearing for preliminary injunction on 22 September 2010. The case involved the cancellation of several liens carried over in TCT Nos. T-325675 and T-325676, including the liens in favor of Sps. Crisologo.

However, Judge Omelio refused to recognize Sps. Crisologo due to lack of legal standing.[40] Judge Omelio bases his refusal to recognize Sps. Crisologo on the ground of lack of the proper Motion to Intervene with Pleading-in-Intervention.[41] In addition, Judge Omelio further claims that the complaint identifies the "John & Jane Does" as defendants who may or hereinafter be in control of the property of the subject complaint and/or those persons or agents who may be acting under the direct orders of the Register of Deeds and Sheriff Medialdea.[42] Since Sps. Crisologo are not yet in control of the property nor are they acting under the direct orders of the Register of Deeds and Sheriff Medialdea, they should not be considered as the defendants in this case.[43] Judge Omelio argues that Sps. Crisologo are not indispensable parties because their participation is not indispensable in the determination of whether or not the subsequent

[40] *Id.* at 66.

[41] *Id.* at 180.

[42] *Id.* at 181.

[43] *Id.*

liens annotated on the titles of the subject properties may be properly cancelled.[44]

We are not persuaded. Parties with liens annotated on the certificate of title are entitled to notice in an action for cancellation of their liens. The Court, in *Southwestern University v. Laurente*,[45] adopted the following reasoning of the lower court:

> The Court is in accord with his contention (that *if there should be notice, it should be limited to the parties annotated in the certificate of title itself, and should not be extended to subsequent parties who, even granting that they acquired the interests of these persons annotated in the certificate of title, failed to have their rights accordingly annotated in said certificate of title*) of petitioner Southwestern University, and maintains that inasmuch as the law specifically provides notice to parties in interest, such notice if any, should be limited to the parties listed or annotated on the certificate of title. x x x.[46] (Italicization in the original)

In this case, it is not disputed that Sps. Crisologo's liens were annotated at the back of JEWM's certificates of title. The cancellation of Sps. Crisologo's liens without notice to them is a violation of their right to due process. Consistent with *Southwestern University v. Laurente*,[47] Judge Omelio should be penalized for failing to recognize Sps. Crisologo as indispensable parties and for requiring them to file a motion to intervene, considering that a simple perusal of the certificates of title would show Sps. Crisologo's adverse rights because their liens are annotated at the back of the titles. For this reason, we find Judge Omelio guilty of gross ignorance of the law for refusing to recognize Sps. Crisologo as indispensable parties in the disputed case.

Manifest bias for granting a contentious motion despite violation of the three-day notice rule

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[44] *Id.* at 181-182.

[45] 135 Phil. 44 (1968).

[46] *Id.* at 47.

[47] *Supra*.

The Investigating Justice failed to discuss the next four issues raised by Sps. Crisologo in their Supplement to the Affidavit-Complaint and Reply[48] and their Memorandum.[49]

Sps. Crisologo claim that JEWM filed a Motion to Render Judgment Granting Plaintiff the Relief Prayed for with Memorandum Attached on 6 December 2010.[50] The motion, however, was heard on 8 December 2010,[51] in violation of the three-day notice requirement.

Section 4, Rule 15 of the Rules of Court provides for the procedure in hearing motions:

> SEC. 4. *Hearing of motion*. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

This provision mandates service to the adverse party at least three days before the hearing date of a written motion required to be heard and its notice of hearing.

In *Philippine Advertising Counselors v. Revilla*,[52] the Court held that the motion for reconsideration which contained a defective notice of hearing did not suspend the running of the period to appeal, and the trial court exceeded its jurisdiction when it granted the defective motion:

> Finally, Section 4, Rule 15 of the Rules of Court provides that notice of a motion shall be served by the applicant to all parties

[48] *Rollo,* pp. 226-230.

[49] *Id.* at 386-393.

[50] *Id.* at 226, 235-237, 391.

[51] *Id.* at 237.

[52] 152 Phil. 213 (1973).

concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it; and Section 5 of the same Rule requires the notice to be directed to the parties concerned and to state the time and place for the hearing of the motion. A motion which fails to comply with these requirements is nothing but a useless piece of paper.[53]

In *J. King & Sons Co., Inc. v. Judge Hontanosas, Jr.*,[54] the Court suspended respondent judge for three months without pay, and declared him guilty, among others, of gross ignorance of the law for granting a motion that was in violation of the three-day notice rule:

> We agree with the Investigating Justice's finding that respondent is guilty of gross ignorance of the law for not holding a full-blown hearing on the motion to lift attachment and for violating the three-day notice rule.
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> xxx xxx xxx
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> A perusal of the motion to lift attachment shows that a copy of the same was mailed to plaintiff's counsel only on July 3, 2002. The court's receiving stamp showed that said motion was filed in court only at 11:02 in the morning of July 5, 2002, despite the fact that the notice of hearing for said motion stated that said motion would be set for hearing at 8:30 in the morning of July 5, 2002. The proximity of the date of mailing of the copy of the motion to the other party and the hearing date indicated in the notice of hearing clearly shows that it is impossible for the other party to receive said motion at least three days before the date of hearing. Evidently, the party filing the motion to lift attachment had already violated the three-day notice rule. Such circumstances should have already warned respondent that plaintiff in the subject case had not yet been apprised of the filing of such a motion, much less the holding of a hearing for said motion. Yet, despite said patent defects in the motion, respondent consented to hold a hearing on the motion at 11:20 of the very same morning of July 5, 2002. Although Section 4, Rule 15 of the 1997 Rules of Civil Procedure provides that the court, for good cause, may set the hearing on shorter notice, the rule is explicit that notice of hearing cannot be altogether dispensed with. In this

[53] *Id.* at 224.

[54] 482 Phil. 1 (2004).

case, common knowledge dictates that it would be impossible for a copy of the motion, mailed only on July 3, 2002, to be delivered by registered mail to counsel for the plaintiff on or before July 5, 2002. Obviously, therefore, the plaintiff had no notice whatsoever of the filing of the motion and the hearing date for the same.

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It has been oft repeated that judges cannot be held to account or answer criminally, civilly or administratively for an erroneous judgment [or] decision rendered by him in good faith, or in the absence of fraud, dishonesty or corruption. However, it has also been held that when the law violated is elementary, a judge is subject to disciplinary action. The principles of due notice and hearing are so basic that respondent's inability to accord a litigant their right thereto cannot be excused. In this case, we believe that respondent's actuations reek of malice and bad faith. Thus, we find respondent guilty of gross ignorance of the law for violating the three-day notice rule and failing to give herein complainant due notice and the opportunity to be heard on the matter as mandated by Section 12, Rule 57 of the 1997 Rules of Civil Procedure.[55]

In this case, JEWM filed a motion to render judgment based on the pleadings on 6 December 2010.[56] The annotations on the copy furnished portion of the motion show that service was made to the Register of Deeds of Davao City and Sheriff Robert Medialdea on 6 December 2010.[57] The hearing was conducted on 8 December 2010.[58] Judge Omelio granted JEWM's motion on 13 December 2010.

A motion to render judgment based on the pleadings is a litigious motion because the grant of such motion will eliminate trial and the case will be considered submitted for decision. For this reason, service to the adverse parties of such litigious motion should be made at least three days before the date of the hearing, as mandated by Section 4, Rule 15 of the Rules of Court.

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[55] *Id.* at 23-27.

[56] *Rollo,* pp. 235-237.

[57] *Id.* at 237.

[58] *Id.*

In this case, Judge Omelio granted a contentious motion which contained a defective notice of hearing. The notice of hearing was defective because it was only served two (2) days before the hearing date, instead of the mandatory three-day notice rule. Such motion should have been considered a mere scrap of paper. Judge Omelio should have denied the motion on the ground that it violated the three-day notice rule, without prejudice to JEWM's re-filing of said motion in accordance with the Rules.

In *Almeron v. Judge Sardido*,[59] the Court held:

> [M]embers of the judiciary are supposed to exhibit more than just a cursory acquaintance with the statutes and procedural rules, more so with legal principles and rules so elementary and basic that not to know them, or to act as if one does not know them, constitutes gross ignorance of the law.[60]

In this case, Judge Omelio granted a litigious motion, in violation of the elementary three-day notice rule on motions. Applying *J. King & Sons Co., Inc. v. Judge Hontanosas, Jr.*,[61] Judge Omelio is considered guilty of gross ignorance of the law for granting the defective motion. The three-day notice rule on motions is so elementary, that not knowing and observing it, especially in litigious and contentious motions, constitute gross ignorance of the law. For this reason, we find Judge Omelio guilty of gross ignorance of the law for granting a contentious motion that was in violation of the three-day notice rule on motions.

Manifest bias for cancelling the registration of sale without due process where Sps. Crisologo are buyers

Sps. Crisologo claim that Judge Omelio, in a complaint for indirect contempt against Sheriff Medialdea, rendered a Decision,[62] not only declaring Sheriff Medialdea guilty of indirect

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[59] 346 Phil. 424 (1997).

[60] *Id.* at 429-430.

[61] *Supra* note 54.

[62] *Rollo,* pp. 407-409.

contempt, but also directed the Register of Deeds of Davao City to cancel any registration or annotation of the Sheriff's Certificate of Sale at the back of TCT Nos. T-325675 and T-325676.[63] Such cancellation of Sps. Crisologo's annotation of the Sheriff's Certificate of Sale in the titles, in a decision for indirect contempt, without notifying the Sps. Crisologo, constitutes a denial of their right to due process.[64] Judge Omelio, on the other hand, claims that no notice was given to the Sps. Crisologo because they are not parties to the complaint for indirect contempt.[65]

The subject complaint for indirect contempt, Civil Case No. 33,1104-2010, was filed on 14 October 2010 and entitled *JEWM Agro-Industrial Corporation v. Sheriff Robert Medialdea and Register of Deeds for the City of Davao*.[66] JEWM, as plaintiff in the indirect contempt complaint, prayed that: (a) Sheriff Medialdea be found guilty of indirect contempt and be penalized a fine not exceeding ₱30,000.00 and imprisoned for not more than six months, in accordance with Section 7, Rule 71 of the Rules of Court; and (b) the auction sale annotated on TCT Nos. T-325675 and T-325676, stating Sps. Crisologo are buyers, be declared illegal and the Register of Deeds of Davao City be directed to cancel such annotation of sale.[67]

In his Decision dated 27 January 2011,[68] Judge Omelio granted JEWM's prayers. The dispositive portion of the decision reads as follows:

> WHEREFORE, in view of all the foregoing, defendant Sheriff Robert Medialdea is hereby declared GUILTY of indirect contempt and is ordered to pay a fine of Five Thousand (₱5,000.00) Pesos. Similar offense in the future will be dealt with more severely.

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[63] *Id.* at 409.

[64] *Id.* at 392.

[65] *Id.* at 346.

[66] *Id.* at 241-245.

[67] *Id.* at 245.

[68] *Id.* at 247-249.

Corollary thereto, for being illegal, the auction sale on October 8, 2010 and the corresponding sheriff's certificates of sale pertaining to the property of plaintiff covered by TCT No. T-325675 and TCT No. T-325676 are hereby declared null and void and without force and effect of the law.

The Register of Deeds for Davao City is hereby directed to cancel any registration or annotation of the subject Sheriff's Certificates of Sale at the back of TCT No. T-325675 and TCT No. T-325676.

Let copy of this decision be furnished the Office of the Court Administrator for proper administrative action.

SO ORDERED.[69] (Emphasis supplied)

Judge Omelio's decision in the indirect contempt complaint ordered the cancellation in TCT Nos. T-325675 and T-325676 of the annotation of the Sheriff's Certificate of Sale in favor of the Sps. Crisologo. Although the case was an indirect contempt complaint, it can still be considered a petition to cancel annotations because of its prayer. As provided in Section 112 of Act No. 496 and *Southwestern University v. Laurente,*[70] notice is required to be given to parties whose annotations appear on the back of the certificate of title in an action for cancellation of annotations on the certificate of title.[71] In this case, however, no summons or notices were issued to Sps. Crisologo. Only the Register of Deeds and Sheriff Medialdea were impleaded. Judge Omelio should have notified the Sps. Crisologo of the indirect contempt complaint because it included the prayer for cancellation of the annotation of sale on the subject titles, where the latter are buyers. Failure to notify the Sps. Crisologo constitutes gross ignorance of the law.

This is not the first time Judge Omelio has rendered a decision affecting third parties' interests, without even notifying the indispensable parties. In the first disputed case, *JEWM Agro-*

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[69] *Id.* at 249.

[70] *Supra* note 45.

[71] *Id.* at 658.

Industrial Corporation v. Register of Deeds, Sheriff Medialdea, John & Jane Does and all persons acting under their directions, Judge Omelio failed to cause the service of proper summons upon the John and Jane Does impleaded in the complaint. Even when Sps. Crisologo voluntarily appeared in court to be recognized as the John and Jane Does, Judge Omelio refused to acknowledge their appearance and ordered the striking out of Sps. Crisologo's pleadings. For this reason, the Investigating Justice recommended admonishing Judge Omelio for failing to recognize the Sps. Crisologo as indispensable parties in that case. Here, in the indirect contempt complaint entitled *JEWM Agro-Industrial Corporation v. Sheriff Robert Medialdea and Register of Deeds for the City of Davao,* which included a prayer for cancellation of annotations on the titles, Judge Omelio once again failed to notify the Sps. Crisologo, the lienholders who would be affected by the cancellation of the annotation. Worse, Judge Omelio granted the prayer for cancellation of the annotations of Sps. Crisologo's Sheriff's Certificate of Sale without notifying them of the complaint. Clearly, the cancellation of the annotation of the sale without notifying the buyers, Sps. Crisologo, is a violation of the latter's right to due process. Since this is the second time that Judge Omelio has issued an order which fails to notify or summon the indispensable parties, we find Judge Omelio guilty of gross ignorance of the law, with a warning that repetition of the same or similar act will merit a stiffer penalty in the future.

Manifest bias in issuing conflicting orders

Sps. Crisologo claim that Judge Omelio exhibited manifest bias when he issued two conflicting orders on the same day, with one already showing prejudgment.[72] In Judge Omelio's Order dated 7 October 2010, he declared:

> The Omnibus Motion dated October 1, 2010 filed by Rene Andrei Q. Saguisag, which is submitted without argument, counsel for the plaintiff is directed to file a comment within five (5) days x x x.[73]

[72] *Rollo,* p. 391.

[73] *Id.* at 405.

In another Order likewise dated on 7 October 2010, Judge Omelio held:

> Atty. R.A.Q. Saguisag, Jr., without first filing a written formal notice of appearance pursuant to the Rules of Court, hence he lacks *locus standi* in court to participate in the proceeding of the case x x x his very urgent omnibus motion dated October 1, 2010 therefore is denied x x x.[74]

Sps. Crisologo allege that Judge Omelio exhibited manifest bias in issuing the conflicting orders, but failed to indicate which provision in the Rules of Court or the Code of Judicial Conduct Juge Omelio violated when he issued these orders. For this reason, we dismiss this charge for lack of merit.

Application of Penalties

In this case, Judge Omelio is found guilty of four counts of gross ignorance of the law for the following acts: (a) refusal to recognize Sps. Crisologo as indispensable parties; (b) granting a contentious motion in violation of the three-day notice rule; (c) non-compliance with the rules on summons; and (d) cancelling the annotation of the Sheriff's Certificate of Sale on the titles without notifying the buyers, in violation of the latter's right to due process.

Section 8, Rule 140 of the Rules of Court considers gross ignorance of the law or procedure as a serious charge. Section 11 of Rule 140, on the other hand, provides for the sanctions on respondents guilty of serious charges:

> SEC. 11. *Sanctions*. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits;

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[74] *Id.* at 406.

2. Suspension from office without salary and other benefits for more than three (3) months, but not exceeding six (6) months; or

3. A fine of more than ₱20,000 but not exceeding ₱40,000.

xxx xxx xxx

Section 55 of the Revised Uniform Rules on Administrative Cases in the Civil Service (Revised Uniform Rules) provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. Section 54(c) of the same Revised Uniform Rules states that the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

The Court, in a number of cases, has adopted the Revised Uniform Rules in the discipline of erring court officers and judges.[75] In *Garcia v. Alejo,*[76] the Court found Alejo guilty of two offenses: (a) dereliction of duty; and (b) violation of reasonable office rules and regulations. The penalty imposed upon Alejo was the penalty for the more serious charge, dereliction of duty, taking into consideration the fact that he had previously been admonished in an earlier case.

In this case, Judge Omelio is found guilty of four counts of the serious charge of gross ignorance of the law, with no mitigating circumstances. Based on the rules on penalties in administrative cases, the sanction to be imposed is the penalty for the serious charge of gross ignorance of the law in its maximum, due to the presence of aggravating circumstances.

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[75] See *OCA v. Judge Indar,* A.M. No. RTJ-10-2232, 10 April 2012*; Reyes v. Vidor,* 441 Phil. 526 (2002); *Falsification of Daily Time Records of Ma. Emcisa A. Benedictos,* A.M. No. P-10-2784, 19 October 2011, 659 SCRA 403.

[76] A.M. No. P-09-2627, 26 January 2011, 640 SCRA 487.

In its Resolution dated 28 July 2008, the Court, in A.M. No. MTJ-08-1701,[77] imposed a fine of Ten Thousand Pesos (₱10,000.00) on Judge Omelio for violation of a Supreme Court Circular with a stern warning that repetition of the same or similar act shall be dealt with more severely. Because of this previous violation, we impose the penalty of fine of Forty Thousand Pesos (₱40,000.00) on Judge Omelio for four counts of gross ignorance of the law.

WHEREFORE, we **DISMISS** the following charges against Judge George E. Omelio for lack of merit: (a) gross ignorance of the law for interfering with the proceedings of a co-equal and coordinate court; (b) gross ignorance of the law for issuing a writ of preliminary injunction without an evidentiary hearing; and (c) manifest bias for issuing conflicting orders. We find Judge George E. Omelio **GUILTY** of four counts of the serious charge of gross ignorance of the law for the following acts: (a) refusing to recognize Spouses Jesus G. Crisologo and Nannette B. Crisologo as indispensable parties; (b) granting a contentious motion in violation of the three-day notice rule; (c) non-compliance with the rules on summons; and (d) rendering a decision in an indirect contempt case that cancels an annotation of a Sheriff's Certificate of Sale on two titles without notifying the buyer, in violation of the latter's right to due process. Accordingly, we impose upon Judge George E. Omelio the penalty of fine of Forty Thousand Pesos (₱40,000.00), with a warning that repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[77] Entitled "*Milagros Villa Abrille v. Judge George Omelio, Municipal Trial Court in Cities, Branch 4, Davao City and Deputy Sheriff Philip N. Betil, Branch 3, same court.*"

[*] Designated Acting Member per Special Order No. 1308 dated 21 September 2012.

FIRST DIVISION

[G.R. No. 159370. October 3, 2012]

PALM TREE ESTATES, INC. and BELLE AIR GOLF AND COUNTRY CLUB, INC., *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE DETERMINATION OF THE COMPLETENESS OR SUFFICIENCY OF THE FORM OF THE PETITION, INCLUDING THE RELEVANT AND PERTINENT DOCUMENTS WHICH HAVE TO BE ATTACHED TO IT, IS LARGELY LEFT TO THE DISCRETION OF THE COURT TAKING COGNIZANCE OF THE PETITION.— The determination of the completeness or sufficiency of the form of the petition, including the relevant and pertinent documents which have to be attached to it, is largely left to the discretion of the court taking cognizance of the petition, in this case the Court of Appeals. If the petition is insufficient in form and substance, the same may be forthwith dismissed without further proceedings. That is the import of Section 6, Rule 65 of the Rules of Court.

2. ID.; ID.; ID.; THE COURT OF APPEALS' DETERMINATION AS TO THE FORMAL SUFFICIENCY OF THE PETITION IS CORRECT; THE DOCUMENTS ATTACHED TO THE PETITION WERE ADEQUATE TO SUPPORT THE ARGUMENTS OF RESPONDENT BANK AND TO GIVE THE APPELLATE COURT A SATISFACTORY, OR AT LEAST SUBSTANTIAL, PICTURE OF THE CASE.— The Court of Appeals already determined that PNB's petition complied with the second paragraph of Section 1, Rule 65 of the Rules of Court and, consequently, that the said petition is sufficient in form and substance when it ordered PTEI and BAGCCI to comment on PNB's petition. This Court sees no compelling reason to set aside the determination of the Court of Appeals on that matter. Moreover, PTEI and BAGCCI wasted their opportunity to question the formal sufficiency of PNB's

petition when they failed to file their comment on time, leading the Court of Appeals to rule in its Decision dated March 21, 2003 as follows: Parenthetically, the "Manifestation and Motion for Leave To Admit Respondents' Comment [on] the Petition," as well as respondents' Comment are hereby DENIED, considering that they were filed more than one (1) year from the lapse of the reglementary period of filing the same. Accordingly, respondents' Comment is ordered EXPUNGED from the record of this case. PTEI and BAGCCI compounded their error when they subsequently failed to raise the issue in their motion for reconsideration of the decision of the Court of Appeals. Such omission constituted a waiver of the said issue pursuant to the omnibus motion rule. Nevertheless, an examination of PNB's petition and the documents attached to it would show that the Court of Appeals' determination as to the formal sufficiency of the petition is correct. The documents attached to the petition were adequate to support the arguments of PNB and to give the Court of Appeals a satisfactory, or at least substantial, picture of the case.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; AN EQUITABLE REMEDY, AND ONE WHO CLAIMS FOR EQUITY MUST DO SO WITH CLEAN HANDS.— A complainant's wrongful conduct respecting the matter for which injunctive relief is sought precludes the complainant from obtaining such relief. A petition for a preliminary injunction is an equitable remedy, and one who comes to claim for equity must do so with clean hands: Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. x x x In this case, the hands of PTEI were not unsullied when it sought preliminary injunction. It was already in breach of its contractual obligations when it defaulted in the payment of its indebtedness to PNB. PTEI's President, Akimoto, admitted that PTEI has unsettled accrued obligations in the letter dated March 28, 2001. Moreover, PTEI had sought the rescheduling or deferral of its payment as well as the restructuring of its loan. This Court has held that a debtor's various and constant requests for deferment of

payment and restructuring of loan, without actually paying the amount due, are clear indications that said debtor was unable to settle his obligation.

4. ID.; ID.; ID.; AS THE MORTGAGOR IS NOT ENTITLED TO THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION, SO IS THE ACCOMMODATION MORTGAGOR; THE ACCESSORY FOLLOWS THE PRINCIPAL.— As PTEI is not entitled to the issuance of a writ of preliminary injunction, so is BAGCCI. The accessory follows the principal. The accessory obligation of BAGCCI as accommodation mortgagor is tied to PTEI's principal obligation to PNB and arises only in the event of PTEI's default. Thus, BAGCCI's interest in the issuance of the writ of preliminary injunction is necessarily prejudiced by PTEI's wrongful conduct and breach of contract.

5. ID.; ID.; ID.; A WRIT OF PRELIMINARY INJUNCTION IS AN EXTRAORDINARY EVENT WHICH MUST BE GRANTED ONLY IN THE FACE OF ACTUAL AND EXISTING SUBSTANTIAL RIGHTS.— A writ of preliminary injunction is an extraordinary event which must be granted only in the face of actual and existing substantial rights. The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it. In the absence of the same, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for having been rendered in grave abuse of discretion.

6. ID.; ID.; ID.; THE ORDER OF THE TRIAL COURT GRANTING THE APPLICATION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION FAILED TO SHOW THAT PETITIONERS HAVE A CLEAR AND UNMISTAKABLE RIGHT WHICH REQUIRES IMMEDIATE PROTECTION DURING THE PENDENCY OF THE ACTION.— The right of PNB to extrajudicially foreclose on the real estate mortgage in the event of PTEI's default is provided under various contracts of the parties. Foreclosure is but a necessary consequence of nonpayment of mortgage indebtedness. In view of PTEI's failure to settle its

outstanding obligations upon demand, it was proper for PNB to exercise its right to foreclose on the mortgaged properties. It then became incumbent on PTEI and BAGCCI, when they filed the complaint and sought the issuance of a writ of preliminary injunction, to establish that they have a clear and unmistakable right which requires immediate protection during the pendency of the action. The Order dated May 17, 2001 of the trial court granting the application for issuance of writ of preliminary injunction failed to show that PTEI and BAGCCI discharged that burden.

7. ID.; ID.; ID.; AN APPLICATION FOR AN INJUNCTIVE RELIEF IS CONSTRUED STRICTLY AGAINST THE PLEADER; THE POSSIBILITY OF IRREPARABLE DAMAGE WITHOUT PROOF OF AN ACTUAL EXISTING RIGHT IS NOT A GROUND FOR PRELIMINARY INJUNCTION.— The Court of Appeals did not err when it ruled that PTEI and BAGCCI failed to show a clear and unmistakable right which would have necessitated the issuance of a writ of preliminary injunction. The Order dated May 17, 2001 of the trial court failed to state a finding of facts that would justify the issuance of the writ of preliminary injunction. It merely stated the conclusion that "real controversies exist" based on the observation that "the positions of the parties are completely opposed to each other." x x x This clearly shows that the trial court relied only on the bare allegations of PTEI and BAGCCI that the mortgaged properties were being made to answer for obligations that are not covered by the mortgage and that properties which are not mortgaged are included in PNB's petition for extrajudicial foreclosure. Beyond bare allegations, however, no specific evidence was cited. Thus, the trial court's order granting the issuance of a writ of preliminary injunction had no factual basis. It is elementary that allegations are not proof. Contentions and averments in pleadings do not constitute facts unless they are in the nature of admissions or proven by competent evidence. This becomes more significant in connection with the issuance of the writ of preliminary injunction in light of the Court's pronouncement in *University of the Philippines v. Hon. Catungal, Jr.*: The [trial] court must state its own findings of fact and cite the particular law to justify the grant of preliminary injunction. Utmost care in this regard is demanded. x x x.

Moreover, an application for injunctive relief is construed strictly against the pleader. Also, the possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction to issue.

APPEARANCES OF COUNSEL

Muntuerto Miel Cavada & Duyongco Law Offices for petitioners.

Alvin C. Go, Teofilo C. Arnado, Jr. and *Jose A. Bernas* for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision[2] and Resolution[3] dated March 21, 2003 and August 4, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 67547, which granted the Petition for *Certiorari* filed by respondent Philippine National Bank (PNB) and reversed and set aside the Orders dated May 17, 2001 and September 3, 2001 of the Regional Trial Court (RTC) of Lapu-Lapu City, Branch 27, in Civil Case No. 5513-L. The Order[4] dated May 17, 2001 of the trial court granted the application for issuance of writ of preliminary injunction of petitioners Palm Tree Estates, Inc. (PTEI) and Belle Air Golf and Country Club, Inc. (BAGCCI), while the Order[5] dated September 3, 2001 denied PNB's motion for reconsideration.

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 46-51; penned by Associate Justice Eloy R. Bello, Jr. with Acting Presiding Justice Cancio C. Garcia and Associate Justice Sergio L. Pestaño, concurring.

[3] *Id*. at 123.

[4] *Id*. at 405-407.

[5] *Id*. at 408-409.

On January 29, 1997, PTEI entered into a seven-year term loan agreement[6] with PNB for the amount of ₱320 million, or its US dollar equivalent, in view of urgent need for additional funding for the completion of its ongoing projects in Lapu-Lapu City.[7] As security for the payment of the loan, a Real Estate Mortgage[8] over 48 parcels of land covering an aggregate area of 353,916 sq.m. together with the buildings and improvements thereon, was executed by PTEI in favor of PNB on February 21, 1997.

On June 15, 1998, upon the request of PTEI, an Amendment to Loan Agreement[9] was signed by PNB and PTEI -

> [T]o (i) extend the grace period for the principal repayment of the Loan, (ii) amend the interest payment date of the Loan, and (iii) grant in favor of the Borrower an additional Loan (the "Additional Loan") in the amount not exceeding ₱80,000,000.00, x x x.[10]

On the same day, June 15, 1998, as a result of PTEI's transfer to BAGCCI of the ownership, title and interest over 199,134 sq.m. of the real properties mortgaged to PNB, PTEI executed an Amendment to Real Estate Mortgage[11] in favor of PNB with BAGCCI as accommodation mortgagor with respect to the real properties transferred to it by PTEI. The relevant portion of the agreement provides:

> SECTION 1. AMENDMENTS
>
> 1.01 The Mortgaged Properties including that portion transferred to BAGCCI shall continue to secure PTEI's obligations to the Mortgagee of whatever kind and nature, and whether such obligations have been contracted, before, during or after the date of this instrument.

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[6] *Id*. at 150-160.

[7] *Id*. at 46.

[8] *Id*. at 161-173.

[9] *Id*. at 67-73.

[10] *Id*. at 67.

[11] *Id*. at 64-66.

1.02 The existing mortgage lien in favor of the Mortgagee annotated on the titles covering the portion of the Mortgaged Properties which is transferred in favor of BAGCCI shall be carried over to the new titles to be issued as a result of the transfer.[12]

On August 10, 1999, PTEI and PNB executed four documents. First, on account of PTEI's failure to avail of the ₱80 million additional loan granted under the amendment to Loan Agreement and upon its request, PTEI and PNB entered into a Loan Agreement[13] revalidating the said additional loan. Under this agreement, full payment of the additional loan shall be secured by a pledge on 204,000 shares of PTEI stock in the names of the accommodation pledgors, Matthew O. Tan and Rodolfo M. Bausa.[14]

Second, a Contract of Pledge[15] was executed by Matthew O. Tan and Rodolfo M. Bausa as accommodation pledgors in favor of PNB to secure the loan agreement covering the ₱80 million additional loan. Under this contract, Tan and Bausa pledged their 204,000 shares of PTEI stock in favor of PNB as security for the full payment of the ₱80 million additional loan.

Third, upon the request of PTEI, a Restructuring Agreement[16] was executed by PTEI and PNB. Under this agreement, the full payment of the restructured loan shall be secured not only by the 48 parcels of land previously mortgaged to PNB but also by an additional mortgage on three parcels of land registered in the name of the accommodation mortgagor, Aprodicio D. Intong.[17]

Fourth, a Supplement to Real Estate Mortgage[18] was executed by Aprodicio D. Intong as accommodation mortgagor in favor

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[12] *Id*. at 65.

[13] *Id*. at 83-89.

[14] *Id*. at 84.

[15] *Id*. at 90-92.

[16] *Id*. at 74-78.

[17] *Id*. at 75.

[18] *Id*. at 282-284.

of the PNB. Under this instrument, in addition to the 48 parcels of land previously mortgaged to PNB, three parcels of land and their improvements have been included in the existing mortgage as additional security for the loans or credit facilities granted by PNB to PTEI.

In a letter[19] dated September 20, 2000, PNB demanded payment of PTEI's outstanding obligations which amounted to ₱599,251,583.18 as of August 31, 2010. Thereafter, in a letter[20] dated February 19, 2001, PNB denied PTEI's request for another restructuring of its past due indebtedness which amounted to ₱621,977,483.61 as of December 6, 2000. In the said letter,

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[19] *Id*. at 320. In its entirety, the letter reads (emphases in the original):

September 20, 2000

PALM TREE ESTATES, INC.
Barrio Agus and Marigondon
Lapu-Lapu City
Mactan Island, Cebu

ATTENTION: MR. KENICHI AKIMOTO
President

Dear Sir:

Our Corporate Banking Division IV has referred to us for legal action your violation of the Pledge Agreement through your failure to deliver additional shares to be pledged to the Bank, despite the deadline imposed on you to comply with the same, subject of our Mr. Earl Montero's demand letter to you dated August 14, 2000.

As a consequence thereof, your obligations with the Bank **have now become due and demandable**. We therefore demand that you **pay in full within five (5) days** from receipt hereof your outstanding obligations with the Bank which as of August 31, 2000 stood at **PHP599,251,583.18**, inclusive of interests.

Your failure to heed this demand will leave us with no recourse but to institute the necessary legal measures to protect the interest of the Bank.

We enjoin you to give the matter your preferential attention.

Very truly yours,

ATTY. RAUL D. MALLARI (Sgd.)
9th Floor, PNB Financial Center
Roxas Blvd., Pasay City

[20] *Id*. at 483-484. In its entirety, the letter reads:

the stated reason for the denial of PTEI's request was its failure to perform its contractual obligations:

February 19, 2001

MR. KENICHI AKIMOTO
President
Palm Tree Estates, Inc.
Barrio Agus and Marigondon
Lapu-lapu City
Mactan Island, Cebu

Dear Mr. Akimoto,

We acknowledge receipt of your letter dated January 23, 2001 (received on January 31, 2001) requesting another restructuring of PTEI's past due indebtedness totaling ₱621,977,483.61 as at December 6, 2000.

It would be difficult for us to justify to our Board of Directors your request because of your failure to fulfill the basic terms and conditions agreed upon in our previous meetings. If you will recall, we mentioned that in order for us to evaluate PTEI's restructuring request, you should settle in full the company's unpaid insurance premium of ₱350,374.13, and your past due credit card advances of ₱1,848,292.78, and update the company's realty tax arrearages on the mortgaged properties. However, to this date, you have not remitted any payments nor submitted any payment plans therefor.

As you are well aware, PNB had been very supportive of PTEI since 1996 when the Bank approved and released a ₱320 Million Term Loan to refinance the company's loan from another bank and to partly fund PTEI's expansion programs. The Bank continued to demonstrate its support in 1998 when it agreed to extend the grace period of the Term Loan for another one year in recognition of the difficult market conditions at that time. Furthermore, in 1999, the Bank approved an additional ₱80.0 Million to enable PTEI to complete the development of at least the golf course. We even allowed the capitalization of unpaid interest amounting ₱66.075 Million, and the restructuring of the original Term Loan. Despite all these support, PTEI has not complied with all its contractual obligations to PNB. Our records show that PTEI's last interest payment to PNB was made on March 6, 1998 yet.

In view of the foregoing, we regret to inform you that we cannot give due consideration to your restructuring proposal unless the committed settlement of the insurance premium, credit card advances and realty taxes are complied with.

Thank you.

Very truly yours,

FELICIANO L. MIRANDA, JR. (Sgd.)
President & CEO

It would be difficult for us to justify to our Board of Directors your request because of your failure to fulfill the basic terms and conditions agreed upon in our previous meetings. If you will recall, we mentioned that in order for us to evaluate PTEI's restructuring request, you should settle in full the company's unpaid insurance premium of ₱350,374.13, and your past due credit card advances of ₱1,848,292.78, and update the company's realty tax arrearages on the mortgaged properties. However, to this date, you have not remitted any payments nor submitted any payment plans therefor.[21]

As PTEI defaulted in its payment of past due loan with PNB, the bank filed a Petition[22] for extrajudicial foreclosure of the mortgaged properties on March 27, 2001.[23] The following day, March 28, 2001, PTEI's President, Kenichi Akimoto, wrote a letter[24] to PNB's President, Feliciano L. Miranda, Jr., requesting for "another 30 days to settle" PTEI's "accrued obligations."

On April 23, 2001, to enjoin PNB from foreclosing on the mortgage, PTEI and BAGCCI filed a Complaint[25] in the RTC of Lapu-Lapu City for breach of contracts, nullity of promissory notes, annulment of mortgages, fixing of principal, accounting, nullity of interests and penalties, annulment of petition for extrajudicial foreclosure, injunction, damages, with prayer for temporary restraining order, and writ of preliminary injunction.[26] This was docketed as Civil Case No. 5513-L and raffled to Branch 27.

In their complaint, PTEI and BAGCCI claimed that, out of the ₱320 million term loan committed by PNB under the loan agreement, PNB released only a total amount of ₱248,045,679.36,[27]

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[21] *Id*. at 483.

[22] *Id*. at 101-121.

[23] *Id*. at 46-47.

[24] *Id*. at 482.

[25] *Id*. at 124-149.

[26] *Id*. at 47.

[27] *Id*. This was allegedly comprised of US$7,923,005.69 and ₱40 million.

or a deficiency of ₱71,954,320.64 which PNB failed to release despite demands.[28] PTEI and BAGCCI also averred that PNB took advantage of their financial difficulty by unilaterally (1) converting the US dollar denominated loan to a peso loan at an unreasonable conversion rate of ₱38.50:US$1, when the prevailing conversion rate at the time of the release of the loan was only ₱26.25:US$1, and (2) re-pricing the interests to exorbitant and unconscionable rates.[29]

PTEI and BAGCCI further alleged that, under threat of foreclosure, they were forced to execute an amendment to the loan agreement acknowledging the principal obligation as of April 20, 1998 to be ₱345,035,719.07 even if they received only ₱248,045,679.36.[30] Moreover, PTEI and BAGCCI signed the amendment to the loan agreement because of PNB's offer to extend an additional ₱80 million loan which the latter failed to release despite the fact that all conditions for its release had been complied with in April 1999.[31] PTEI and BAGCCI further claimed that the amendment to the loan agreement, amendment to the real estate mortgage, certain promissory notes and their respective disclosure statements and the restructuring agreement should be declared void as they were executed pursuant to a void amendment to the loan agreement, and with vitiated consent and without full consideration.[32]

Finally, PTEI and BAGCCI stated that the extrajudicial foreclosure initiated by respondent on their properties was patently null and void since it included promissory notes which were supposed to have already been paid, as well as properties which have already been transferred to BAGCCI and were being made

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[28] *Id*. at 127-129 and 137; paragraphs 11 and 16 and 35-36, Complaint, pp. 4-6 and 14.

[29] *Id*. at 128 and 130; paragraphs 13 and 18-19, Complaint, pp. 5 and 7.

[30] *Id*. at 131-132 and 138-139; paragraphs 24-25 and 39, Complaint, pp. 8-9 and 15-16.

[31] *Id*. at 139; also paragraph 40, Complaint, p. 16.

[32] *Id*. at 138-140; paragraphs 39 and 42-44, Complaint, pp. 15-17.

to answer under the restructuring agreement of which BAGCCI was not a party.[33] Furthermore, PTEI averred that the amendment to the real estate mortgage had been novated by a subsequent loan agreement covering the new ₱80 million loan which was secured by a pledge on 204,000 shares of stock of PTEI. PTEI also alleged that the machinery and equipments being chattels should not be included in the foreclosure of the real estate mortgage.[34]

On the other hand, PNB refuted PTEI and BAGCCI's allegations and claimed that it had already issued to PTEI the total amount of ₱356,722,152.46 which exceeded the ₱320 million covered by the loan agreement by ₱36 million.[35] Whatever delay in the release of the loan proceeds, if any, was attributable only to PTEI.[36]

According to PNB, the conversion of dollar loans to peso loans was not unilateral but made upon the request of PTEI and that the use of dollar to peso rate of US$1:₱39.975 was only proper as it was the prevailing exchange rate at the time of the conversion.[37] There was also no unilateral increase of the interest rate as PTEI never raised any objection to such an increase although it was duly notified of the loan repricing through various letter-advices.[38]

PNB likewise denied that the loan agreement and the amendment to it, the amendment to real estate mortgage, certain promissory notes and their disclosure statements, as well as the restructuring agreement, were all executed without PTEI's

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[33] *Id*. at 141; paragraph 45, Complaint, p. 18.

[34] *Id*.

[35] *Id*. at 342 and 777; paragraph 5, Answer, p. 3 and paragraph 9.e, PNB's Memorandum, p. 8.

[36] *Id*. at 343-344 and 348; paragraphs 8 and 18, Answer, pp. 4-5 and 9.

[37] *Id*. at 343-346 and 353; paragraphs 7, 12-14 and 28, Answer, pp. 4-7 and 14.

[38] *Id*.

consent.[39] Under the law, Kenichi Akimoto, PTEI's president, and other executive officers could be presumed to be responsible and intelligent enough to carefully read, understand and evaluate each loan document for Akimoto's signature.[40]

PNB further claimed that PTEI was granted an additional ₱80 million loan which was secured by a pledge of PTEI's shares of stock. There was no novation because neither was the object and principal conditions changed, nor PTEI substituted as debtor, nor any third person subrogated in PNB's rights.[41]

After hearing the PTEI and BAGCCI's application for issuance of writ of preliminary injunction, the RTC of Lapu-Lapu City required the parties to submit their respective memoranda.

Subsequently, the RTC of Lapu-Lapu City issued the Order dated May 17, 2001 ordering the issuance of a writ of preliminary injunction:

O R D E R

For resolution is plaintiffs' application for issuance of writ of preliminary injunction to prevent the acts complained of.

It is to be noted that the resolution of the application is only preliminary in character and may change depending upon the nature, character and weight of evidence that will be presented during trial on the merits.

After carefully going through with the parties' arguments contained in their respective memorand[a] together with their respective documentary evidences appended thereto, it is very clear that the positions of the parties are completely opposed to each other which indicates (sic) that real controversies exist. The Court believes that all these legal controversies can only be resolved in a trial on the merits where the parties are given complete opportunity to present their case and adduce evidence.

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[39] *Id*. at 354; paragraphs 29 and 31, Answer, p. 15.

[40] *Id*. at 357; paragraph 36(i), Answer, p. 18.

[41] *Id*. at 347-351; paragraphs 17-21, Answer, pp. 8-12.

The Court further believes that while all the legal controversies are being heard and tried, the *status quo ante litem* must be maintained which means that the acts being complained of must be enjoined *pendente lite*.

Noted by this Court is the issue of[,] among others, the propriety of the foreclosure proceedings in line with plaintiffs' contention "x x x that properties of the plaintiffs are being made to answer by the defendants for obligations which are not secured by these properties, or that properties of plaintiffs which are already free from the mortgage are included in the Petition (Annex "W" of the Complaint) for extra-judicial foreclosure. Continuing, the plaintiffs elaborated that "While plaintiffs are not disputing the right of a creditor-mortgagee to proceed against the properties of a debtor-mortgagor to pay for any unpaid secured obligations, it must be clearly understood, however, that any foreclosure proceedings that may be effected relative thereto must only affect the properties subject of the mortgage contract and should only be made to answer for the correct and undisputed obligations which are secured by the properties sought to be foreclosed. Any foreclosure proceedings which will include properties which are not subject of the mortgage contract or which will make the said properties answer for obligations which are not secured by the said properties will be tantamount to taking of properties without due process of law in violation of the Constitution x x x."

In other words, there are serious controversies whose resolution must not be rendered moot and academic by the performance of the assailed acts. In this regard, the Court is adopting the ruling of the Supreme Court in the case of *Rava Development Corporation vs. Court of Appeals,* 211 SCRA 144[,] that says:

> " x x x it is a well settled rule that the sole object of a preliminary injunction whether prohibitory or mandatory is to preserve the status quo until the merits of the case can be heard (*Avila vs. Tapucan*, 200 SCRA 148 [1991]). It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case."

The Court is convinced that[,] at the very least[,] plaintiffs have the right to be fully heard before it is finally deprived of its rights over the mortgaged properties in question in the same manner that defendant bank has the right to be fully heard on its claims. Plaintiffs have the right to be heard on their claim that the principal amount and the total obligation alleged by the defendant is not correct, that the escalation of the interest is not legal or that their property can only be foreclosed after final determination of the exact and correct amount of the total obligation. On the other hand, the defendant bank is fully protected because its claims on the mortgaged properties are properly recorded[,] if not registered. Besides, plaintiffs admitted their said indebtedness to the defendant bank and signified to meet their said obligations only after the determination of the exact amount of the same.

On the matter of the questioned and disputed principal obligation, interests and/penalties, the Court is of the opinion that it would be in the interest of justice and equity that the matter be also threshed out during the trial on the merits of this case before any foreclosure proceeding can proceed consonant to the following ruling of the Supreme Court in *Almeda vs. Court of Appeals*, 256 SCRA 292, 307, to wit:

> "In the first place, because of the dispute regarding the interest rate increases, an issue which was never settled on the merit in the courts below, the exact amount of petitioner's obligation could not be determined. Thus, the foreclosure provisions of P.D. 385 could be validly invoked by respondent bank only after the settlement of the question invoking the interest rate of the loan, and only after the spouses refused to meet their obligations following such determination."

In essence, therefore, the Court is swayed to order the [maintenance of the] status quo and direct the issuance of the writ of preliminary injunction by the fact that if plaintiffs are immediately deprived of their said properties altogether disregarding the demands of due process, plaintiffs will surely be damaged and injured gravely and even irreparably. The Court does not want that to happen until it has fully disposed of the case.

WHEREFORE, premises considered, let a writ of preliminary injunction issue enjoining the defendants, or any person or agents

acting for and [in] their behalf, from foreclosing the subject properties of the plaintiffs, and/or from further proceeding with foreclosure under the Petition (Annex "W" of the Complaint), upon filing by the plaintiffs, and approval by this Court, of an injunction bond in the amount of ONE MILLION AND FIVE HUNDRED THOUSAND (₱1,500,000.00) PESOS.[42]

Reconsideration of the above order was denied in an Order dated September 3, 2001. Thereafter, PNB filed a Petition for *Certiorari* with the Court of Appeals alleging that the RTC of Lapu-Lapu City acted with grave abuse of discretion in issuing the Orders dated May 17, 2001 and September 3, 2001.

The Court of Appeals, in the assailed Decision dated March 21, 2003, found merit in PNB's petition. According to the Court of Appeals, PTEI and BAGCCI failed to show a clear and unmistakable right which would have necessitated the issuance of a writ of preliminary injunction, while PNB had the right to extrajudicial foreclosure under the loan agreement when its debtors defaulted in their obligation.[43] Thus, the Court of Appeals granted PNB's petition.

Reconsideration was denied in a Resolution dated August 4, 2003.

Hence, this petition.

This Court is asked to resolve the issue of whether the writ of injunction was issued by the trial court with grave abuse of discretion, in which case the appellate court correctly set it aside.

PTEI and BAGCCI claim that the Court of Appeals should not have given due course to PNB's Petition for *Certiorari* as such petition violated Section 1, Rule 65 of the Rules of Court when it deliberately omitted all the supporting material documents attached to the complaint such as the petition for foreclosure, the real estate mortgage, the loan agreements, and promissory notes. PTEI and BAGCCI question the reversal and setting aside

[42] *Id.* at 405-407.

[43] *Id.* at 49a.

by the Court of Appeals of the orders of the trial court although there was no finding that the trial court acted without or in excess of its jurisdiction in issuing the said orders. PTEI and BAGCCI further assert that the Court of Appeals was wrong in ruling that no clear and unmistakable right in favor of PTEI and BAGCCI was shown to exist.[44]

On the other hand, PNB insists that PTEI and BAGCCI failed to establish an indubitable right which was violated by PNB and which ought to be protected by an injunctive writ. They also failed to show that the absence of an injunctive writ would cause them irreparable injury.[45] For PNB, the Court of Appeals therefore correctly ruled that there was no basis for the trial court's issuance of a writ of preliminary injunction.

The petition has no merit.

The second paragraph of Section 1, Rule 65 of the Rules of Court provides:

> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

In this case, PNB attached the following documents to the Petition for *Certiorari* which it filed in the Court of Appeals:

(a) Order dated May 17, 2001 granting PTEI and BAGCCI's application for the issuance of preliminary injunction;

(b) Order dated September 3, 2001 denying PNB's motion for reconsideration;

(c) PNB's memorandum in support of its opposition to the issuance of preliminary injunction;

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[44] *Id*. at 21-31.

[45] *Id*. at 696-700; PNB's Comments and Opposition to the Petition for Review on *Certiorari*, pp. 13-17.

(d) PNB's motion for reconsideration of the order dated May 17, 2001;

(e) PNB's motion for early resolution dated July 4, 2011;

(f) PNB's supplemental motion for early resolution dated July 26, 2001;

(g) PNB's answer with counterclaim dated June 5, 2001, together with its annexes "A" to "L"; and

(h) PTEI and BAGCCI's complaint dated April 16, 2001, without the annexes.

PTEI and BAGCCI fault PNB for not including the annexes to their complaint which consisted of PNB's petition for foreclosure, the real estate mortgage, the loan agreements, and promissory notes. They argue that such failure on PNB's part constituted a violation of the second paragraph of Section 1, Rule 65 of the Rules of Court. The Court is not persuaded.

The determination of the completeness or sufficiency of the form of the petition, including the relevant and pertinent documents which have to be attached to it, is largely left to the discretion of the court taking cognizance of the petition, in this case the Court of Appeals. If the petition is insufficient in form and substance, the same may be forthwith dismissed without further proceedings.[46] That is the import of Section 6, Rule 65 of the Rules of Court:

Sec. 6. *Order to comment*. – If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

In petitions for *certiorari* before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents

[46] Regalado, Florenz, *REMEDIAL LAW COMPENDIUM*, Vol. I (10th Edition [2010]), p. 816.

to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

The Court of Appeals already determined that PNB's petition complied with the second paragraph of Section 1, Rule 65 of the Rules of Court and, consequently, that the said petition is sufficient in form and substance when it ordered PTEI and BAGCCI to comment on PNB's petition. This Court sees no compelling reason to set aside the determination of the Court of Appeals on that matter. Moreover, PTEI and BAGCCI wasted their opportunity to question the formal sufficiency of PNB's petition when they failed to file their comment on time, leading the Court of Appeals to rule in its Decision dated March 21, 2003 as follows:

> Parenthetically, the "Manifestation and Motion for Leave To Admit Respondents' Comment [on] the Petition", as well as respondents' Comment are hereby DENIED, considering that they were filed more than one (1) year from the lapse of the reglementary period of filing the same. Accordingly, respondents' Comment is ordered EXPUNGED from the record of this case.[47]

PTEI and BAGCCI compounded their error when they subsequently failed to raise the issue in their motion for reconsideration of the decision of the Court of Appeals. Such omission constituted a waiver of the said issue pursuant to the omnibus motion rule.[48]

Nevertheless, an examination of PNB's petition and the documents attached to it would show that the Court of Appeals' determination as to the formal sufficiency of the petition is correct.

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[47] *Rollo*, p. 50.

[48] Section 8, Rule 15 of the Rules of Court provides:

> Sec. 8. *Omnibus motion.* – Subject to the provisions of section 1 of Rule 9, **a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived**. (Emphasis supplied.)

The documents attached to the petition were adequate to support the arguments of PNB and to give the Court of Appeals a satisfactory, or at least substantial, picture of the case.

A complainant's wrongful conduct respecting the matter for which injunctive relief is sought precludes the complainant from obtaining such relief.[49] A petition for a preliminary injunction is an equitable remedy, and one who comes to claim for equity must do so with clean hands[50]:

> Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. x x x.[51] (Citation omitted.)

In this case, the hands of PTEI were not unsullied when it sought preliminary injunction. It was already in breach of its contractual obligations when it defaulted in the payment of its indebtedness to PNB. PTEI's President, Akimoto, admitted that PTEI has unsettled accrued obligations in the letter dated March 28, 2001. Moreover, PTEI had sought the rescheduling or deferral of its payment as well as the restructuring of its loan. This Court has held that a debtor's various and constant requests for deferment of payment and restructuring of loan, without actually paying the amount due, are clear indications that said debtor was unable to settle his obligation.[52]

As PTEI is not entitled to the issuance of a writ of preliminary injunction, so is BAGCCI. The accessory follows the principal. The accessory obligation of BAGCCI as accommodation mortgagor is tied to PTEI's principal obligation to PNB and

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[49] 42 Am Jur 2d 590 on Injunctions, § 20.

[50] *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 253.

[51] *University of the Philippines v. Hon. Catungal, Jr.*, 338 Phil. 728, 743-744 (1997).

[52] *RPRP Ventures Management & Development Corporation v. Guadiz, Jr.*, G.R. No. 152236, July 28, 2010, 626 SCRA 37, 44.

arises only in the event of PTEI's default. Thus, BAGCCI's interest in the issuance of the writ of preliminary injunction is necessarily prejudiced by PTEI's wrongful conduct and breach of contract.

In *Barbieto v. Court of Appeals*,[53] the Court stated the general principles in issuing a writ of preliminary injunction:

> A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.
>
> At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."
>
> For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. x x x.[54]

A writ of preliminary injunction is an extraordinary event which must be granted only in the face of actual and existing

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[53] G.R. No. 184645, October 30, 2009, 604 SCRA 825.

[54] *Id.* at 844-845.

substantial rights.[55] The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it.[56] In the absence of the same, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for having been rendered in grave abuse of discretion.[57]

The right of PNB to extrajudicially foreclose on the real estate mortgage in the event of PTEI's default is provided under various contracts of the parties. Foreclosure is but a necessary consequence of nonpayment of mortgage indebtedness.[58] In view of PTEI's failure to settle its outstanding obligations upon demand, it was proper for PNB to exercise its right to foreclose on the mortgaged properties. It then became incumbent on PTEI and BAGCCI, when they filed the complaint and sought the issuance of a writ of preliminary injunction, to establish that they have a clear and unmistakable right which requires immediate protection during the pendency of the action. The Order dated May 17, 2001 of the trial court granting the application for issuance of writ of preliminary injunction failed to show that PTEI and BAGCCI discharged that burden.

In this connection, this Court has denied the application for a writ of preliminary injunction that would enjoin an extrajudicial foreclosure of a mortgage, and declared that foreclosure is proper when the debtors are in default of the payment of their obligation. In particular, this Court ruled in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*[59]:

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[55] *Overseas Workers Welfare Administration v. Chavez*, G.R. No. 169802, June 8, 2007, 524 SCRA 451, 476.

[56] *Id.* at 472, citing *Civil Service Commission v. Court of Appeals*, 475 Phil. 276, 287 (2005).

[57] *Id.*

[58] *Lotto Restaurant Corporation v. BPI Family Savings Bank, Inc.*, G.R. No. 177260, March 30, 2011, 646 SCRA 699, 705, citing *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91.

[59] *Id.*

Where the parties stipulated in their credit agreements, mortgage contracts and promissory notes that the mortgagee is authorized to foreclose the mortgaged properties in case of default by the mortgagors, the mortgagee has a clear right to foreclosure in case of default, making the issuance of a Writ of Preliminary Injunction improper. x x x.[60] **(Citation omitted.)**

The Court of Appeals did not err when it ruled that PTEI and BAGCCI failed to show a clear and unmistakable right which would have necessitated the issuance of a writ of preliminary injunction. The Order dated May 17, 2001 of the trial court failed to state a finding of facts that would justify the issuance of the writ of preliminary injunction. It merely stated the conclusion that "real controversies exist" based on the observation that "the positions of the parties are completely opposed to each other."[61] It simply declared:

> Noted by this Court is the issue of[,] among others, the propriety of the foreclosure proceedings in line with plaintiffs' contention "x x x that properties of the plaintiffs are being made to answer by the defendants for obligations which are not secured by these properties, or that properties of plaintiffs which are already free from the mortgage are included in the Petition (Annex "W" of the Complaint) for extra-judicial foreclosure. Continuing, the plaintiffs elaborated that "While plaintiffs are not disputing the right of a creditor-mortgagee to proceed against the properties of a debtor-mortgagor to pay for any unpaid secured obligations, it must be clearly understood, however, that any foreclosure proceedings that may be effected relative thereto must only affect the properties subject of the mortgage contract and should only be made to answer for the correct and undisputed obligations which are secured by the properties sought to be foreclosed. Any foreclosure proceedings which will include properties which are not subject of the mortgage contract or which will make the said properties answer for obligations which are not secured by the said properties will be tantamount to taking of properties without due process of law in violation of the Constitution x x x."[62]

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[60] *Id.* at 91-92.

[61] *Rollo*, p. 405.

[62] *Id.* at 405-406.

This clearly shows that the trial court relied only on the bare allegations of PTEI and BAGCCI that the mortgaged properties were being made to answer for obligations that are not covered by the mortgage and that properties which are not mortgaged are included in PNB's petition for extrajudicial foreclosure. Beyond bare allegations, however, no specific evidence was cited. Thus, the trial court's order granting the issuance of a writ of preliminary injunction had no factual basis. It is elementary that allegations are not proof.[63] Contentions and averments in pleadings do not constitute facts unless they are in the nature of admissions or proven by competent evidence. This becomes more significant in connection with the issuance of the writ of preliminary injunction in light of the Court's pronouncement in *University of the Philippines v. Hon. Catungal, Jr.*[64]:

> The [trial] court must state its own findings of fact and cite the particular law to justify the grant of preliminary injunction. Utmost care in this regard is demanded. x x x.[65]

Moreover, an application for injunctive relief is construed strictly against the pleader.[66] Also, the possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction to issue.[67]

At most, the trial court's finding of the existence of a real controversy because the respective claims of the parties are opposing simply amounted to a finding that the rights of PTEI and BAGCCI are disputed, debatable or dubious. This Court has held, however, that:

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[63] *People v. Cledoro, Jr.*, 412 Phil. 772, 778 (2001); *Angeles v. Polytex Design, Inc.*, G.R. No. 157673, October 15, 2007, 536 SCRA 159, 167.

[64] *Supra* note 51.

[65] *Id.* at 743.

[66] *Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela*, G.R. No. 184778, October 2, 2009, 602 SCRA 698, 721.

[67] *Nisce v. Equitable PCI Bank, Inc., supra* note 50 at 253.

In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. **It is not proper when the complainant's right is doubtful or disputed**.[68] (Emphasis supplied, citation omitted.)

In view of the doubtful nature of the alleged right of PTEI and BAGCCI, the trial court's pronouncement regarding the necessity to issue a writ of injunction to protect the right of PTEI and BAGCCI to be heard before they are deprived of such alleged right crumbles:

A writ of preliminary injunction is issued to prevent an extrajudicial foreclosure, only upon a clear showing of a violation of the mortgagor's unmistakable right. **Unsubstantiated allegations of denial of due process and prematurity of a loan are not sufficient to defeat the mortgagee's unmistakable right to an extrajudicial foreclosure**.[69] (Emphasis supplied.)

Furthermore, without pre-empting the trial court's ruling on the allegation of PTEI and BAGCCI regarding PNB's alleged unilateral increase of interest rates, the trial court misapplied *Almeda v. Court of Appeals*[70] when it opined that "it would be in the interest of justice and equity" that "the matter of the questioned and disputed principal obligation, interests and/ penalties" "be also threshed out during the trial on the merits" "before any foreclosure proceeding can proceed." In *Almeda*, the petitioner spouses questioned from the very start the unilateral increases in interest rates made by the creditor bank. They also tendered payment and, when refused by the creditor bank, consigned the amount equivalent to the principal loan and accrued interest calculated at the originally stipulated rate. In this case, it appears that, despite having previously received letter-advices[71]

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[68] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, 522 Phil. 671, 691 (2006).

[69] *Id*. at 674.

[70] 326 Phil. 309 (1996).

[71] The letter advices dated October 13, 1997, November 10, 1997 and November 12, 1997 were of the following standard form:

in October and November 1997 regarding changes in the loan interest rate, PTEI and BAGCCI assailed the alleged unilateral increases in interest rates only when they filed the complaint on April 23, 2001 and after PNB had already exercised its right to extrajudicial foreclosure. Moreover, despite admitting PTEI's indebtedness to PNB, no tender of payment or consignation was made. These substantial differences work against the applicability of *Almeda* in this case.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners PTEI and BAGCCI.

SO ORDERED.

Sereno, C.J. (Chairperson), Carpio,[*] *Villarama, Jr.,* and *Reyes, JJ.,* concur.

This will confirm our earlier advice to you that the rate of interest on the outstanding drawdowns/availments on the (Term Loan) has been repriced as follows:

PN NO.	PRINCIPAL	PERIOD COVERED	INTEREST
	AMOUNT		RATE

in line with the provisions of the loan documents wherein you agreed to the right of PNB to increase or decrease the rate of interest on the (Term Loan), for the subsequent Interest Periods brought about by changes in interest rate prescribed by law or Monetary Board of the Bangko Sentral ng Pilipinas, or in PNB's policy.

Unless we receive a written objection from you within a period of ten (10) calendar days from interest setting date, it shall be deemed that you are agreeable to the interest rate quoted by the Bank. (*Rollo*, p. 370.)

[*] Per Special Order No. 1315 dated September 21, 2012.

FIRST DIVISION

[G.R. Nos. 159561-62. October 3, 2012]

R.V. SANTOS COMPANY, INC., *petitioner, vs.* **BELLE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; RULE THAT ONLY QUESTIONS OF LAW MAY BE RAISED FINDS EVEN MORE STRINGENT APPLICATION IN CASES DECIDED BY CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC).— It must be stressed that in petitions for review under Rule 45 only questions of law may be raised, unless the petitioner shows that the case falls under the recognized exceptions. In *Makati Sports Club, Inc. v. Cheng*, we explained, thus: At the outset, we note that this recourse is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 1 of the Rule, **such a petition shall raise only questions of law** which must be distinctly alleged in the appropriate pleading. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. **If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, then the issue is necessarily factual**. In cases decided by the CIAC, the above rule finds even more stringent application. x x x In the case at bar, petitioner indeed raises factual matters in the present controversy which this Court may not look into under a petition for review on *certiorari*. We likewise find that this case is not among the exceptions to this settled rule. Nevertheless, even if we were to excuse this

procedural infirmity of the petition, we are still not inclined to reverse the lower tribunals' findings on the merits of the case.

2. CIVIL LAW; CONTRACTS; WHILE THERE WAS NO PROVISION IN THE CONSTRUCTION CONTRACT EXPRESSLY AUTHORIZING RESPONDENT TO SECURE THE SERVICES OF A THIRD PARTY AUDITOR TO DETERMINE THE VALUE OF THE WORK ACCOMPLISHED BY PETITIONER, THERE IS LIKEWISE NO PROVISION PROHIBITING THE SAME.— [W]hile there was no provision in the Construction Contract expressly authorizing Belle to secure the services of a third party auditor to determine the value of the work accomplished by petitioner RVSCI, there is likewise no provision prohibiting the same. Certainly, RVSCI failed to point to any contractual stipulation preventing RVSCI to seek expert opinion regarding the value of RVSCI's accomplishment or the accuracy of the Progress Billing, whether prior or subsequent to the approval of such billing.

3. ID.; ID.; ID.; MERE FACT THAT THE AUDIT WAS UNILATERAL, OR WAS NOT PARTICIPATED IN BY PETITIONER, DID NOT RENDER THE SAME OBJECTIONABLE; THERE IS NOTHING IN THE CONSTRUCTION CONTRACT WHICH OBLIGATES RESPONDENT TO INFORM PETITIONER OR TO SECURE THE LATTER'S PARTICIPATION SHOULD THE FORMER DECIDE TO COMMISSION AN AUDIT OF THE WORK ACCOMPLISHED.— The mere fact that the audit was unilateral, or was not participated in by petitioner, did not render the same objectionable. There is nothing in the Construction Contract which obligates Belle to inform RVSCI or to secure the latter's participation should the former decide to commission an audit of the work accomplished. On the contrary, in case of termination due to default of the contractor, Article XIII, Section 13.4 of the Construction Contract explicitly allows Belle to unilaterally evaluate the value of the work and the only condition is that it be done in good faith. Even assuming *arguendo* we accept RVSCI's contentions that it justifiably suspended work and that Article XIII, Section 13.4 merely covers instances of default and not situations of justified suspension of works, we see no reason why the procedure for

cessation of work due to default cannot be applied to other instances of cessation of work, particularly in the absence of a contractual provision governing termination or suspension of works in situations not involving a default. Verily, the fact that the parties agreed to a unilateral valuation of the work by the owner in the event of a termination of the contract due to default signifies that the parties, including RVSCI, did not find anything abhorrent in a one-sided valuation at the time of the execution of the contract. If RVSCI believed that this was unfair or that its participation should be required in a review or audit of its work, then it should not have acquiesced to such a provision in the first place and instead insisted on a stipulation prohibiting a unilateral audit of its work.

4. ID.; ID.; ID.; NO ERROR ON THE PART OF THE CIAC AND THE COURT OF APPEALS IN RELYING ON THE THIRD PARTY AUDIT REPORT AND GIVING IT DUE WEIGHT IN THE RESOLUTION OF THE PRESENT CASE.— To be sure, RVSCI is not precluded from proffering evidence to rebut the findings of R.A. Mojica. However, RVSCI did not present or point to documents, invoices, and receipts to show that the amounts and quantities in the audit report were not correct, nor did RVSCI convincingly substantiate its assertion that it had completed work in other areas of the project that was not included in said report. RVSCI merely relied on its own Progress Billing as supposedly signed by Belle's representatives. However, it is that Progress Billing which was later questioned by Belle on the suspicion that the same was bloated and inaccurate. Thus, Belle had a third party conduct an audit of RVSCI's actual work accomplishment. As the CIAC noted, there was nothing to prevent RVSCI to secure the services of its own expert witness to contest the findings of R.A. Mojica and buttress the accuracy of its Progress Billing with supporting documents other than such billing but RVSCI did not. Hence, we find no error on the part of the CIAC and the Court of Appeals in relying on the third party audit report and giving it due weight in the resolution of the present case.

5. ID.; ID.; ID.; PETITIONER'S APPROVAL OF THE PROGRESS BILLINGS IS MERELY PROVISIONAL AND NOT FINAL AND BINDING AND MAY BE WITHDRAWN; THE OWNER HAS THE RIGHT TO

VERIFY THE CONTRACTOR'S ACTUAL WORK ACCOMPLISHMENT OR TO RE-EVALUATE OR RE-MEASURE THE WORK PRIOR TO PAYMENT.— After careful consideration of the contentions of the parties, we agree with the CIAC's finding, as affirmed by the Court of Appeals, that the owner's approval of progress billing is merely provisional. This much can be gleaned from Article VI, Section 6.2(c) of the Construction Contract which states that "[t]he acceptance of work from time to time for the purpose of making progress payment shall not be considered as final acceptance of the work under the Contract." There can be no other interpretation of the said provision but that progress billings are but preliminary estimates of the value of the periodic accomplishments of the contractor. Otherwise, there would be no need to include Article VI, Section 6.2(c) in the Contract since final acceptance of the contractor's work would come as a matter of course if progress billings were, as RVSCI contends, final and binding upon the owner. On the contrary, progress billings and final acceptance of the work were clearly still subject to review by the owner. Moreover, we see no reason to disturb the CIAC ruling that the foregoing contractual provision is consistent with industry practice, as can be deduced from Articles 22.02, 22.04 and 22.09 of CIAP Document 102. x x x From the above-quoted provisions, it is readily apparent that, whether in the case of progress billings or of turn-over of completed work, the owner has the right to verify the contractor's actual work accomplishment prior to payment. In all, we approve the CIAC's pronouncement that "[t]he owner is, therefore, not estopped [from questioning] a prior evaluation of the percentage of accomplishment of the contractor and to downgrade such accomplishment after re-evaluation. It is the right of every owner to re-evaluate or re-measure the work of its contractor during the progress of the work."

6. ID.; ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; BEARING IN MIND THE LAW AND JURISPRUDENCE ON UNJUST ENRICHMENT, PETITIONER IS LIABLE TO RETURN WHAT IT HAD RECEIVED BEYOND THE ACTUAL VALUE OF THE WORK IT HAD DONE FOR RESPONDENT.— Anent the third issue, it is apropos to state here that the rationale underlying the owner's right to seek an evaluation of the contractor's work is the right to pay only

the true value of the work as may be reasonably determined under the circumstances. This is consistent with the law against unjust enrichment under Article 22 of the Civil Code which states that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." Expounding on this provision in a recent case, we have held that "[t]he principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it." In the case at bar, we uphold the CIAC's factual finding that the value of the total work accomplished by RVSCI on the main project was ₱4,868,443.59 while the cost of the additional work amounted to ₱1,768,000.00 plus ₱22,442.27, for a total of ₱6,658,885.86. On the other hand, Belle had made payments in the total amount of ₱11,598,994.44. It is thus undeniable that RVSCI had received payments from Belle in excess of the value of its work accomplishment. In light of this overpayment, it seems specious for RVSCI to claim that it has suffered damages from Belle's refusal to pay its Progress Billing, which had been proven to be excessive and inaccurate. Bearing in mind the law and jurisprudence on unjust enrichment, we hold that RVSCI is indeed liable to return what it had received beyond the actual value of the work it had done for Belle.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BIAS ON THE PART OF A WITNESS CANNOT BE PRESUMED; IT IS A BASIC RULE THAT GOOD FAITH IS ALWAYS PRESUMED AND BAD FAITH MUST BE PROVED.— [B]ias on the part of a witness cannot be presumed. It is a basic rule that good faith is always presumed and bad faith must be proved. In a previous case, we have held that the witness' employment relationship with, or financial dependence on, the party presenting his testimony would not be sufficient reason to discredit said witness and label his testimony as biased and unworthy of credence. Analogously, that Belle and R.A. Mojica had a long standing business relationship does not necessarily mean that the latter's report was tainted with irregularity, especially in the absence of evidence that the audit report was indeed inaccurate or erroneous. It must be emphasized as well that RVSCI had ample opportunity

to cross-examine Engr. Mojica with respect to the particulars of his company's audit report.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Tan & Venturanza Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For disposition of the Court is a Petition for Review on *Certiorari*, assailing the Court of Appeals' Decision[1] dated March 7, 2003 and Resolution[2] dated August 20, 2003 in the consolidated cases docketed as CA-G.R. SP Nos. 60217 and 60224. In its Decision dated March 7, 2003, the Court of Appeals affirmed the July 28, 2000 Decision[3] in CIAC Case No. 45-99 of the Construction Industry Arbitration Commission (CIAC), which, among others, (a) ordered RV Santos Company, Inc. (RVSCI) to refund the amount of ₱4,940,108.58 to Belle Corporation (Belle), and (b) denied Belle's claim for liquidated damages and RVSCI's counterclaims for unpaid billings and attorney's fees. In the assailed August 20, 2003 Resolution, the Court of Appeals denied the parties' respective motions for reconsideration of its March 7, 2003 Decision.

The present controversy arose from a Request for Adjudication[4] filed by Belle with the CIAC on November 3, 1999. According to the Complaint[5] attached to said Request, Belle and RVSCI

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[1] *Rollo*, Vol. II, pp. 629-634; penned by Associate Justice Bernardo P. Abesamis with Associate Justices Juan Q. Enriquez, Jr. and Edgardo F. Sundiam, concurring.

[2] *Id.* at 636.

[3] *Id.* at 638-651.

[4] CIAC Records, Vol. 2, p. 1.

[5] *Id.* at 2-114.

entered into a Construction Contract on July 14, 1997. As stipulated therein, RVSCI undertook to construct a detailed underground electrical network for Belle's Tagaytay Woodlands Condominium Project located in Tagaytay City[6] with a project cost that shall not be more than Twenty-Two Million Pesos (₱22,000,000.00), inclusive of all taxes, government fees and the service fee under the Contract.[7] Likewise under said contract, Belle advanced to RVSCI fifty percent (50%) of the contract price in the amount of Eleven Million Pesos (₱11,000,000.00)[8] for which RVSCI issued to Belle an official receipt[9] dated August 8, 1997.

Sometime thereafter, RVSCI commenced work on the project. Under Article VII(A) of the Construction Contract, the project was supposed to be completed and ready for operation within 180 calendar days from receipt by RVSCI of the notice to commence from Belle, provided that all civil related works necessary for the execution of the project works were in place. However, the project was allegedly not completed within the stipulated time frame.

On March 17, 1998, Belle's Woodlands General Committee supposedly set April 21, 1998 as the target date for completion of the Log Home Units in Woodlands. In a Memorandum[10] dated April 14, 1998, Belle purportedly informed RVSCI of the target date and urged the latter to complete the project on or before said deadline. Still the project was not completed on April 21, 1998.

Subsequently, in June 1998, Belle placed additional work orders with RVSCI, who in turn made the following cost estimates for the additional work:

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[6] *Id*. at 12; Construction Contract, par. 1.

[7] *Id*. at 17; Article IV, Sec. 4.2.

[8] *Id*. at 21; Article VI, Sec. 6.2(a).

[9] *Id*. at 33.

[10] *Id*. at 34.

Additional Order No. 1 Installation of 7 units of Load break switch, 102 units of kw-hrs. meters and fabrication of 21 sets of Bus ducts	₱3,854,400.00
Additional Order No. 2 Supply and installation of one (1) unit MDP-DTIA	541,528.54
Additional Order No. 3 Various work orders issued to [RVSCI]	158,612.00 ₱4,554,540.54[11]

Belle admittedly approved RVSCI's cost estimates for Additional Order Nos. 1 and 2 but the former allegedly did not approve the cost estimate for Additional Order No. 3 which Belle estimated should only cost ₱22,442.47. Nonetheless, RVSCI proceeded to implement Additional Order Nos. 1 and 3 while Belle itself accomplished Additional Order No. 2.

On August 10, 1998, RVSCI submitted its Progress Billing[12] to Belle, claiming 53.3% accomplishment of the project, including the work done for Additional Order No. 1, as set forth above. RVSCI claimed that the value of the work accomplished under the August 10, 1998 Progress Billing was ₱7,159,216.63 on the main project and ₱1,768,000.00 on the additional work order. After deducting 50% of the Progress Billing on the main project, the total amount billed by RVSCI was ₱5,347,608.03. Purportedly relying on RVSCI's representations, Belle's project engineer recommended approval of the Progress Billing.

Subsequently, however, Belle reputedly made its own assessment of the work accomplished by RVSCI and determined that it was only worth ₱4,676,724.64. Belle supposedly relayed its findings to RVSCI.[13]

On September 30, 1998, while negotiations were allegedly on-going between the parties regarding the payment of the

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[11] *Id.* at 4.

[12] *Id.* at 35.

[13] *Id.* at 5.

Progress Billing, Belle claimed that RVSCI unceremoniously abandoned the project without prior notice and forced Belle to take over the construction work therein. Belle purportedly sent a Memorandum[14] dated December 15, 1998 to RVSCI to convey its "extreme disappointment" over the latter's abandonment of the project.

On January 11, 1999, the parties' representatives met and during that meeting RVSCI allegedly advised Belle that it will not return to the site until the outstanding balance due to it is paid.[15]

Meanwhile, on January 22, 1999, Belle made an additional payment for electrical works to RVSCI in the amount of ₱476,503.30. This payment was evidenced by an official receipt[16] issued by RVSCI. Belle likewise remitted the amount of ₱122,491.14 to the Bureau of Internal Revenue representing the withholding tax due from RVSCI.

In February 1999, Belle engaged the services of an assessor, R.A. Mojica and Partners (R.A. Mojica), to determine the value of the work done by RVSCI. After it conducted an electrical works audit, R.A. Mojica reported to Belle that the work accomplished by RVSCI on the main project only amounted to ₱4,868,443.59 and not ₱7,159,216.05 as billed by RVSCI.[17]

In Belle's view, it had overpaid RVSCI, based on the following computation:

Downpayment	₱11,000,000.00
Withholding Tax Payable	122,491.14
Additional Payment for electrical works (Billing #01)	476,503.33
	₱11,598,994.44

[14] *Id*. at 36.

[15] *Id*. at 6.

[16] *Id*. at 38.

[17] *Id*. at 7.

LESS:	
Actual Value of Work Accomplished 4,868,443.59	
Approved Change of Specifications and Additional Work Orders	
	1,790,442.70
NET DUE TO [BELLE]	₱ 4,940,108.15[18]

RVSCI allegedly refused to return the excess payment despite repeated demands. Thus, relying on the arbitration clause in the Construction Contract, Belle brought the matter before the CIAC and prayed that RVSCI be directed to (a) reimburse Belle the amount of ₱4,940,108.15, and (b) pay Belle the amount of ₱2,200,000.00 as liquidated damages.[19]

By way of defense, RVSCI claimed that its August 10, 1998 Progress Billing was a result of a "bilateral assessment" by the representatives of both parties and was, in fact, approved/ recommended for payment by Belle's representatives. RVSCI complained that Belle segregated the project into two phases (Phase 1 and Phase 2) with Phase 1 comprising the area already worked on by RVSCI and Phase 2 comprising the "unworked" area. It was Belle which advised RVSCI in a meeting on January 11, 1999 that the former was suspending Phase 2 of the project due to economic difficulties. RVSCI allegedly made several demands for payment of its Progress Billing but Belle ignored said demands. Thus, in view of Belle's suspension of the work and the nonpayment of the progress billing, RVSCI was purportedly forced to stop work on the project, despite being fully prepared to comply with its obligations under the contract. RVSCI further asserted that it was not notified of, nor made privy to, the audit work conducted by R.A. Mojica and therefore RVSCI was not bound by such audit. Insisting on the accuracy of its Progress Billing, RVSCI interposed a counterclaim against Belle for the payment of the amount of ₱4,312,170.95, computed thus:

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[18] *Id.* at 8.

[19] *Id.* at 10-11.

Progress Billing	₱ 7,159,216.05
Remaining MDPs for delivery Under original contract (11 sets @ ₱327,128.54)	₱ 3,598,413.94
Approved Change of Specifications and Additional Work Order/s (dated August 10, 1998 and September 30, 1998)	₱ 4,554,540.95
Total	₱ 15,312,170.95
Less: Advance Payment	₱ 11,000,000.00
Net Due to [RVSCI]	₱ 4,312,170.95[20]

RVSCI prayed for the dismissal of the Complaint and for the CIAC to order Belle to pay the following amounts: (a) ₱4,312,170.95 as balance of RVSCI's progress billing(s), (b) ₱500,000.00 as moral damages, and (c) ₱500,000.00 as attorney's fees and costs of suit.[21]

At the preliminary conference, the parties agreed on the Terms of Reference for the arbitration of their respective claims. According to the Terms of Reference, the admitted facts and the issues to be resolved by the arbitration panel were as follows:

II. ADMITTED FACTS

The parties admit the following:

1. Their respective identity/juridical existence and circumstances.

2. The genuineness and due execution of the Contract (attached as Annex A of the Complaint) for the construction of a detailed underground electrical network for the Tagaytay Woodlands Condominium Project in Tagaytay City entered into by the parties on 14 July 1997 for a contract price of ₱22,000,000.00.

3. Article IV, Section 4.2 of the Construction Contract which provide (sic) that the "Contractor [RVSCI] guarantees and

[20] *Id.* at 122-123.

[21] *Id.* at 123.

warrants that the total project cost shall not be more than ₱22,000,000.00, inclusive of all taxes and government fees and the service fee under the Contract."

4. Sec. 6.2(a), Art. VI of the Construction Contract which provides that: "Owner [Belle] shall advance to Contractor an amount equivalent to 50% of the Contract Price or the amount of ₱11,000,000.00, as down payment for the construction, upon execution of the Contract, receipt of which is hereby acknowledged by Contractor. Progress payments to be made by Owner to Contractor, proportionate to the percentage of accomplishment of the Project, shall be deducted from the balance of the Contract Price. The same proportion of the down payment shall also be deducted from billing progress payments."

5. The payment made by Claimant to Respondent in the amount of ₱11,000,000.00 as acknowledged to have been received under Official Receipt No. 0706 issued by the latter on 8 August 1997 (attached as Annex B of the Complaint).

6. The following proposed cost estimate of the Respondent on Claimant's additional work orders in June 1998:

Additional Order No. 1	Installation of 7 units of Load break switch, 102 units of kw-hrs. meters and fabrication of 21 sets of Bus ducts.	₱3,854,400.00
Additional Order No. 2	Supply and installation of one (1) unit MDP-DTIA	541,528.54
Additional Order No. 3	Various work orders issued to [RVSCI]	158,612.00
		₱4,554,540.54

7. Claimant approved Respondent's proposed estimates on Additional Orders Nos. 1 and 2, but disputed the cost estimate of Additional Order No. 3. Thereafter, Respondent proceeded to implement additional Orders Nos. 1 and 3.

8. Progress Billing No. 1 (attached as Annex D of the Complaint) which Claimant received on 10 August 1998.

9. On 11 January 1999, the parties' representatives met to discuss the reasons for Respondent's failure/refusal to return

to the Site. These representatives were Fernando R. Santico, Edgardo F. Villarino & Rudy P. Aninipot, for the Claimant, and Renato V. Santos & Joey C. Caldeo, for the Respondent.

10. Claimant made additional payment to Respondent for electrical works on 22 January 1999 amounting to ₱476,503.30 as per Official Receipt No. 0717 issued by Respondent (attached as Annex G of the Complaint).

11. Existence of Respondent's letter to Claimant dated 4 May 1999 re: Underground Electrical Utilities (attached as Annex A of the Reply).

xxx xxx xxx

IV. ISSUES TO BE DETERMINED

1. Is Claimant entitled to its claims for overpayment? If so, how much should be returned to the Claimant?

   1.1 How much was the work accomplished by Respondent in the project?

   1.2 Whether or not Respondent has manufactured/produced and/or installed 11 sets of Main Distribution Panels? If so, is Claimant liable and for how much should it be liable to pay Respondent for their cost/value?

   1.3 Whether or not Respondent is entitled to its claim for unpaid billings?

2. Is Claimant entitled to its claim for liquidated damages? If so, how much by way of liquidated damages should be awarded to it?

   2.1 Was Respondent justified in suspending its work?

   2.2 Is Respondent justified in declining to return to work?

3. Is Respondent entitled to its counterclaim for attorney's fees? If so, how much is Claimant liable to Respondent for such claim?[22]

The Terms of Reference further indicated the parties' agreement that the presentation of their testimonial evidence shall be by

[22] CIAC Records, Vol. 4, pp. 17-18.

way of affidavits of witnesses. Hearings were held on March 24 and 28, 2000. Thereafter, the parties submitted their draft Decisions to the arbitral tribunal.

In a Decision dated July 28, 2000, the CIAC found that, under the Construction Contract[23] and industry practice, Belle had the right to the true value of the work performed by RVSCI upon termination. Further, the CIAC ruled that according to the Uniform General Conditions of Contract for Private Construction (CIAP Document 102), approval of a progress billing is provisional[24] and is subject to final review and approval before acceptance of the completed work and prior to final payment.[25] Hence, Belle was within its rights to make a reevaluation of the work accomplishment of RVSCI. Finding that Engr. Raladin A. Mojica qualified as an expert witness, the CIAC gave weight to the results of the re-survey done by R.A. Mojica and held that Belle indeed made an overpayment to RVSCI. Since the date when RVSCI commenced work on the Project and the supposed completion date cannot be determined, the CIAC found no basis to award liquidated damages in favor of Belle. The arbitral tribunal likewise denied RVSCI's counterclaims. Thus, the dispositive portion of the CIAC Decision reads:

WHEREFORE, award is hereby made as follows:

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[23] The CIAC cited Article XIII, Section 13.4 of the Contract which provides:

> **13.4 Valuation of the Work Performed**
>
> Upon termination of the Contract by OWNER under Article 13.1 above, OWNER in good faith shall determine the true value to OWNER, if any, of works actually completed by CONTRACTOR in accordance with the specifications of the Contract, and CONTRACTOR shall pay to OWNER, or OWNER shall pay to CONTRACTOR, as the case may be the difference between the value so determined and the aggregate amount paid to CONTRACTOR as at the time of termination, in either case within thirty (30) business days from date of such determination. (CIAC Records, Vol. 2, p. 30.)

[24] CIAP Document No. 102, citing Articles 22.02 and 22.04.

[25] *Id*., citing Article 22.09.

1. Claimant's [Belle's] claim for refund of ₱4,940,108.58, representing overpayment to the Respondent is hereby granted. Respondent is, therefore, ordered to pay this amount to Claimant with interest at the rate of 6% per annum from the date of this Award.

2. Claimant's claim for liquidated damages and Respondent's counterclaims for an alleged balance due and unpaid on progress billings and for attorney's fees are denied.

3. Arbitration fees and expenses shall be shared by the parties pro rata on the basis of the amount of their claims and counterclaims.

4. The amount of ₱4,940,108.58 found in paragraph 1 of this Award to be due the Claimant plus interest at 6% per annum shall further earn interest at the rate of 12% per annum from the time this decision becomes final and executory and the total amount found to be due remains unpaid.[26]

Both Belle and RVSCI filed petitions for review under Rule 43 of the Rules of Court to assail the foregoing CIAC Decision with the Court of Appeals, which were docketed as CA-G.R. SP No. 60217 and CA-G.R. SP No. 60224, respectively. Upon motion by the parties, the cases were consolidated and after due proceedings, the Court of Appeals issued a Decision dated March 7, 2003, dismissing the petitions and affirming the CIAC Decision. The separate motions for reconsideration of the parties were likewise denied by the Court of Appeals in a Resolution dated August 20, 2003.

RVSCI elevated the matter to this Court and questioned the Court of Appeals' March 7, 2003 Decision and August 20, 2003 Resolution through the present petition for review on *certiorari* under Rule 45. The grounds relied upon by RVSCI were:

I. THE APPELLATE COURT GRAVELY ERRED IN RULING THAT THE SURVEYOR'S ELECTRICAL WORK AUDIT WAS COMPETENT AND MUST BE GIVEN WEIGHT.

II. THE APPELLATE COURT GRAVELY ERRED IN RULING THAT BELLE MAY WITHDRAW ITS APPROVAL OF THE PROGRESS BILLING PURSUANT TO ARTICLES VI(2)(C) AND XIII(4) OF THE CONTRACT.

[26] *Rollo,* Vol. II, p. 650.

III. THE APPELLATE COURT GRAVELY ERRED IN RULING THAT [RVSCI] IS NOT ENTITLED TO AN AWARD FOR DAMAGES.[27]

Anent the first ground, RVSCI argued that R.A. Mojica's electrical work audit that was unilaterally commissioned by Belle was not binding on the former since (a) it was not authorized by the Contract and was done without the consent or participation of RVSCI; (b) assuming that the Contract allowed Belle to commission such audit, it was incomplete as it failed to cover the entire work performed by RVSCI as shown by its Progress Billing and Bill of Quantities, allegedly approved by Belle; and (c) the audit was tainted by obvious partiality since R.A. Mojica was a regular contractor of Belle and a competitor of RVSCI.

With respect to the second ground, it is RVSCI's contention that Article VI, Section 6.2(c) of the Construction Contract merely differentiate acceptance by Belle of RVSCI's work accomplishment from time to time from Belle's final acceptance of work upon completion of the entire project. Also RVSCI claims that Article XIII, Section 13.4 only allows Belle to determine the true value of the works in cases of termination of the Contract upon occurrence of any of the events of default enumerated under Article XIII, Section 13.1 and said provision has no application in instances of justified suspension of works due to Belle's breach of the Contract. In any event, it is RVSCI's view that neither Article VI, Section 6.2(c) nor Article XIII, Section 13.4 allows Belle to withdraw its previous approval of RVSCI's Progress Billing, contrary to the rulings of both the CIAC and the Court of Appeals. Assuming without conceding that Article XIII, Section 13.4 of the Contract applies in this instance, RVSCI believes that the final determination of the value of the works should be made by (a) both parties or (b) an independent third party mutually commissioned by them.

As for the last ground, RVSCI asserts that the CIAC and the Court of Appeals erred in denying RVSCI's claim for damages

[27] *Rollo,* Vol. I, p. 24 and Vol. II, p. 1441.

in view of Belle's breach of the Contract by its unjustified refusal or failure to pay the Progress Billing.

On the other hand, Belle claims that the Petition should be dismissed for raising questions of fact, which are improper in a petition under Rule 45 of the Rules of Court, without showing that this case fell under the recognized exceptions under jurisprudence. On the merits of the Petition, Belle argued that it had the right to determine the true value of work done and nothing in the Contract limited that right. According to Belle, the CIAC and the Court of Appeals properly relied on Article VI, Section 6.2(c) and Article XIII, 13.4 of the Contract and on industry practice in upholding Belle's right for a re-evaluation of RVSCI's actual work accomplishment. Thus, the CIAC and the appellate court allegedly were correct in giving weight to the electrical audit report made by R.A. Mojica. Belle further propounds that the lower tribunals correctly did not grant RVSCI any award for damages considering that RVSCI did not prove such damages as it had, in fact, been overpaid. As for RVSCI's claim for the value of materials and equipment purportedly left at the site, the same was not included in the Terms of Reference and RVSCI was not allowed by the CIAC to present evidence on the same. Thus, this matter cannot be raised for the first time on appeal.

After a thorough review of the issues raised by the parties, the Court finds no merit in the Petition.

On the procedural issue:

It must be stressed that in petitions for review under Rule 45 only questions of law may be raised, unless the petitioner shows that the case falls under the recognized exceptions. In *Makati Sports Club, Inc. v. Cheng*,[28] we explained, thus:

> At the outset, we note that this recourse is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 1 of the Rule, **such a petition shall raise only questions of law** which must be distinctly alleged in the appropriate pleading. In a case

[28] G.R. No. 178523, June 16, 2010, 621 SCRA 103.

involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. **If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, then the issue is necessarily factual**.[29] (Emphases supplied, citation omitted.)

In cases decided by the CIAC, the above rule finds even more stringent application. As we previously observed in one case:

> Executive Order No. 1008, as amended, provides, in its Section 19, as follows:
>
> > "Sec. 19. *Finality of Awards*. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court."
>
> Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court - which is not a trier of facts - in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and [u]nappealable.
>
> xxx xxx xxx
>
> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. **The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which**

[29] *Id.* at 110-111.

are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[30] (Emphasis supplied, citations omitted.)

In another case, we have also held that:

It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.

This rule, however, admits of certain exceptions. In *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, we said:

> In *David v. Construction Industry and Arbitration Commission*, we ruled that, as exceptions, factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as

[30] *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, G.R. No. 110434, December 13, 1993, 228 SCRA 397, 404-407.

> such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.
>
> Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.[31] (Citations omitted.)

In the case at bar, petitioner indeed raises factual matters in the present controversy which this Court may not look into under a petition for review on *certiorari*. We likewise find that this case is not among the exceptions to this settled rule. Nevertheless, even if we were to excuse this procedural infirmity of the petition, we are still not inclined to reverse the lower tribunals' findings on the merits of the case.

On the substantive matters: Whether the third party audit report commissioned by Belle is admissible and may be given weight

To recapitulate, petitioner assailed R.A. Mojica's audit report on the following grounds: (a) that there was no provision in the Construction Contract allowing Belle to unilaterally conduct an audit of petitioner's work; (b) assuming the Contract allows such an audit, it nonetheless failed to include all the work done by petitioner; and (c) it was tainted by bias and partiality since R.A. Mojica was a regular, long time contractor of Belle.

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[31] *IBEX International, Inc. v. Government Service Insurance System*, G.R. No. 162095, October 12, 2009, 603 SCRA 306, 314-315.

On this issue, we uphold the CIAC and the Court of Appeals in their allowance of the third party audit report done by R.A. Mojica.

First, while there was no provision in the Construction Contract expressly authorizing Belle to secure the services of a third party auditor to determine the value of the work accomplished by petitioner RVSCI, there is likewise no provision prohibiting the same. Certainly, RVSCI failed to point to any contractual stipulation preventing RVSCI to seek expert opinion regarding the value of RVSCI's accomplishment or the accuracy of the Progress Billing, whether prior or subsequent to the approval of such billing.

Second, the mere fact that the audit was unilateral, or was not participated in by petitioner, did not render the same objectionable. There is nothing in the Construction Contract which obligates Belle to inform RVSCI or to secure the latter's participation should the former decide to commission an audit of the work accomplished. On the contrary, in case of termination due to default of the contractor, Article XIII, Section 13.4 of the Construction Contract explicitly allows Belle to unilaterally evaluate the value of the work and the only condition is that it be done in good faith. Even assuming *arguendo* we accept RVSCI's contentions that it justifiably suspended work and that Article XIII, Section 13.4 merely covers instances of default and not situations of justified suspension of works, we see no reason why the procedure for cessation of work due to default cannot be applied to other instances of cessation of work, particularly in the absence of a contractual provision governing termination or suspension of works in situations not involving a default.

Verily, the fact that the parties agreed to a unilateral valuation of the work by the owner in the event of a termination of the contract due to default signifies that the parties, including RVSCI, did not find anything abhorrent in a one-sided valuation at the time of the execution of the contract. If RVSCI believed that this was unfair or that its participation should be required in a

review or audit of its work, then it should not have acquiesced to such a provision in the first place and instead insisted on a stipulation prohibiting a unilateral audit of its work.

Third, bias on the part of a witness cannot be presumed. It is a basic rule that good faith is always presumed and bad faith must be proved.[32] In a previous case, we have held that the witness' employment relationship with, or financial dependence on, the party presenting his testimony would not be sufficient reason to discredit said witness and label his testimony as biased and unworthy of credence.[33] Analogously, that Belle and R.A. Mojica had a long standing business relationship does not necessarily mean that the latter's report was tainted with irregularity, especially in the absence of evidence that the audit report was indeed inaccurate or erroneous. It must be emphasized as well that RVSCI had ample opportunity to cross-examine Engr. Mojica with respect to the particulars of his company's audit report.

To be sure, RVSCI is not precluded from proffering evidence to rebut the findings of R.A. Mojica. However, RVSCI did not present or point to documents, invoices, and receipts to show that the amounts and quantities in the audit report were not correct, nor did RVSCI convincingly substantiate its assertion that it had completed work in other areas of the project that was not included in said report. RVSCI merely relied on its own Progress Billing as supposedly signed by Belle's representatives. However, it is that Progress Billing which was later questioned by Belle on the suspicion that the same was bloated and inaccurate. Thus, Belle had a third party conduct an audit of RVSCI's actual work accomplishment. As the CIAC noted, there was nothing to prevent RVSCI to secure the services of its own expert witness to contest the findings of R.A. Mojica and buttress the accuracy of its Progress Billing with supporting documents other than such billing but RVSCI did not.

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[32] *Navida v. Dizon, Jr.*, G.R. Nos. 125078, 125598, 126654, 127856 and 128398, May 30, 2011, 649 SCRA 33, 83-84.

[33] *Ong Eng Kiam v. Lucita G. Ong*, 535 Phil. 805, 817 (2006).

Hence, we find no error on the part of the CIAC and the Court of Appeals in relying on the third party audit report and giving it due weight in the resolution of the present case.

Whether Belle's approval of the Progress Billing is final and binding and may no longer be withdrawn

After careful consideration of the contentions of the parties, we agree with the CIAC's finding, as affirmed by the Court of Appeals, that the owner's approval of progress billing is merely provisional. This much can be gleaned from Article VI, Section 6.2(c) of the Construction Contract which states that "[t]he acceptance of work from time to time for the purpose of making progress payment shall not be considered as final acceptance of the work under the Contract." There can be no other interpretation of the said provision but that progress billings are but preliminary estimates of the value of the periodic accomplishments of the contractor. Otherwise, there would be no need to include Article VI, Section 6.2(c) in the Contract since final acceptance of the contractor's work would come as a matter of course if progress billings were, as RVSCI contends, final and binding upon the owner. On the contrary, progress billings and final acceptance of the work were clearly still subject to review by the owner.

Moreover, we see no reason to disturb the CIAC ruling that the foregoing contractual provision is consistent with industry practice, as can be deduced from Articles 22.02, 22.04 and 22.09 of CIAP Document 102 which pertinently state:

> 22.02 REQUESTS FOR PAYMENT: The Contractor may submit periodically but not more than once each month a Request for Payment for work done. The Contractor shall furnish the Owner all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the Work. x x x.
>
> xxx xxx xxx
>
> 22.04 CONDITIONS RELATIVE TO PAYMENTS: The Owner shall estimate the value of work accomplished by the

> Contractor using as basis the schedule stipulated in the Breakdown of Work and Corresponding Value. Such estimate of the Owner of the amount of work performed shall be taken as the basis for the compensation to be received by the Contractor. While such preliminary estimates of amount and quantity shall not be required to be made by strict measurement or with exactness, they must be made as close as possible to the actual percentage of work accomplishment.
>
> xxx xxx xxx
>
> 22.09 ACCEPTANCE AND FINAL PAYMENT: Whenever the Contractor notifies the Owner that the Work under the Contract has been completely performed by the Contractor, the Owner shall proceed to verify the work, shall make the final estimates, certify to the completion of the work, and accept the same.

From the above-quoted provisions, it is readily apparent that, whether in the case of progress billings or of turn-over of completed work, the owner has the right to verify the contractor's actual work accomplishment prior to payment.

In all, we approve the CIAC's pronouncement that "[t]he owner is, therefore, not estopped [from questioning] a prior evaluation of the percentage of accomplishment of the contractor and to downgrade such accomplishment after re-evaluation. It is the right of every owner to re-evaluate or re-measure the work of its contractor during the progress of the work."[34]

Whether Belle should be made liable to RVSCI for damages

Anent the third issue, it is apropos to state here that the rationale underlying the owner's right to seek an evaluation of the contractor's work is the right to pay only the true value of the work as may be reasonably determined under the circumstances.

This is consistent with the law against unjust enrichment under Article 22 of the Civil Code which states that "[e]very person who through an act of performance by another, or any other

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[34] *Rollo*, Vol. II, p. 644.

means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." Expounding on this provision in a recent case, we have held that "[t]he principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it."[35]

In the case at bar, we uphold the CIAC's factual finding that the value of the total work accomplished by RVSCI on the main project was ₱4,868,443.59 while the cost of the additional work amounted to ₱1,768,000.00 plus ₱22,442.27, for a total of ₱6,658,885.86. On the other hand, Belle had made payments in the total amount of ₱11,598,994.44.[36] It is thus undeniable that RVSCI had received payments from Belle in excess of the value of its work accomplishment. In light of this overpayment, it seems specious for RVSCI to claim that it has suffered damages from Belle's refusal to pay its Progress Billing, which had been proven to be excessive and inaccurate. Bearing in mind the law and jurisprudence on unjust enrichment, we hold that RVSCI is indeed liable to return what it had received beyond the actual value of the work it had done for Belle.

On a related note, this Court cannot grant RVSCI's claim for the value of materials and equipment allegedly left at the site. As observed by the CIAC, this particular claim was not included in the Terms of Reference and, hence, could not be litigated upon or proved during the CIAC proceedings.

In conclusion, the CIAC rightly dismissed RVSCI's counterclaims for lack of merit.

WHEREFORE, the instant petition for review is **DENIED.** The Decision dated March 7, 2003 and the Resolution dated August 20, 2003 of the Court of Appeals in CA-G.R. SP Nos. 60224 and 60217 are **AFFIRMED.**

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[35] *MIAA v. Avia Filipinas International, Inc.*, G.R. No. 180168, February 27, 2012.

[36] *Rollo*, Vol. II, p. 648.

SO ORDERED.

Sereno, C.J. (Chairperson), Carpio,[*] *Villarama, Jr.*, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 164051. October 3, 2012]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **LILIAN S. SORIANO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; THE REINSTATEMENT OF THE CRIMINAL CASES AGAINST RESPONDENT WILL NOT VIOLATE HER CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY; THE WITHDRAWAL OF THE CRIMINAL CASES DID NOT INCLUDE A CATEGORICAL DISMISSAL BY THE TRIAL COURT.— The reinstatement of the criminal cases against Soriano will not violate her constitutional right against double jeopardy. Section 7, Rule 117 of the Rules of Court provides for the requisites for double jeopardy to set in: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) **when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent**. In the present case, the withdrawal of the criminal

[*] Per Special Order No. 1315 dated September 21, 2012.

cases did not include a categorical dismissal thereof by the RTC. Double jeopardy had not set in because Soriano was not acquitted nor was there a valid and legal dismissal or termination of the fifty-one (51) cases against her. It stands to reason therefore that the fifth requisite which requires conviction or acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS; MODES OF EXTINGUISHMENT OF OBLIGATION; NOVATION; NEVER PRESUMED, AND THE *ANIMUS NOVANDI*, WHETHER TOTALLY OR PARTIALLY, MUST APPEAR BY EXPRESS AGREEMENT OF THE PARTIES, OR BY THEIR ACTS THAT ARE TOO CLEAR AND UNMISTAKABLE.— We cannot subscribe to the appellate court's reasoning. The DOJ Secretary's and the Court of Appeals holding that, the supposed restructuring novated the loan agreement between the parties is myopic. To begin with, the purported restructuring of the loan agreement did not constitute novation. Novation is one of the modes of extinguishment of obligations; it is a single juridical act with a diptych function. The substitution or change of the obligation by a subsequent one extinguishes the first, resulting in the creation of a new obligation in lieu of the old. It is not a complete obliteration of the obligor-obligee relationship, but operates as a relative extinction of the original obligation. Article 1292 of the Civil Code which provides: **Art. 1292**. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. Contemplates two kinds of novation: express or implied. The extinguishment of the old obligation by the new one is a necessary element of novation, which may be effected either expressly or impliedly. In order for novation to take place, the concurrence of the following requisites is indispensable: (1) There must be a previous valid obligation; (2) There must be an agreement of the parties concerned to a new contract; (3) There must be the extinguishment of the old contract; and (4) There must be the validity of the new contract. Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear

by express agreement of the parties, or by their acts that are too clear and unmistakable. The contracting parties must incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts. Nonetheless, both kinds of novation must still be clearly proven.

3. ID.; ID.; ID.; TEST OF INCOMPATIBILITY; EXPLAINED; APPLYING THE TEST IN CASE AT BAR, NO INCOMPATIBILITY CAN BE FOUND BETWEEN THE FLOOR STOCK LINE AND THE PURPORTED RESTRUCTURED OMNIBUS LINE THAT COULD EQUATE TO A FINDING OF IMPLIED NOVATION.— The approval of LISAM's restructuring proposal is not the bone of contention in this case. The pith of the issue lies in whether, assuming a restructuring was effected, it extinguished the criminal liability on the loan obligation secured by trust receipts, by extinguishing the entruster-entrustee relationship and substituting it with that of an ordinary creditor-debtor relationship. Stated differently, we examine whether the Floor Stock Line is incompatible with the purported restructured Omnibus Line. The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation. We have scoured the records and found no incompatibility between the Floor Stock Line and the purported restructured Omnibus Line. While the restructuring was approved in principle, the effectivity thereof was subject to conditions precedent such as the payment of interest and other charges, and the submission of the titles to the real properties in *Tandang Sora,* Quezon City. These conditions precedent imposed on the restructured Omnibus Line were never refuted by Soriano who, oddly enough, failed to file a

Memorandum. To our mind, Soriano's bare assertion that the restructuring was approved by PNB cannot equate to a finding of an implied novation which extinguished Soriano's obligation as entrustee under the TR's.

4. ID.; ID.; ID.; ID.; THE RESTRUCTURING OF A LOAN AGREEMENT SECURED BY A TRUST RECEIPT DOES NOT *PER SE* NOVATE OR EXTINGUISH THE CRIMINAL LIABILITY INCURRED THEREUNDER.— Moreover, as asserted by Soriano in her counter-affidavit, the waiver pertains to penalty charges on the Floor Stock Line. There is no showing that the waiver extinguished Soriano's obligation to "sell the [merchandise] for cash for [LISAM's] account and to deliver the proceeds thereof to PNB to be applied against its acceptance on [LISAM's] account." Soriano further agreed to hold the "vehicles and proceeds of the sale thereof in Trust for the payment of said acceptance and of any of its other indebtedness to PNB." Well-settled is the rule that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one. Besides, novation does not extinguish criminal liability. It stands to reason therefore, that Soriano's criminal liability under the TR's subsists considering that the civil obligations under the Floor Stock Line secured by TR's were not extinguished by the purported restructured Omnibus Line. In *Transpacific Battery Corporation v. Security Bank and Trust Company*, we held that the restructuring of a loan agreement secured by a TR does not *per se* novate or extinguish the criminal liability incurred thereunder.

APPEARANCES OF COUNSEL

Alfredo F. Velasco, Jr. for petitioner.
Pedro R. Abaya for respondent.

D E C I S I O N

PEREZ, *J.*:

We are urged in this petition for review on *certiorari* to reverse and set aside the Decision of the Court of Appeals in CA-G.R. SP No. 76243[1] finding no grave abuse of discretion in the ruling of the Secretary of the Department of Justice (DOJ) which, in turn, dismissed the criminal complaint for *Estafa, i.e.*, violation of Section 13 of Presidential Decree No. 115 (Trust Receipts Law), in relation to Article 315, paragraph 1(b) of the Revised Penal Code, filed by petitioner Philippine National Bank (PNB) against respondent Lilian S. Soriano (Soriano).[2]

First, the ostensibly simple facts as found by the Court of Appeals and adopted by PNB in its petition and memorandum:

> On March 20, 1997, [PNB] extended a credit facility in the form of [a] Floor Stock Line (FSL) in the increased amount of Thirty Million Pesos (₱30 Million) to Lisam Enterprises, Inc. [LISAM], a family-owned and controlled corporation that maintains Current Account No. 445830099-8 with petitioner PNB.
>
> x x x. Soriano is the chairman and president of LISAM, she is also the authorized signatory in all LISAM's Transactions with [PNB].
>
> On various dates, LISAM made several availments of the FSL in the total amount of Twenty Nine Million Six Hundred Forty Five Thousand Nine Hundred Forty Four Pesos and Fifty Five Centavos (₱29,645,944.55), the proceeds of which were credited to its current account with [PNB]. For each availment, LISAM through [Soriano], executed 52 Trust Receipts (TRs). In addition to the promissory notes, showing its receipt of the items in trust with the duty to turn-over the proceeds of the sale thereof to [PNB].
>
> Sometime on January 21-22, 1998, [PNB's] authorized personnel conducted an actual physical inventory of LISAM's motor vehicles

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Rosalinda Asuncion-Vicente, concurring. *Rollo,* pp. 10-15.

[2] CA *rollo*, pp. 12-17.

and motorcycles and found that only four (4) units covered by the TRs amounting to One Hundred Forty Thousand Eight Hundred Pesos (₱158,100.00) (*sic*) remained unsold.

Out of the Twenty Nine Million Six Hundred Forty Four Thousand Nine Hundred Forty Four Pesos and Fifty Five Centavos (₱29,644,944.55) as the outstanding principal balance [of] the total availments on the line covered by TRs, [LISAM] should have remitted to [PNB], Twenty Nine Million Four Hundred Eighty Seven Thousand Eight Hundred Forty Four Pesos and Fifty Five Centavos (₱29,487,844.55). Despite several formal demands, respondent Soriano failed and refused to turn over the said [amount to] the prejudice of [PNB].[3]

Given the terms of the TRs which read, in pertinent part:

RECEIVED in Trust from the [PNB], Naga Branch, Naga City, Philippines, the motor vehicles ("Motor Vehicles") specified and described in the Invoice/s issued by HONDA PHILIPPINES, INC. (HPI) to Lisam Enterprises, Inc., (the "Trustee") hereto attached as Annex "A" hereof, and in consideration thereof, the trustee hereby agrees to hold the Motor Vehicles in storage as the property of PNB, with the liberty to sell the same for cash for the Trustee's account and to deliver the proceeds thereof to PNB to be applied against its acceptance on the Trustee's account. Under the terms of the Invoices and (*sic*) the Trustee further agrees to hold the said vehicles and proceeds of the sale thereof in Trust for the payment of said acceptance and of any [of] its other indebtedness to PNB.

xxx xxx xxx

For the purpose of effectively carrying out all the terms and conditions of the Trust herein created and to insure that the Trustee will comply strictly and faithfully with all undertakings hereunder, the Trustee hereby agrees and consents to allow and permit PNB or its representatives to inspect all of the Trustee's books, especially those pertaining to its disposition of the Motor Vehicles and/or the proceeds of the sale hereof, at any time and whenever PNB, at its discretion, may find it necessary to do so.

The Trustee's failure to account to PNB for the Motor Vehicles received in Trust and/or for the proceeds of the sale thereof within

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

thirty (30) days from demand made by PNB shall constitute *prima facie* evidence that the Trustee has converted or misappropriated said vehicles and/or proceeds thereof for its benefit to the detriment and prejudice of PNB.[4]

and Soriano's failure to account for the proceeds of the sale of the motor vehicles, PNB, as previously adverted to, filed a complaint-affidavit before the Office of the City Prosecutor of Naga City charging Soriano with fifty two (52) counts of violation of the Trust Receipts Law, in relation to Article 315, paragraph 1(b) of the Revised Penal Code.

In refutation, Soriano filed a counter-affidavit asserting that:

1. The obligation of [LISAM] which I represent, and consequently[,] my obligation, if any, is purely civil in nature. All of the alleged trust receipt agreements were availments made by the corporation [LISAM] on the PNB credit facility known as "Floor Stock Line" (FSL), which is just one of the several credit facilities granted to [LISAM] by PNB. When my husband Leandro A. Soriano, Jr. was still alive, [LISAM] submitted proposals to PNB for the restructuring of all of [LISAM's] credit facilities. After exchanges of several letters and telephone calls, Mr. Josefino Gamboa, Senior Vice President of PNB on 12 May 1998 wrote [LISAM] informing PNB's lack of objection to [LISAM's] proposal of restructuring all its obligations. x x x.

2. On September 22, 1998 Mr. Avengoza sent a letter to [LISAM], complete with attached copy of PNB Board's minutes of meeting, with the happy information that the Board of Directors of PNB has approved the conversion of [LISAM's] existing credit facilities at PNB, which includes the FSL on which the Trust receipts are availments, to [an] Omnibus Line (OL) available by way of Revolving Credit Line (RCL), Discounting Line Against Post-Dated Checks (DLAPC), and Domestic Bills Purchased Line (DBPL) and with a "Full waiver of penalty charges on RCL, FSL (which is the Floor Stock Line on which the trust receipts are availments) and Time Loan. x x x.

3. The [FSL] and the availments thereon allegedly secured by Trust Receipts, therefore, was (sic) already converted into[,]

[4] CA *rollo,* pp. 29-30.

and included in[,] an Omnibus Line (OL) of ₱106 million on September 22, 1998, which was actually a Revolving Credit Line (RCL)[.][5]

PNB filed a reply-affidavit maintaining Soriano's criminal liability under the TRs:

> 2. x x x. While it is true that said restructuring was approved, the same was never implemented because [LISAM] failed to comply with the conditions of approval stated in B/R No. 6, such as the payment of the interest and other charges and the submission of the title of the 283 sq. m. of vacant residential lot, x x x Tandang Sora, Quezon City, as among the common conditions stated in paragraph V, of B/R 6. The non-implementation of the approved restructuring of the account of [LISAM] has the effect of reverting the account to its original status prior to the said approval. Consequently, her claim that her liability for violation of the Trust Receipt Agreement is purely civil does not hold water.[6]

In a Resolution,[7] the City Prosecutor of Naga City found, thus:

> WHEREFORE, the undersigned finds *prima facie* evidence that respondent LILIAN SORIANO is probably guilty of violation of [the] Trust Receipt Law[,] in relation to Article 315 par. 1 (b) of the Revised Penal Code, let therefore 52 counts of ESTAFA be filed against the respondent.[8]

Consequently, on 1 August 2001, the same office filed Informations against Soriano for fifty two (52) counts of *Estafa* (violation of the Trust Receipts Law), docketed as Criminal Case Nos. 2001-0641 to 2001-0693, which were raffled to the Regional Trial Court (RTC), Branch 21, Naga City.

Meanwhile, PNB filed a petition for review of the Naga City Prosecutor's Resolution before the Secretary of the DOJ.

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[5] *Id.* at 69-70.

[6] *Id.* at 32.

[7] *Id.* at 34-37.

[8] *Id.* at 37.

In January 2002, the RTC ordered the dismissal of one of the criminal cases against Soriano, docketed as Criminal Case No. 2001-0671. In March of the same year, Soriano was arraigned in, and pled not guilty to, the rest of the criminal cases. Thereafter, on 16 October 2002, the RTC issued an Order resetting the continuation of the pre-trial on 27 November 2002.

On the other litigation front, the DOJ, in a Resolution[9] dated 25 June 2002, reversed and set aside the earlier resolution of the Naga City Prosecutor:

> **WHEREFORE,** the questioned resolution is **REVERSED** and **SET ASIDE** and the City Prosecutor of Naga City is hereby directed to move, with leave of court, for the withdrawal of the informations for estafa against Lilian S. Soriano in Criminal Case Nos. 2001-0641 to 0693 and to report the action taken thereon within ten (10) days from receipt thereof.[10]

On various dates the RTC, through Pairing Judge Novelita Villegas-Llaguno, issued the following Orders:

1. 27 November 2002[11]

> When this case was called for continuation of pre-trial[,] [Soriano's] counsel appeared[.] [H]owever, Prosecutor Edgar Imperial failed to appear.
>
> Records show that a copy of the Resolution from the Department of Justice promulgated on October 28, 2002 was received by this Court, (*sic*) denying the Motion for Reconsideration of the Resolution No. 320, series of 2002 reversing that of the City Prosecutor of Naga City and at the same time directing the latter to move with leave of court for the withdrawal of the information[s] for Estafa against Lilian Soriano.
>
> Accordingly, the prosecution is hereby given fifteen (15) days from receipt hereof within which to comply with the directive of the Department of Justice.

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[9] *Id.* at 12-17.

[10] *Id.* at 15.

[11] *Rollo,* p. 54.

2. 21 February 2003[12]

Finding the Motion to Withdraw Informations filed by Pros. Edgar Imperial duly approved by the City Prosecutor of Naga City to be meritorious the same is hereby granted. As prayed for, the Informations in Crim. Cases Nos. RTC 2001-0641 to 2001-0693 entitled, People of the Philippines vs. Lilian S. Soriano, consisting of fifty-two (52) cases except for Crim. Case No. RTC 2001-0671 which had been previously dismissed, are hereby ordered WITHDRAWN.

3. 15 July 2003[13]

The prosecution of the criminal cases herein filed being under the control of the City Prosecutor, the withdrawal of the said cases by the Prosecution leaves this Court without authority to re-instate, revive or re-file the same.

Wherefore, the Motion for Reconsideration filed by the private complainant is hereby DENIED.

With the denial of its Motion for Reconsideration of the 25 June 2002 Resolution of the Secretary of the DOJ, PNB filed a petition for *certiorari* before the Court of Appeals alleging that:

> A. [THE SECRETARY OF THE DOJ] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OR EXCESS OF JURISDICTION IN REVERSING AND SETTING ASIDE THE RESOLUTON OF THE CITY PROSECUTOR OF NAGA CITY FINDING A *PRIMA FACIE* CASE AGAINST PRIVATE RESPONDENT [SORIANO], FOR THE SAME HAS NO LEGAL BASES AND IS NOT IN ACCORD WITH THE JURISPRUDENTIAL RULINGS ON THE MATTER.[14]

As stated at the outset, the appellate court did not find grave abuse of discretion in the questioned resolution of the DOJ, and dismissed PNB's petition for *certiorari*.

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[12] *Id.* at 55.

[13] *Id.* at 56.

[14] CA *rollo,* p. 7.

Hence, this appeal by *certiorari*.

Before anything else, we note that respondent Soriano, despite several opportunities to do so, failed to file a Memorandum as required in our Resolution dated 16 January 2008. Thus, on 8 July 2009, we resolved to dispense with the filing of Soriano's Memorandum.

In its Memorandum, PNB posits the following issues:

I. Whether or not the Court of Appeals gravely erred in concurring with the finding of the DOJ that the approval by PNB of [LISAM's] restructuring proposal of its account with PNB had changed the status of [LISAM's] obligations secured by Trust Receipts to one of an ordinary loan, non-payment of which does not give rise to a criminal liability.

II. Whether or not the Court of Appeals gravely erred in concluding and concurring with the June 25, 2002 Resolution of the DOJ directing the withdrawal of the Information for Estafa against the accused in Criminal Case Nos. 2001-0641 up to 0693 considering the well-established rule that once jurisdiction is vested in court, it is retained up to the end of the litigation.

III. Whether or not the reinstatement of the 51 counts (Criminal Case No. 2001-0671 was already dismissed) of criminal cases for estafa against [Soriano] would violate her constitutional right against double jeopardy.[15]

Winnowed from the foregoing, we find that the basic question is whether the Court of Appeals gravely erred in affirming the DOJ's ruling that the restructuring of LISAM's loan secured by trust receipts extinguished Soriano's criminal liability therefor.

It has not escaped us that PNB's second and third issues delve into the three (3) Orders of the RTC which are not the subject of the petition before us. To clarify, the instant petition assails the Decision of the appellate court in CA-G.R. SP No. 76243 which, essentially, affirmed the ruling of the DOJ in I.S. Nos. 2000-1123, 2000-1133 and 2000-1184. As previously

[15] *Rollo*, p. 98.

narrated, the DOJ Resolution became the basis of the RTC's Orders granting the withdrawal of the Informations against Soriano. From these RTC Orders, the remedy of PNB was to file a petition for *certiorari* before the Court of Appeals alleging grave abuse of discretion in the issuance thereof.

However, for clarity and to obviate confusion, we shall first dispose of the peripheral issues raised by PNB:

1. Whether the withdrawal of Criminal Cases Nos. 2001-0641 to 2001-0693 against Soriano as directed by the DOJ violates the well-established rule that once the trial court acquires jurisdiction over a case, it is retained until termination of litigation.

2. Whether the reinstatement of Criminal Cases Nos. 2001-0641 to 2001-0693 violate the constitutional provision against double jeopardy.

We rule in the negative.

Precisely, the withdrawal of Criminal Cases Nos. 2001-0641 to 2001-0693 was ordered by the RTC. In particular, the Secretary of the DOJ directed City Prosecutor of Naga City to move, **with leave of court**, for the withdrawal of the Informations for *estafa* against Soriano. Significantly, the trial court gave the prosecution fifteen (15) days within which to comply with the DOJ's directive, and thereupon, readily granted the motion. Indeed, the withdrawal of the criminal cases did not occur, *nay*, could not have occurred, without the trial court's *imprimatur*. As such, the DOJ's directive for the withdrawal of the criminal cases against Soriano did not divest nor oust the trial court of its jurisdiction.

Regrettably, a perusal of the RTC's Orders reveals that the trial court relied solely on the Resolution of the DOJ Secretary and his determination that the Informations for *estafa* against Soriano ought to be withdrawn. The trial court abdicated its judicial power and refused to perform a positive duty enjoined by law. On one occasion, we have declared that while the recommendation of the prosecutor or the ruling of the Secretary

of Justice is persuasive, it is not binding on courts.[16] We shall return to this point shortly.

In the same vein, the reinstatement of the criminal cases against Soriano will not violate her constitutional right against double jeopardy.

Section 7,[17] Rule 117 of the Rules of Court provides for the requisites for double jeopardy to set in: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) **when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent**.[18]

In the present case, the withdrawal of the criminal cases did not include a categorical dismissal thereof by the RTC. Double jeopardy had not set in because Soriano was not acquitted nor was there a valid and legal dismissal or termination of the fifty one (51) cases against her. It stands to reason therefore that the fifth requisite which requires conviction or acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met.

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[16] *Cerezo v. People*, G.R. No. 185230, 1 June 2011, 650 SCRA 222, 229.

[17] **SEC. 7.** *Former conviction or acquittal; double jeopardy*. – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charge, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

[18] *Co v. Lim,* G.R. Nos. 164669-70, 30 October 2009, 604 SCRA 702, 714-715.

On both issues, the recent case of *Cerezo v. People*,[19] is enlightening. In *Cerezo,* the trial court simply followed the prosecution's lead on how to proceed with the libel case against the three accused. The prosecution twice changed their mind on whether there was probable cause to indict the accused for libel. On both occasions, the trial court granted the prosecutor's motions. Ultimately, the DOJ Secretary directed the prosecutor to re-file the Information against the accused which the trial court forthwith reinstated. Ruling on the same issues raised by PNB in this case, we emphasized, thus:

> x x x. In thus resolving a motion to dismiss a case or to withdraw an Information, the trial court should not rely solely and merely on the findings of the public prosecutor or the Secretary of Justice. It is the court's bounden duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the motion. x x x.
>
> In this case, it is obvious from the March 17, 2004 Order of the RTC, dismissing the criminal case, that the RTC judge failed to make his own determination of whether or not there was a *prima facie* case to hold respondents for trial. He failed to make an independent evaluation or assessment of the merits of the case. The RTC judge blindly relied on the manifestation and recommendation of the prosecutor when he should have been more circumspect and judicious in resolving the Motion to Dismiss and Withdraw Information especially so when the prosecution appeared to be uncertain, undecided, and irresolute on whether to indict respondents.
>
> The same holds true with respect to the October 24, 2006 Order, which reinstated the case. The RTC judge failed to make a separate evaluation and merely awaited the resolution of the DOJ Secretary. This is evident from the general tenor of the Order and highlighted in the following portion thereof:
>
> > As discussed during the hearing of the Motion for Reconsideration, the Court will resolve it depending on the outcome of the Petition for Review. Considering the findings of the Department of Justice reversing the resolution of the City Prosecutor, the Court gives favorable action to the Motion for Reconsideration.

[19] *Supra* note 16.

By relying solely on the manifestation of the public prosecutor and the resolution of the DOJ Secretary, the trial court abdicated its judicial power and refused to perform a positive duty enjoined by law. The said Orders were thus stained with grave abuse of discretion and violated the complainant's right to due process. They were void, had no legal standing, and produced no effect whatsoever.

xxx xxx xxx

It is beyond cavil that double jeopardy did not set in. Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) **when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent**.

Since we have held that the March 17, 2004 Order granting the motion to dismiss was committed with grave abuse of discretion, then respondents were not acquitted nor was there a valid and legal dismissal or termination of the case. Ergo, the fifth requisite which requires the conviction and acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met. Thus, double jeopardy has not set in.[20] (Emphasis supplied)

We now come to the crux of the matter: whether the restructuring of LISAM's loan account extinguished Soriano's criminal liability.

PNB admits that although it had approved LISAM's restructuring proposal, the actual restructuring of LISAM's account consisting of several credit lines was never reduced into writing. PNB argues that the stipulations therein such as the provisions on the schedule of payment of the principal obligation, interests, and penalties, must be in writing to be valid and binding between the parties. PNB further postulates that assuming the restructuring was reduced into writing, LISAM failed to comply with the conditions precedent for its effectivity, specifically, the payment of interest and other charges, and the

[20] *Id.* at 229-231.

submission of the titles to the real properties in *Tandang Sora*, Quezon City. On the whole, PNB is adamant that the events concerning the restructuring of LISAM's loan did not affect the TR security, thus, Soriano's criminal liability thereunder subsists.

On the other hand, the appellate court agreed with the ruling of the DOJ Secretary that the approval of LISAM's restructuring proposal, even if not reduced into writing, changed the status of LISAM's loan from being secured with Trust Receipts (TR's) to one of an ordinary loan, non-payment of which does not give rise to criminal liability. The Court of Appeals declared that there was no breach of trust constitutive of *estafa* through misappropriation or conversion where the relationship between the parties is simply that of creditor and debtor, not as entruster and entrustee.

We cannot subscribe to the appellate court's reasoning. The DOJ Secretary's and the Court of Appeals' holding that, the supposed restructuring novated the loan agreement between the parties is myopic.

To begin with, the purported restructuring of the loan agreement did not constitute novation.

Novation is one of the modes of extinguishment of obligations;[21] it is a single juridical act with a diptych function. The substitution or change of the obligation by a subsequent one extinguishes the first, resulting in the creation of a new obligation in lieu of the old.[22] It is not a complete obliteration of the obligor-obligee relationship, but operates as a relative extinction of the original obligation.

Article 1292 of the Civil Code which provides:

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[21] **Art. 1231** of the **Civil Code**: Obligations are extinguished:

xxx xxx xxx

(6) By novation.

[22] **Art. 1292** of the **Civil Code**.

Art. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

contemplates two kinds of novation: express or implied. The extinguishment of the old obligation by the new one is a necessary element of novation, which may be effected either expressly or impliedly.

In order for novation to take place, the concurrence of the following requisites is indispensable:

(1) There must be a previous valid obligation;

(2) There must be an agreement of the parties concerned to a new contract;

(3) There must be the extinguishment of the old contract; and

(4) There must be the validity of the new contract.[23]

Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unmistakable. The contracting parties must incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts.[24] Nonetheless, both kinds of novation must still be clearly proven.[25]

In this case, without a written contract stating in unequivocal terms that the parties were novating the original loan agreement, thus undoubtedly eliminating an express novation, we look to

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[23] *Sueno v. Land Bank of the Philippines*, G.R. No. 174711, 17 September 2008, 565 SCRA 611, 617-618; *Azolla Farms v. Court of Appeals*, 484 Phil. 745, 755 (2004).

[24] *Philippine Savings Bank v. Sps. Mañalac, Jr.*, 496 Phil. 671, 687-688 (2005).

[25] *Bisaya Land Transportation Co., Inc. v. Sanchez*, 237 Phil. 510, 522-523 (1987).

whether there is an incompatibility between the Floor Stock Line secured by TR's and the subsequent restructured Omnibus Line which was supposedly approved by PNB.

Soriano is confident with her assertion that PNB's approval of her proposal to restructure LISAM's loan novated the loan agreement secured by TR's. Soriano relies on the following:

> 1. x x x. All the alleged trust receipt agreements were availments made by [LISAM] on the PNB credit facility known as "Floor Stock Line," (FSL) which is just one of the several credit facilities granted to [LISAM] by PNB. When my husband Leandro A. Soriano, Jr. was still alive, [LISAM] submitted proposals to PNB for the restructuring of all of [LISAM's] credit facilities. After exchanges of several letters and telephone calls, Mr. Josefino Gamboa, Senior Vice President of PNB on 12 May 1998 wrote [LISAM] informing PNB's lack of objection to [LISAM's] proposal of restructuring all its obligations[.] x x x[.]
>
> 2. On September 22, 1998[,] Mr. Avengoza sent a letter to [LISAM], complete with attached copy of PNB's Board's minutes of meeting, with the happy information that the Board of Directors of PNB has approved the conversion of [LISAM's] existing credit facilities at PNB, which includes the FSL on which the trust receipts are availments, to [an] Omnibus Line (OL) available by way of Revolving Credit Line (RCL), Discounting Line Against Post-Dated Checks (DLAPC), and Domestic Bills Purchased Line (DBPL) and with a "Full waiver of penalty charges on RCL, FSL (which is the Floor Stock Line on which the trust receipts are availments) and Time Loan. x x x.[26]

Soriano's reliance thereon is misplaced. The approval of LISAM's restructuring proposal is not the bone of contention in this case. The pith of the issue lies in whether, assuming a restructuring was effected, it extinguished the criminal liability on the loan obligation secured by trust receipts, by extinguishing the entruster-entrustee relationship and substituting it with that of an ordinary creditor-debtor relationship. Stated differently, we examine whether the Floor Stock Line is incompatible with the purported restructured Omnibus Line.

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[26] CA *rollo,* pp. 69-70.

The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.[27]

We have scoured the records and found no incompatibility between the Floor Stock Line and the purported restructured Omnibus Line. While the restructuring was approved in principle, the effectivity thereof was subject to conditions precedent such as the payment of interest and other charges, and the submission of the titles to the real properties in *Tandang Sora*, Quezon City. These conditions precedent imposed on the restructured Omnibus Line were never refuted by Soriano who, oddly enough, failed to file a Memorandum. To our mind, Soriano's bare assertion that the restructuring was approved by PNB cannot equate to a finding of an implied novation which extinguished Soriano's obligation as entrustee under the TR's.

Moreover, as asserted by Soriano in her counter-affidavit, the waiver pertains to penalty charges on the Floor Stock Line. There is no showing that the waiver extinguished Soriano's obligation to "sell the [merchandise] for cash for [LISAM's] account and to deliver the proceeds thereof to PNB to be applied against its acceptance on [LISAM's] account." Soriano further agreed to hold the "vehicles and proceeds of the sale thereof in Trust for the payment of said acceptance and of any of its other indebtedness to PNB." Well-settled is the rule that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the

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[27] *California Bus Lines, Inc. v. State Investment House, Inc.*, 463 Phil. 689, 703 (2003) citing *Molino v. Security Diners International Corporation*, 415 Phil. 587, 594 (2001).

old one.[28] Besides, novation does not extinguish criminal liability.[29] It stands to reason therefore, that Soriano's criminal liability under the TR's subsists considering that the civil obligations under the Floor Stock Line secured by TR's were not extinguished by the purported restructured Omnibus Line.

In *Transpacific Battery Corporation v. Security Bank and Trust Company*,[30] we held that the restructuring of a loan agreement secured by a TR does not *per se* novate or extinguish the criminal liability incurred thereunder:

> x x x Neither is there an implied novation since the restructuring agreement is not incompatible with the trust receipt transactions.
>
> Indeed, the restructuring agreement recognizes the obligation due under the trust receipts when it required "payment of all interest and other charges prior to restructuring." With respect to Michael, there was even a proviso under the agreement that the amount due is subject to "the joint and solidary liability of Spouses Miguel and Mary Say and Michael Go Say." While the names of Melchor and Josephine do not appear on the restructuring agreement, it cannot be presumed that they have been relieved from the obligation. The old obligation continues to subsist subject to the modifications agreed upon by the parties.
>
> The circumstance that motivated the parties to enter into a restructuring agreement was the failure of petitioners to account for the goods received in trust and/or deliver the proceeds thereof. To remedy the situation, the parties executed an agreement to restructure Transpacific's obligations.
>
> The Bank only extended the repayment term of the trust receipts from 90 days to one year with monthly installment at 5% per annum over prime rate or 30% per annum whichever is higher. Furthermore, the interest rates were flexible in that they are subject to review every amortization due. Whether the terms appeared to be more onerous or not is immaterial. Courts are not authorized to extricate

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[28] *Spouses Reyes v. BPI Family Savings Bank, Inc.*, 520 Phil. 801, 807-808 (2006).

[29] **Art. 89** of the **Revised Penal Code**.

[30] G.R. No. 173565, 8 May 2009, 587 SCRA 536.

parties from the necessary consequences of their acts. The parties will not be relieved from their obligations as there was absolutely no intention by the parties to supersede or abrogate the trust receipt transactions. The intention of the new agreement was precisely to revive the old obligation after the original period expired and the loan remained unpaid. Well-settled is the rule that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.[31]

Based on all the foregoing, we find grave error in the Court of Appeals dismissal of PNB's petition for *certiorari*. Certainly, while the determination of probable cause to indict a respondent for a crime lies with the prosecutor, the discretion must not be exercised in a whimsical or despotic manner tantamount to grave abuse of discretion.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. SP No. 76243 finding no grave abuse of discretion on the part of the Secretary of Justice is **REVERSED** and **SET ASIDE.**

The Resolution of the Secretary of Justice dated 25 June 2002, directing the City Prosecutor of Naga City to move for the withdrawal of the Informations for *estafa* in relation to the Trust Receipts Law against respondent Lilian S. Soriano, and his 29 October 2002 Resolution, denying petitioner's Motion for Reconsideration, are **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion; and the Resolution of the Naga City Prosecutor's Office dated 19 March 2001, finding probable cause against herein respondent, is **REINSTATED.** Consequently, the Orders of the Regional Trial Court, Branch 21 of Naga City in Criminal Cases Nos. 2001-0641 to 2001-0693, except Criminal Case No. 2001-0671, dated 27 November 2002, 21 February 2003 and 15 July 2003 are **SET ASIDE** and its Order of 16 October 2002 resetting the continuation of the pre-trial is **REINSTATED.** The RTC is further ordered to conduct the pre-trial with dispatch.

[31] *Id.* at 548-549.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Brion*, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 182209. October 3, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **EMILIANO R. SANTIAGO, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657); JUST COMPENSATION; CONSIDERING THAT THE AGRARIAN REFORM PROCESS IS STILL INCOMPLETE IN CASE AT BAR AS THE JUST COMPENSATION DUE THE LANDOWNER HAS YET TO BE SETTLED, SUCH JUST COMPENSATION SHOULD BE DETERMINED AND PROCESS CONCLUDED UNDER REPUBLIC ACT NO. 6657.— The determination of the just compensation therefore in this case depends on the valuation formula to be applied: the formula under Presidential Decree No. 27 and Executive Order No. 228 or the formula under Republic Act No. 6657? This Court finds the case of *Meneses v. Secretary of Agrarian Reform* applicable insofar as it has determined what formula should be used in computing the just compensation for property expropriated under Presidential Decree No. 27 under the factual milieu of this case, *viz*: x x x **Under the circumstances of this case, the Court deems it more equitable to apply the**

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[*] Per Special Order No. 1308 dated 21 September 2012.

ruling in the *Natividad case*. In said case, the Court applied the provisions of R.A. No. 6657 in computing just compensation for property expropriated under P.D. No. 27, stating, *viz*: Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation. **Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche***. x x x The ruling in *Land Bank of the Philippines v. Natividad* was likewise applied in *Land Bank of the Philippines v. Heirs of Angel T. Domingo*, when the landowner Domingo filed a Petition for the Determination and Payment of Just Compensation despite his receipt of LBP's partial payment. This Court held that since the amount of just compensation to be paid to Domingo had yet to be settled, then the agrarian reform process was still incomplete; thus, it should be completed under Republic Act No. 6657. Based on the foregoing, when the agrarian reform process is still incomplete as the just compensation due the landowner has yet to be settled, such just compensation should be determined and the process concluded under Republic Act No. 6657.

2. ID.; ID.; ID.; SINCE THE TAKING AND VALUATION OF THE SUBJECT PROPERTY IN CASE AT BAR OCCURRED AFTER REPUBLIC ACT NO. 6657 HAD ALREADY BECOME EFFECTIVE AND UNTIL NOW THE ISSUE OF JUST COMPENSATION HAS NOT BEEN SETTLED AND THE PROCESS HAS YET TO BE COMPLETED, THE PROVISIONS OF AFOREMENTIONED LAW SHALL APPLY.— Similarly,

in the case before us, the emancipation patents were issued to the farmer-beneficiaries from 1992 to 1994. While the preliminary compensation of ₱135,482.12 was reserved in trust at LBP for the heirs of Santiago in 1992, this amount was not received by the heirs until 1998, as its release, pending the final determination of the land valuation, became the subject of a petition in this Court in *Land Bank of the Philippines v. Court of Appeals*. Like in the case cited above, both the taking and the valuation of the subject property occurred after Republic Act No. 6657 had already become effective. Until now, the issue of just compensation for the subject property has not been settled and the process has yet to be completed; thus, the provisions of Republic Act No. 6657 shall apply.

3. ID.; ID.; ID.; ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM, EXTENDING THE ACQUISITION AND DISTRIBUTION THEREOF OR THE "CARPER LAW" (REPUBLIC ACT NO. 9700); SUPPORTS REPUBLIC ACT 6657 BY STATING THAT "PREVIOUSLY ACQUIRED LANDS WHEREIN THE VALUATION IS SUBJECT TO CHALLENGE SHALL BE COMPLETED AND RESOLVED PURSUANT TO SECTION 17 OF REPUBLIC ACT NO. 6657, AS AMENDED".— This Court is not unaware of the new agrarian reform law, Republic Act No. 9700 or the CARPER Law, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor," passed by the Congress on July 1, 2009, **further** amending Republic Act No. 6657, as amended. That this case, despite the new law, still falls under Section 17 of Republic Act No. 6657 is supported even by Republic Act No. 9700, which states that "previously acquired lands wherein valuation is subject to challenge shall be completed and resolved pursuant to **Section 17 of Republic Act No. 6657, as amended**."

4. ID.; ID.; ID.; ID.; THE IMPLEMENTING RULES OF REPUBLIC ACT NO. 9700 (DAO AO NO. 02-09), AUTHORIZES THE VALUATION OF LANDS IN

ACCORDANCE WITH THE OLD SECTION 17, REPUBLIC ACT NO. 6657, AS AMENDED, SO LONG AS THE CLAIM FOLDERS FOR SUCH LANDS HAVE BEEN RECEIVED BY THE LAND BANK OF THE PHILIPPINES BEFORE ITS AMENDMENT BY REPUBLIC ACT NO. 9700 IN 2009.— DAR AO No. 02-09, the Implementing Rules of Republic Act No. 9700, which DAR formulated pursuant to Section 31 of Republic Act No. 9700, makes the above distinction even clearer, to wit: VI. *Transitory Provision.* With respect to cases where the Master List of ARBs has been finalized on or before July 1, 2009 pursuant to Administrative Order No. 7, Series of 2003, the acquisition and distribution of landholdings shall continue to be processed under the provisions of R.A. No. 6657 prior to its amendment by R.A. No. 9700. However, **with respect to land valuation, all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700**. Thus, DAR AO No. 02-09 authorizes the valuation of lands in accordance with the *old* Section 17 of Republic Act No. 6657, as amended (prior to further amendment by Republic Act No. 9700), so long as the claim folders for such lands have been received by LBP before its amendment by Republic Act No. 9700 in 2009.

5. ID.; ID.; ID.; ID.; THE RATE OF INTEREST IMPOSED IN CASE OF DELAY IN PAYMENTS IN AGRARIAN CASES IS 12% PER ANNUM COMPUTED FROM THE DATE OF TAKING OF THE SUBJECT PROPERTY.— The Court has allowed the grant of interest in expropriation cases where there is delay in the payment of just compensation. In fact, the interest imposed in case of delay in payments in agrarian cases is 12% per annum and not 6% as "the imposition x x x [is] in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance." Quoting *Republic v. Court of Appeals* this Court, in *Land Bank of the Philippines v. Rivera*. x x x The Court, in *Republic*, recognized that "the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State." In fixing the interest rate at 12%, it followed the guidelines on the award of interest that we enumerated in *Eastern Shipping Lines, Inc.*

v. Court of Appeals. x x x This Court therefore deems it proper to impose a 12% legal interest per annum, computed from the date of the "taking" of the subject property, on the just compensation to be determined by the SAC, due to respondent, less whatever he and his co-owners had already received.

6. ID.; ID.; ID.; ID.; CASE AT BAR IS REMANDED TO THE SPECIAL AGRARIAN COURT (SAC) FOR RECEPTION OF EVIDENCE AND DETERMINATION OF JUST COMPENSATION; GUIDELINES IN THE REMAND OF THE CASE.— Given that the only factor considered by the SAC in the determination of just compensation was the changing government support price for a *cavan* of *palay*, this Court is constrained to remand the case to the SAC Branch 29 for the reception of evidence and determination of just compensation in accordance with Section 17 of Republic Act No. 6657 and DAR AO No. 02-09 dated October 15, 2009, the latest DAR issuance on fixing just compensation. x x x In *Land Bank of the Philippines v. Heirs of Salvador Encinas and Jacoba Delgado*, we said that "[t]he taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding." Thus, the SAC is "reminded to adhere strictly to the doctrine that just compensation *must be valued at the time of taking*" and not at the time of the rendition of judgment. In the same case, this Court also required the trial court to consider the following factors as enumerated in Section 17 of Republic Act No. 6657, as amended: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any. It is stressed that the foregoing factors, and the formula as translated by the DAR in its implementing rules, are mandatory and not mere guides that the SAC may disregard.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.

Hector Reuben D. Feliciano for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] seeking to annul and set aside the September 28, 2007 Decision[2] and March 14, 2008 Resolution[3] of the Court of Appeals in **CA-G.R. SP No. 82467**, which affirmed the January 21, 2000 Decision[4] of the Regional Trial Court of Cabanatuan City, Branch 23, sitting as a Special Agrarian Court (SAC Branch 23), as modified by the January 28, 2004 Resolution[5] of the Regional Trial Court of Cabanatuan City, Branch 29 (SAC Branch 29) in Agrarian Case No. 125-AF.

The antecedents of this case, as culled from the records, are as follows:

Petitioner Land Bank of the Philippines (LBP) is a government financial institution[6] designated under Section 64 of Republic Act No. 6657[7] as the financial intermediary of the agrarian reform program of the government.[8]

Respondent Emiliano R. Santiago, Jr. (respondent) is one of the heirs of Emiliano F. Santiago (Santiago), the registered owner

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 52-65; penned by Associate Justice Monina Arevalo-Zenarosa with Acting Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam, concurring.

[3] *Id*. at 68-69.

[4] CA *rollo*, pp. 43-47.

[5] *Id*. at 49-58.

[6] Section 74, Republic Act No. 3844, Agricultural Land Reform Code as amended by Presidential Decree No. 251 (effective August 8, 1963):

Section 74. *Creation.* – To provide timely and adequate financial support in all phases involved in the execution of needed agrarian reform, there is hereby established a body corporate and government instrumentality to be known as the "Land Bank of the Philippines," hereinafter called the "Bank" which shall have its principal place of business in Greater Manila. The legal existence of the Bank shall be for a period of fifty (50) years from the date of approval hereof.

[7] Comprehensive Agrarian Law of 1988 as amended.

[8] Section 64, Republic Act No. 6657:

of an 18.5615-hectare parcel of land (subject property) in Laur, Nueva Ecija, covered by Transfer Certificate of Title (TCT) No. NT-60359.[9]

Pursuant to the government's Operation Land Transfer (OLT) Program under Presidential Decree No. 27,[10] the Department of Agrarian Reform (DAR) acquired 17.4613 hectares of the subject property.[11]

In determining the just compensation payable to Santiago, the LBP and the DAR used the following formula under Presidential Decree No. 27, which states:

> For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one-half (2-½) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree[.]

and Executive Order No. 228, which reads:

> Sec. 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973 and related issuances and regulation of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty-Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of *palay* on October 21, 1972, or Thirty One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case

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Sec. 64. *Financial Intermediary for the CARP.*— The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

[9] CA *rollo*, pp. 232-233.

[10] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor. (October 21, 1972.)

[11] CA *rollo*, p. 294.

may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

The above formula in equation form is:

Land Value (LV) = (Average Gross Production [AGP] x 2.5 Hectares x Government Support Price [GSP])

Using the foregoing formula, the land value of the subject property was pegged at 3,915 *cavans* of *palay*, using 90 *cavans* of *palay* per year for the irrigated portion and 44.33 *cavans* of *palay* per year for the unirrigated portion, as the AGP per hectare in San Joseph, Laur, Nueva Ecija, as established by the Barangay Committee on Land Production (BCLP), based on three normal crop years immediately preceding the promulgation of Presidential Decree No. 27.[12]

As Santiago had died earlier on November 1, 1987,[13] the LBP, in 1992, reserved in trust for his heirs the amount of One Hundred Thirty-Five Thousand Four Hundred Eighty-Two Pesos and 12/100 (₱135,482.12), as just compensation computed by LBP and DAR using the above formula with ₱35.00 as the GSP per *cavan* of *palay* for the year 1972 under Executive Order No. 228.[14]

The land valuation of the subject property is broken down as follows:[15]

AGP *cavans*	**x 2 and ½ hectares**	**x Area Acquired (hectare)**	**=LV in *Cavans***	**x GSP**	**= LV**
90	2.5	16.9544[16]	3,814.74	₱35.00	₱133,515.92
44.33	2.5	.5069[17]	56.18	₱35.00	1,966.20
		17.4613	3,870.92		**₱135,482.12**

[12] *Id*. at 45; as certified by the Regional Operation Land Transfer Coordinator on January 8, 1982.

[13] *Id*. at 101.

[14] *Rollo*, p. 54.

[15] *Id*. at 28.

[16] Irrigated portion of the subject property.

[17] Unirrigated portion of the subject property.

This amount was released to Santiago's heirs on April 28, 1998,[18] pursuant to this Court's decision in *Land Bank of the Philippines v. Court of Appeals*.[19] LBP, on May 21, 1998 and June 1, 1998, also paid the heirs the sum of ₱353,122.62, representing the incremental interest of 6% on the preliminary compensation, compounded annually for 22 years,[20] pursuant to Provincial Agrarian Reform Council (PARC) Resolution No. 94-24-1[21] and DAR Administrative Order (AO) No. 13, series of 1994.[22]

However, on November 20, 1998, respondent, as a co-owner and administrator of the subject property, filed a petition before the RTC of Cabanatuan City, Branch 23, acting as a Special Agrarian Court (SAC Branch 23), for the "approval and appraisal of just compensation" due on the subject property. This was docketed as SAC Case No. 125-AF.[23]

While respondent was in total agreement with the land valuation of the subject property at 3,915 *cavans* of *palay*, he contended that the 1998 GSP per *cavan*, which was ₱400.00, should be used in the computation of the just compensation for the subject property. Moreover, the incremental interest of 6% compounded annually, as per PARC Resolution No. 94-24-1, should be imposed on the principal amount from 1972 to 1998 or for 26 years.[24]

On January 21, 2000, the SAC Branch 23 rendered its Decision, the dispositive portion of which reads:

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[18] CA *rollo*, p. 196.

[19] 319 Phil. 246 (1995).

[20] CA *rollo*, pp. 197-198.

[21] Resolution Approving the Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree No. 27 and Executive Order No. 228.

[22] Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree No. 27 and Executive Order No. 228.

[23] CA *rollo*, pp. 90-93.

[24] *Id*. at 91-92.

WHEREFORE, the defendant Land Bank of the Philippines is hereby ordered to pay the plaintiff in the sum of ₱1,039,017.88 representing the balance of the land valuation of the plaintiff with legal interest at 12% from the year 1998 until the same is fully paid subject to the modes of compensation under R.A. No. 6657.[25]

The SAC Branch 23 arrived at its ruling, ratiocinating in this wise:

The defendant LBP arrived at this aforesaid amount by pegging the price at the rate of ₱35.00 per cavan, which was the government support price [GSP] in 1972, pursuant to E.O. No. 228.

With the GSP of *palay* in 1992 being already ₱300.00 per cavan x x x, it is very clear, then, that the [respondent] was denied the true, current actual money equivalence of the land valuation of 3,915 cavans of palay mutually agreed upon by the parties.

Aptly, plaintiff had been short-paid. x x x.

xxx xxx xxx

The sum of ₱135,482.12 as the money value of 3,915 cavans did not, therefore, amount to "just compensation" to [respondent] since what was due to him of 3,915 cavans was diluted when the defendant LBP gave a money value at the rate of ₱35.00 per cavan, which was a far cry from the prevailing true and actual GSP of ₱300.00 per cavan in 1992 x x x.[26]

Discontented with the ruling, respondent filed a Motion for Reconsideration[27] of the SAC's decision on February 16, 2000, arguing that the GSP per *cavan* of *palay* should be computed at ₱400.00 instead of ₱300.00 because payment of the preliminary compensation was made by LBP in 1998 and not in 1992. Respondent likewise insisted that in addition to the 12% legal interest ordered by the SAC, a compounded annual interest of 6% of the principal amount should be awarded to them pursuant to the PARC Resolution and DAR AO No. 13. Furthermore,

[25] *Id*. at 47.

[26] *Id*. at 46.

[27] *Id*. at 59-69.

respondent asked that the DAR be ordered to return to him the unacquired portion of the subject property.[28]

On February 10, 2000, Judge Andres R. Amante, Jr., the presiding judge of SAC Branch 23, inhibited himself from resolving the motion for reconsideration,[29] thus, the case was re-raffled to the RTC of Cabanatuan City, Branch 29, acting as Special Agrarian Court (SAC Branch 29).[30]

On January 28, 2004, the SAC Branch 29 issued a Resolution, with the following *fallo*:

> WHEREFORE, the decision is reconsidered as follows:
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> 1. The defendant Land Bank of the Philippines is hereby ordered to pay the petitioner the sum of ₱1,039,017.88 representing the land valuation of the petitioner with legal interest of six percent (6%) per annum beginning year 1998 until the same is fully paid subject to the modes of compensation under Republic Act No. 6657.
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> 2. The Land Bank of the Philippines is ordered to return to the petitioner the unacquired area embraced and covered by TCT No. NT-60359 after segregating the area taken by the DAR.[31]

In denying respondent's claim over the 6% compounded annual interest, the SAC Branch 29 explained that the purpose of the compounded interest was to compensate the landowners for unearned interest, as their money would have earned if they had been paid in 1972, when the GSP for a *cavan* of *palay* was still at ₱35.00. The SAC Branch 29 said that since a higher GSP was already used in the computation of the subject property's land value, there was no more justification in adding any compounded interest to the principal amount.[32]

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[28] *Id*. at 60-66.

[29] *Id*. at 77-78.

[30] *Id*. at 50.

[31] *Id*. at 58.

[32] *Id*. at 57.

The SAC Branch 29 also lowered the legal interest from 12% to 6% on the ground that respondent's claim cannot be considered as a forbearance of money. Furthermore, since the government only acquired 17.4 hectares of the subject property, it ordered LBP to return the unacquired portion to respondent.[33]

Respondent filed a Petition for Review before this Court, questioning the SAC Branch 29's ruling on his non-entitlement to the incremental interest of 6%. The case, entitled *Heirs of Emiliano F. Santiago, represented by Emiliano [R]. Santiago, Jr. as administrator of the land covered by TCT No. NT 60354 v. Republic of the Philippines, represented by the Department of Agrarian Reform, and Land Bank of the Philippines*, and docketed as G.R. No. 162055, was, however, denied by this Court on March 31, 2004, for lack of merit.[34]

Meanwhile, LBP filed a Petition for Review[35] before the Court of Appeals, questioning the just compensation fixed and the legal interest granted by the SAC Branch 23 in its January 21, 2000 Decision and by the SAC Branch 29 in its January 28, 2004 Resolution.

On September 28, 2007, the Court of Appeals, in CA-G.R. SP No. 82467, affirmed the SAC Branch 23's Decision as modified by the SAC Branch 29's Resolution. The dispositive portion of that Decision reads:

WHEREFORE, based on the foregoing, the instant petition for review filed pursuant to **Section 60 of Republic Act No. 6657 is hereby DISMISSED. ACCORDINGLY,** the Decision dated January 21, 2000 of the Regional Trial Court of Cabanatuan City, Branch 23, sitting as **Special Agrarian Court,** as modified by the Resolution dated January 28, 2004 of the Regional Trial Court of Cabanatuan City, Branch 29, is hereby **AFFIRMED**.[36]

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[33] *Id.*

[34] *Id.* at 261-265.

[35] *Id.* at 8-42.

[36] *Rollo*, p. 64.

The Court of Appeals held that the formula in DAR AO No. 13 could no longer be applied since the Provincial Agrarian Reform Adjudicator (PARAD) had already been using a higher GSP. Since the formula could no longer be applied, as a higher GSP was used in the computation of respondent's just compensation, the Court of Appeals ruled that he was no longer entitled to the incremental interest of 6%.[37]

The LBP[38] moved to reconsider the foregoing decision on October 25, 2007. However, the Court of Appeals, finding no new argument worthy of its reconsideration, denied such motion in a Resolution dated March 14, 2008.

The LBP is now before us, claiming that its petition should be allowed for the following reason:

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN **AFFIRMING** THE JANUARY 21, 2000 DECISION OF THE REGIONAL TRIAL COURT (RTC) OF CABANATUAN CITY, BR. 23, SITTING AS SPECIAL AGRARIAN COURT (**AS MODIFIED** BY THE RESOLUTION DATED JANUARY 28, 2004 OF THE RTC OF CABANATUAN CITY, BRANCH 29) WHICH FIXED THE JUST COMPENSATION OF SUBJECT PROPERTIES ACQUIRED UNDER P.D. 27 WITHOUT OBSERVING THE PRESCRIBED FORMULA UNDER P.D. 27 AND E.O. 228.[39]

Issues

The following are the issues propounded by the LBP for this Court's Resolution:

1. WHETHER OR NOT THE COURT OF APPEALS CAN DISREGARD THE FORMULA PRESCRIBED UNDER P.D. 27 AND E.O. 228 IN FIXING THE JUST COMPENSATION OF SUBJECT P.D. 27-ACQUIRED LAND.

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[37] *Id*. at 61-62.

[38] *Id*. at 81-94.

[39] *Id*. at 24.

2. WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE GRANT BY THE COURT *A QUO* OF 6% INTEREST TO THE RESPONDENT.[40]

1st Issue
Computation of Just Compensation

LBP has been consistent in its position that the formula prescribed in Presidential Decree No. 27 and Executive Order No. 228 is the only formula that should be applied in the computation of the valuation of lands acquired under Presidential Decree No. 27. In support of its position, LBP cites this Court's ruling in *Gabatin v. Land Bank of the Philippines*,[41] wherein we held that the GSP should be pegged at the time of the taking of the properties, which in this case was deemed effected on October 21, 1972, the effectivity date of Presidential Decree No. 27.

This Court notes that even before respondent filed a petition for the judicial determination of the just compensation due him for the subject property before the SAC Branch 23 on November 20, 1998, Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, already took effect on June 15, 1988.

The determination of the just compensation therefore in this case depends on the valuation formula to be applied: the formula under Presidential Decree No. 27 and Executive Order No. 228 or the formula under Republic Act No. 6657? This Court finds the case of *Meneses v. Secretary of Agrarian Reform*[42] applicable insofar as it has determined what formula should be used in computing the just compensation for property expropriated under Presidential Decree No. 27 under the factual milieu of this case, *viz*:

Respondent correctly cited the case of *Gabatin v. Land Bank of the Philippines*, where the Court ruled that "in computing the just compensation for expropriation proceedings, it is the value of the

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[40] *Id*. at 25.

[41] 486 Phil. 366, 383 (2004).

[42] 535 Phil. 819 (2006).

land at the time of the taking [or October 21, 1972, the effectivity date of P.D. No. 27], not at the time of the rendition of judgment, which should be taken into consideration." Under P.D. No. 27 and E.O. No. 228, the following formula is used to compute the land value for *palay*:

LV (land value) = 2.5 x AGP x GSP x (1.06)n

It should also be pointed out, however, that in the more recent case of *Land Bank of the Philippines vs. Natividad*, the Court categorically ruled: "the seizure of the landholding did not take place on the date of effectivity of P.D. No. 27 but would take effect on the payment of just compensation." Under Section 17 of R.A. No. 6657, the following factors are considered in determining just compensation, to wit:

> Sec. 17. *Determination of Just Compensation.*— In determining just compensation, **the cost of acquisition of the land, the current value of 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 farm-workers 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.

Consequently, the question that arises is which of these two rulings should be applied?

Under the circumstances of this case, the Court deems it more equitable to apply the ruling in the *Natividad case*. In said case, the Court applied the provisions of R.A. No. 6657 in computing just compensation for property expropriated under P.D. No. 27, stating, *viz*:

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.

> **Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.**
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> xxx xxx xxx
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> It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[43] (Emphases supplied, citations omitted.)

The ruling in *Land Bank of the Philippines v. Natividad*[44] was likewise applied in *Land Bank of the Philippines v. Heirs of Angel T. Domingo*,[45] when the landowner Domingo filed a Petition for the Determination and Payment of Just Compensation despite his receipt of LBP's partial payment. This Court held that since the amount of just compensation to be paid to Domingo had yet to be settled, then the agrarian reform process was still incomplete; thus, it should be completed under Republic Act No. 6657.

Based on the foregoing, when the agrarian reform process is still incomplete as the just compensation due the landowner has yet to be settled, such just compensation should be determined and the process concluded under Republic Act No. 6657.[46]

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[43] *Id.* at 831-833.

[44] 497 Phil. 738 (2005).

[45] G.R. No. 168533, February 4, 2008, 543 SCRA 627, 640.

[46] *Land Bank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, January 20, 2009, 576 SCRA 680, 690.

Elucidating on this pronouncement, this Court, in *Land Bank of the Philippines v. Puyat*,[47] held:

> In the case at bar, respondents' title to the property was cancelled and awarded to farmer-beneficiaries on March 20, 1990. In 1992, Land Bank approved the initial valuation for the just compensation that will be given to respondents. Both the taking of respondents' property and the valuation occurred during the effectivity of RA 6657. **When the acquisition process under PD 27 remains incomplete and is overtaken by RA 6657, the process should be completed under RA 6657, with PD 27 and EO 228 having suppletory effect only.** This means that PD 27 applies only insofar as there are *gaps* in RA 6657; where RA 6657 is sufficient, PD 27 is superseded. **Among the matters where RA 6657 is sufficient is the determination of just compensation.** In Section 17 thereof, the legislature has provided for the factors that are determinative of just compensation. Petitioner cannot insist on applying PD 27 which would render Section 17 of RA 6657 inutile. (Emphases ours, citation omitted.)

Similarly, in the case before us, the emancipation patents were issued to the farmer-beneficiaries from 1992 to 1994. While the preliminary compensation of ₱135,482.12 was reserved in trust at LBP for the heirs of Santiago in 1992, this amount was not received by the heirs until 1998, as its release, pending the final determination of the land valuation, became the subject of a petition in this Court in *Land Bank of the Philippines v. Court of Appeals*.[48] Like in the case cited above, both the taking and the valuation of the subject property occurred after Republic Act No. 6657 had already become effective. Until now, the issue of just compensation for the subject property has not been settled and the process has yet to be completed; thus, the provisions of Republic Act No. 6657 shall apply.

Section 17 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 provides:

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[47] G.R. No. 175055, June 27, 2012.

[48] *Supra* note 19.

SEC. 17. *Determination of Just compensation*. - In determining just compensation, the cost of acquisition of the land, the current value of 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.

This Court is not unaware of the new agrarian reform law, Republic Act No. 9700 or the CARPER Law, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor," passed by the Congress on July 1, 2009,[49] **further** amending Republic Act No. 6657, as amended.

That this case, despite the new law, still falls under Section 17 of Republic Act No. 6657 is supported even by Republic Act No. 9700, which states that "previously acquired lands wherein valuation is subject to challenge shall be completed and resolved pursuant to **Section 17 of Republic Act No. 6657, as amended**," *viz*:

Section 5. Section 7 of Republic Act No. 6657, **as amended**, is hereby ***further*** amended to read as follows:

> SEC. 7. *Priorities*. - The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the final acquisition and distribution of all remaining unacquired and undistributed agricultural lands from the effectivity of this Act until June 30, 2014. Lands shall be acquired and distributed as follows:

[49] **Section 34.** ***Effectivity Clause*.** - This Act shall take effect on July 1, 2009 and it shall be published in at least two (2) newspapers of general circulation.

Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; **rice and corn lands under Presidential Decree No. 27**; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: x x x *Provided, furthermore*, **That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to *Section 17 of Republic Act No. 6657, as amended*:** x x x. (Emphases supplied.)

Section 7 of Republic Act No. 9700, **further amending** Section 17 of Republic Act No. 6657, as amended, reads:

Section 7. Section 17 of Republic Act No. 6657, **as amended**, is hereby **further amended** to read as follows:

> SEC. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, *the value of the standing crop*, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and *seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR* shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphases supplied; further amendments made to Section 17 of R.A. No. 6657, as amended, are italicized.)

The foregoing shows that the Section 17 referred to in Section 5 of Republic Act No. 9700 is the old Section 17 under Republic Act No. 6657, as amended; that is, prior to **further** amendment by Republic Act No. 9700. A reading of the provisions

of Republic Act No. 9700 will readily show that the old provisions, under Republic Act No. 6657, are referred to as Sections under "Republic Act No. 6657, as amended," as distinguished from "**further** amendments" under Republic Act No. 9700.

DAR AO No. 02-09, the Implementing Rules of Republic Act No. 9700, which DAR formulated pursuant to Section 31[50] of Republic Act No. 9700, makes the above distinction even clearer, to wit:

VI. *Transitory Provision*

With respect to cases where the Master List of ARBs has been finalized on or before July 1, 2009 pursuant to Administrative Order No. 7, Series of 2003, the acquisition and distribution of landholdings shall continue to be processed under the provisions of R.A. No. 6657 prior to its amendment by R.A. No. 9700.

However, **with respect to land valuation, all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700**. (Emphasis supplied.)

Thus, DAR AO No. 02-09 authorizes the valuation of lands in accordance with the *old* Section 17 of Republic Act No. 6657, as amended (prior to further amendment by Republic Act No. 9700), so long as the claim folders for such lands have been received by LBP before its amendment by Republic Act No. 9700 in 2009.[51]

2nd Issue
Imposition of 6% Legal Interest

All the courts *a quo* imposed a legal interest on the just compensation due respondent, albeit the SAC Branch 29 lowered it from 12% to 6% per annum.

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[50] Section 31. *Implementing Rules and Regulations*. - The PARC and the DAR shall provide the necessary implementing rules and regulations within thirty (30) days upon the approval of this Act. Such rules and regulations shall take effect on July 1, 2009 and it shall be published in at least two (2) newspapers of general circulation.

[51] *Land Bank of the Philippines v. Puyat*, *supra* note 47.

LBP argues that DAR AO No. 13, which provides for an incremental interest of 6%, compounded annually, should be the governing rule when it comes to the grant of interest.[52]

Respondent on the other hand, prays that the original award of 12% interest be reinstated as the unreasonable delay in the payment of his just compensation constitutes forbearance of money.[53]

This Court notes that the award of 6% legal interest was not given under DAR AO No. 13, as the courts *a quo* explicitly stated that DAR AO No. 13 **was not applicable**, albeit citing an incorrect reason, *i.e.,* that this was because a higher GSP was already used. As we have discussed above, "the law and jurisprudence on the determination of just compensation of agrarian lands are settled,"[54] and the courts below deviated from them when they simply used a higher GSP in the computation of respondent's just compensation.

The Court has allowed the grant of interest in expropriation cases where there is delay in the payment of just compensation.[55] In fact, the interest imposed in case of delay in payments in agrarian cases is 12% per annum and not 6%[56] as "the imposition x x x [is] in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance."[57]

Quoting *Republic v. Court of Appeals*[58] this Court, in *Land Bank of the Philippines v. Rivera*,[59] held:

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[52] *Rollo,* p. 39.

[53] CA *rollo,* pp. 419-420.

[54] *Land Bank of the Philippines v. Gallego, Jr., supra* note 46 at 691.

[55] *Land Bank of the Philippines v. Wycoco,* 464 Phil. 83, 100 (2004).

[56] *Land Bank of the Philippines v. Puyat, supra* note 47.

[57] *Land Bank of the Philippines v. Wycoco, supra* note 55 at 100.

[58] 433 Phil. 106, 122-123 (2002).

[59] G.R. No. 182431, November 17, 2010, 635 SCRA 285.

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, if fixed at the time of the actual taking by the government. Thus, **if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest 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 Bulacan trial court, in its 1979 decision, was correct in imposing interest on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% *per annum* should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.[60] (Citation omitted, emphasis in the original.)

The Court, in *Republic*, recognized that "the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State."[61] In fixing the interest rate at 12%, it followed the guidelines on the award of interest that we enumerated in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[62] to wit:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor

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[60] *Id*. at 294.

[61] *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 744.

[62] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[63] (Citations omitted.)

[63] *Id.* at 95-97.

This Court therefore deems it proper to impose a 12% legal interest per annum, computed from the date of the "taking" of the subject property, on the just compensation to be determined by the SAC, due to respondent, less whatever he and his co-owners had already received.

Remand of the Case

Given that the only factor considered by the SAC in the determination of just compensation was the changing government support price for a *cavan* of *palay*, this Court is constrained to remand the case to the SAC Branch 29 for the reception of evidence and determination of just compensation in accordance with Section 17 of Republic Act No. 6657[64] and DAR AO No. 02-09 dated October 15, 2009, the latest DAR issuance on fixing just compensation.[65]

Guidelines in the Remand of the Case

In *Land Bank of the Philippines v. Heirs of Salvador Encinas and Jacoba Delgado*,[66] we said that "[t]he taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding." Thus, the SAC is "reminded to adhere strictly to the doctrine that just compensation *must be valued at the time of taking*"[67] and not at the time of the rendition of judgment.[68]

In the same case, this Court also required the trial court to consider the following factors as enumerated in Section 17 of Republic Act No. 6657, as amended:

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[64] *Land Bank of the Philippines v. Livioco*, G.R. No. 170685, September 22, 2010, 631 SCRA 86, 111-112.

[65] *Land Bank of the Philippines v. Heirs of Salvador Encinas and Jacoba Delgado*, G.R. No. 167735, April 18, 2012.

[66] *Id*.

[67] *Land Bank of the Philippines v. Livioco*, *supra* note 64 at 112.

[68] *Land Bank of the Philippines v. Heirs of Salvador Encinas and Jacoba Delgado*, *supra* note 65.

(1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.[69]

It is stressed that the foregoing factors, and the formula as translated by the DAR in its implementing rules, are mandatory and not mere guides that the SAC may disregard.[70] This Court has held:

> While the determination of just compensation is essentially a judicial function vested in the RTC acting as a [SAC], the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. [SACs] are **not at liberty to disregard** the formula laid down [by the DAR], because unless an administrative order is declared invalid, courts have no option but to apply it. The [SAC] cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation.[71] (Emphasis in the original, citation omitted.)

WHEREFORE, premises considered, the petition is **DENIED** insofar as it seeks to have the Land Bank of the Philippines' valuation of the subject property sustained. The assailed **September 28, 2007 Decision** and **March 14, 2008 Resolution** of the Court of Appeals in **CA-G.R. SP No. 82467** are **REVERSED and SET ASIDE** for lack of factual and legal basis. **Agrarian Case No. 125-AF** is **REMANDED** back to the Regional Trial Court of Cabanatuan City, Branch 29, to determine the just compensation due Emiliano R. Santiago, Jr., less whatever payments he and his co-owners had received, strictly

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[69] *Id*.

[70] *Id*.

[71] *Id*.

in accordance with the guidelines in this Decision; Section 17 of Republic Act No. 6657, as amended; and Department of Agrarian Reform Administrative Order No. 02-09 dated October 15, 2009.

SO ORDERED.

Sereno, C.J. (Chairperson), Carpio,[*] *Villarama, Jr.,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 189817. October 3, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNA BATALUNA LLANITA and SOTERO BUAR *Y* BANGUIS,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS OF THE CRIME; ESTABLISHED IN CASE AT BAR.— In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*. The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the

[*] Per Special Order No. 1315 dated 21 September 2012.

operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale with moral certainty.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; EXPLAINED; LINKS THAT THE PROSECUTION MUST PROVE IN ORDER TO ESTABLISH THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION.— "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition. In the case of *People v. Kamad,* the Court had the opportunity to enumerate the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

3. ID.; ID.; ID.; THE FUNCTION OF THE CHAIN OF CUSTODY REQUIREMENT IS TO ENSURE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED, SO MUCH SO THAT UNNECESSARY DOUBTS AS TO THE IDENTITY OF THE EVIDENCE ARE REMOVED.— The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by

records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.

4. ID.; ID.; ID.; THE IMPLEMENTING RULES SANCTION SUBSTANTIAL COMPLIANCE WITH THE PROCEDURE TO ESTABLISH A CHAIN OF CUSTODY, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING TEAM/OFFICER.— The substantial compliance with the procedure is provided for in Sec. 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165. x x x Clearly, the implementing rules sanction substantial compliance with the procedure to establish a chain of custody, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officer. Jurisprudence supports the acceptance of substantial compliance with the procedure on custody of evidence in drug cases. As held in *People of the Philippines v. Ara:* RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. xxx We have emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY OF THE APPREHENDING LAW ENFORCERS UPHELD OVER THE BARE AND SELF-SERVING ALIBI, DENIAL AND CLAIM OF EXTORTION BY THE ACCUSED-APPELLANTS.— We find credibility in the statements of the police officers as to the completed illegal sale of dangerous drug. Examination of the testimony of PO2 Catuday reveals that the elements of illegal sale are present to affirm conviction of Llanita and Buar. x x x It is well settled rule that narration of the incident by law enforcers, buttressed by the presumption that they have

regularly performed their duties in the absence of convincing proof to the contrary, must be given weight. This Court will not reverse the finding of facts of the trial court and appellate court on the basis of the denial and alibi of the two accused-appellants. Neither will this be done on the claim of extortion, substantiated only by their self-serving statements.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellants.

D E C I S I O N

PEREZ, *J.*:

For review through this appeal[1] is the decision[2] dated 15 July 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03335 which affirmed the conviction of herein accused-appellants REYNA BATALUNA LLANITA *alias* "Sirena/Reyna" and SOTERO BUAR *y* BANGUIS *alias* "Roy" of illegal sale of dangerous drugs in violation of Section 5, Article II[3] of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

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[1] Via a notice of appeal, pursuant to Section 2 (c) of Rule 122 of the Rules of Court. *Rollo*, pp. 15-16.

[2] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court) with Associate Justices Monina Arevalo-Zenarosa and Priscilla J. Baltazar-Padilla concurring. *Id.* at 2-14.

[3] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The factual rendition of the prosecution follows:

The first witness presented by the prosecution was PO2 Joseph Gene Catuday (PO2 Catuday). He testified that he has been a member of the Philippine National Police (PNP) since 21 March 2000 presently assigned at the Station Anti-Illegal Drugs Special Operations Task Force (SAIDSOTF), Parañaque City Police Station.[4] His functions, among others, are to conduct buy-bust and surveillance operations.

On 21 October 2005, he reported for duty at his Station at about 9:00 o'clock in the morning.[5] At around 12:30 o'clock in the afternoon of the same day, a female informant *alias "Inday"* went to the station to give information about the illegal drug activities of one *alias* "Reyna."[6] He then relayed the information to PO3 Rene Rendaje (PO3 Rendaje) who in turn relayed the same to the station's action officer Lt. Dominador Bartolazo (Lt. Bartolazo).[7] Upon receiving this information, Lt. Bartolazo immediately formed a team to conduct a buy-bust operation against Reyna. The team was composed of PO2 Catuday as the poseur-buyer and PO3 Ricky Macaraeg, PO3 Rendaje, PO2 Alfonso Del Rosario, PO2 Edwin Plopinio (PO2 Plopinio) and PO2 Felix Domecillo (PO2 Domecillo) acted as back-up police officers.[8] PO2 Catuday, being the designated poseur-buyer, was given three (3) pieces of ₱100.00 peso bill to be used as marked money in the operation.[9]

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

xxx xxx xxx

[4] PO2 Catuday's testimony. TSN, 19 July 2006. Records, pp. 34-38.

[5] *Id.* at 39-40.

[6] *Id.* at 41-44.

[7] *Id.* at 44-45.

[8] *Id.* at 45-46.

[9] *Id.* at 47.

At around 1:40 o'clock in the afternoon, the team together with Inday, went to the target area located at Sitio Daughters, Brgy. San Martin De Porres, Parañaque City.[10] Upon reaching it at about 2:00 o'clock in the afternoon, PO2 Catuday and Inday proceeded to the alleged alley of drug activities with the rest of the team following behind. Inside the alley, Inday waived her hand to a woman, later identified as Reyna Llanita *y* Bataluna (Llanita)[11] and a man later identified as the co-accused Sotero Banguis Buar (Buar). Llanita and Buar then approached Inday and PO2 Catuday.[12] PO2 Catuday was introduced by Inday to Llanita as a person in need of *shabu*.[13] PO2 Catuday then gave the ₱300-peso marked money to Llanita who in turn handed it to Buar.[14] In exchange, Llanita gave him a small sachet which upon his examination turned out to be *shabu*. PO2 Catuday then placed a white towel in his head as a pre-arranged signal that the illegal sale was already completed.[15] He immediately introduced himself as a police officer and the back-up police officers rushed to the place.[16] Llanita and Buar tried to evade the police officers but were immediately apprehended. Soon after, Llanita and Buar were ordered to empty their pockets. PO2 Domecillo recovered a plastic sachet of *shabu* from Llanita and the marked money and another sachet from Buar.[17] PO3 Rendaje immediately apprised them of their constitutional rights and brought them to the police station for investigation.[18] Sachets of the specimen recovered were forwarded to the Crime Laboratory in Makati for examination[19] which after examination yielded

[10] *Id.* at 47-48.

[11] *Id.* at 54-55 and 72.

[12] *Id.* at 54-56.

[13] *Id.* at 57.

[14] *Id.* at 59-61.

[15] *Id.* at 61.

[16] *Id.* at 62-63.

[17] *Id.* at 65-66.

[18] *Id.* at 66-68.

[19] *Id.* at 70.

positive results for *shabu*.[20] On the other hand, the buy-bust money recovered was turned over to the Office of the City Prosecutor of Parañaque and identified in court as the marked money.[21]

In sum, witness PO2 Plopinio who acted as one of the back-up officers during the buy-bust operation corroborated the testimony and recollection of facts of PO2 Catuday in open court. He added that Llanita surrendered to PO2 Catuday one small sachet of *shabu*[22] and the same sachet yielded positive results for methamphetamine hydrochloride[23]. During the cross-examination, he testified that it was PI Rolando Santiago (PI Santiago) who put the marking on the sachet inside the police station.[24]

The Chemistry Report of PNP Forensic Chemist Sandra Decena Go (Forensic Chemist Go) proving that the examination of the white crystalline substance yielded positive results for methamphetamine hydrochloride was dispensed with per Order of the trial court dated 7 March 2006.[25] In its Formal Offer of Evidence, the prosecution submitted the "*Pinagsamang Salaysay*" executed by the police officers who conducted the operation to prove the circumstances of the arrest of Llanita and Buar.[26] The Pre-Operation/Coordination Sheet, Inventory of Recovered/ Seized Evidence and Certificate of Coordination with the Philippine Drug Enforcement Agency (PDEA) were also submitted to prove coordination with the PDEA and proper accounting of the seized illegal drugs.[27]

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[20] *Id.* at 71.

[21] *Id.* at 76.

[22] PO2 Plopinio's testimony. TSN, 13 August 2007. Records, p. 148.

[23] *Id.* at 151.

[24] *Id.* at 166.

[25] Order of RTC Parañaque and Formal Offer of Evidence, Chemistry Report Number D-1341-05 conducted by Sandra Decena Go dated 21 October 2005. *Id.* at 23 and 172.

[26] Exhibit "D". *Id.* at 173-174.

[27] *Id.* at 169-170.

On the other hand, the factual version of the defense as presented by accused Llanita follows:

She testified that at around 6:00 o'clock in the morning of 21 October 2005, she was with her live-in partner Buar in their house located at Daang Hari, Taguig City when a number of unknown persons who introduced themselves as police officers unlawfully barged into their home and entered without any search warrant.[28] The police officers were looking for a certain person named "Nene."[29] When she replied that she did not know any person by that name, the police officers got hold of her and frisked her but recovered nothing.[30] She added that they showed her *shabu*, the ownership of which she vehemently denied.[31] Buar asked whether a search warrant was issued against them but the police officers replied that, *"Huwag na kayong magtanong, sumama nalang kayo sa amin."*[32] Upon arrival at the police station, a police officer identified as PO2 Domecillo was asking for ₱50,000.00 in exchange for their release.[33] She however replied that they do not have such amount of money.[34] She was placed inside the office while Buar was detained for three days.[35]

On 24 October 2005, the prosecutor assigned to conduct the inquest investigation informed her that the charges against them were violation of Sections 5 and 11 of R.A. No. 9165 or the illegal sale and possession of dangerous drugs.[36]

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[28] Reyna Llanita's testimony. TSN, 17 September 2007. *Id*. at 186, 191 and 193.

[29] *Id.* at 192.

[30] *Id.* at 193-195.

[31] *Id.* at 195-196.

[32] *Id.* at 197.

[33] *Id.* at 199-200.

[34] *Id.*

[35] *Id.* at 201-203.

[36] *Id.* at 204.

Buar in his testimony corroborated the testimony given by Llanita, he denied any involvement in the illegal sale and possession of dangerous drugs.[37]

Eventually, three sets of Information were filed:

For Criminal Case No. 05-1220 against Llanita and Buar for violation of Sec. 5, Art. II of R.A. 9165:

> That on or about the 21st day of October 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did them and there, willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport [Methamphetamine] Hydrochloride (*shabu*) weighing 0.07 gram, a dangerous drug.
>
> CONTRARY TO LAW.[38]

For Criminal Case No. 05-1221 against Llanita for violation of Sec. 11, Art. II of R.A. 9165:

> That on or about the 21st day of October 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above named accused, not being lawfully authorized to possess, did then and there willfully, unlawfully and feloniously have in her possession and under her control and custody [Methamphetamine] Hydrochloride (*shabu*) weighing 0.03 gram, a dangerous drug.
>
> CONTRARY TO LAW.[39]

For Criminal Case No. 05-1222 against Buar for violation of Sec. 11, Art. II of R.A. 9165:

> That on or about the 21st day of October 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable

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[37] Sotero Buar's testimony. TSN, 5 November 2007. *Id.* at 227-241.

[38] *Id.* at 1 and 288.

[39] *Id.* at 2 and 288.

Court, the above named accused, not being lawfully authorized to possess dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody [Methamphetamine] Hydrochloride (*shabu*) weighing 0.03 gram, a dangerous drug.

CONTRARY TO LAW.[40]

Upon arraignment on 3 November 2005, both the accused-appellants, with the assistance of their counsel Atty. Leonardo Rodriguez, Jr. of the Public Attorney's Office, pleaded NOT GUILTY to the offenses charged against them.

On 5 March 2008, the trial court found the accused-appellants GUILTY of violation of Section 5, Article II, of R.A. 9165 in Criminal Case No. 05-1220 but NOT GUILTY of violation of Section 11, Article II, of R.A. 9165 in Criminal Case Nos. 05-1221 and 05-1222. The disposition reads:

WHEREFORE, PREMISES CONSIDERED, in Criminal Case No. 05-1220 the court finds accused REYNA BATALUNA LLANITA *alias* "SIRENA/REYNA" and SOTERO BANGUIS BUAR *alias* "BOY" GUILTY beyond reasonable doubt for violation of Section 5 Art. II of R.A. 9165, for unlawfully selling 0.07 gram of Methamphetamine Hydrochloride otherwise known as *shabu*, this Court hereby sentences both accused to life imprisonment and to pay a fine of ₱500,000.00 each.

In Criminal Case No. 05-1221, the court promounces (sic) a verdict of NOT GUILTY as against accused REYNA BATALUNA LLANITA for violation of Sec. 11 Art. II of R.A. 9165 considering that offense charged being inherent in the offense charged against her in Criminal Case No. 05-1220.

In Criminal Case No. 05-1222, the court finds accused SOTERO BANGUIS BUAR, NOT GUILTY for violation of Sec. 11 Art. II of R.A. 9165 for insufficiency of evidence.

The Branch Clerk of Court is hereby directed to prepare the Mittimus for the immediate transfer of accused REYNA BATALUNA LLANITA *alias* "SIRENA/REYNA" and SOTERO BANGUIS BUAR

[40] *Id.* at 3 and 289.

alias "BOY" from the Parañaque City jail to the New Bilibid Prisons, Muntinlupa City and to turn over the physical evidence in this case to the Philippine Drug Enforcement Agency (PDEA) pursuant to Administrative Order No, 145-2002, for proper disposition.[41]

Upon appeal, the accused-appellants, represented by the Public Attorney's Office, argued that the trial court erred in convicting them despite the fact that the prosecution failed to overthrow the constitutional presumption of innocence.[42] The accused-appellants centered their argument on the alleged failure of the prosecution to establish a continuous unbroken chain of custody of evidence.[43]

The People, through the Office of the Solicitor General, countered that police operatives acted in accordance with Section 21, Art. II of R.A. 9165 in preserving the integrity and the evidentiary value of the seized items.[44]

The CA affirmed the ruling of the trial court. The dispositive portion reads:

WHEREFORE, the appeal is DENIED. The Decision of the Regional Trial Court of Parañaque City, Branch 259, dated March 5, 2008 is, in light of the foregoing discussion, AFFIRMED.[45]

The appellate court ruled that the evidence for the prosecution fully proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal sale of prohibited drugs, namely, (1) that the transaction or sale actually took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[46]

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[41] *Id.* at 306, CA *rollo,* p. 26.

[42] Accused-Appellants' Brief. *Id*. at 49.

[43] *Id.* at 50.

[44] Plaintiff-Appellee's Brief. *Id*. at 98.

[45] *Rollo,* p. 14.

[46] CA Decision. *Id*. at 8.

It trusted the testimonies of the police officers who conducted the buy-bust operation.[47] Finally, it upheld as unbroken the chain of custody of evidence as presented by the prosecution.[48]

In this appeal, accused-appellants, repeat their arguments before the appellate court with the addition in its supplemental brief of citation of instances which supposedly prove the break in the chain of custody and absence of integrity of the evidence presented.[49]

We do not agree.

There are several instances cited by the accused-appellants to prove the broken chain of custody, such as: (1) PO2 Catuday failed to testify on the identity of the individual to whom he directly turned over the seized illegal drug; (2) PO2 Domecillo, the police officer who recovered the illegal drug from Buar, was not presented to testify and disclose to whom he turned over the confiscated drug; (3) PI Santiago, the one who marked the specimen drug, was also not presented to disclose how he came to such possession and to whom he handed the same; (4) failure to show how the possession of the illegal drug was turned over to PO2 Plopinio who thereafter delivered the specimen to the forensic laboratory; and (5) failure to show evidence on how the illegal specimens were handled and safeguarded pending their presentation in court.[50]

Reviewing the records of the case, we cannot subscribe to the arguments of the defense.

In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller,

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[47] *Id.* at 8-10.

[48] *Id.* at 12-13.

[49] Accused-Appellants' Supplemental Brief. *Id.* at 42-50.

[50] *Id.* at 42-43.

the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[51]

What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.[52] The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale with moral certainty.[53]

We find credibility in the statements of the police officers as to the completed illegal sale of dangerous drug. Examination of the testimony of PO2 Catuday reveals that the elements of illegal sale are present to affirm conviction of Llanita and Buar. Pertinent provisions of the stenographic notes are here cited:

Fiscal Hernandez: After your informant waived her hands to the two (2) persons, what happened next?

PO2 Catuday: We immediately approached them, sir.

Q: Why did you approach them?

A: I was introduced by our informant as a person in need of *shabu*, sir.

Q: Were you introduced by your informant to these two (2) persons?

A: Yes, sir.

Q: And how were you introduced to these two persons?

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[51] *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324 citing *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 463.

[52] *Id*. citing *People v. Gaspar*, G.R. No. 192816, 6 July 2011, 653 SCRA 673, 686.

[53] *Id.* at 325.

A: I was introduced as a scorer/user, sir.

Q: That was all that was said by your informant that you were a user in need of *shabu*?

A: Yes, sir.

Q: To whom was that statement addressed?

A: It was directed to our female subject, sir.

Q: You are referring to *alias* Reyna?

A: Yes, sir.

Q: So what was the reaction of this *alias* Reyna after you were introduced by your informant as a user of *shabu*?

A: I immediately gave to *alias* Reyna the marked money, sir.

Q: How much money did you give her?

A: ₱300.00, sir.

Q: And in return of that money, what did you receive?

A: I received a small sachet of *shabu*, sir.

xxx xxx xxx

Q: Did you examine the same?

A: Yes, sir.

Q: And after examining the same, what happened next?

A: After *alias* Reyna received the money, sir, she immediately handed the money to his male companion, sir.

Q: So after the money was turned over by this *alias* Reyna to her male companion, what happened next?

A: Immediately placed a white towel on my head, sir.

Q: What does that mean or signify?

A: It means that I successfully bought *shabu* from them, sir. xxx[54] (Emphasis supplied).

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[54] PO2 Catuday's testimony. TSN, 19 July 2006. Records, pp. 56-61.

This recitation of facts was further corroborated on material points by PO2 Plopinio in his testimony dated 13 August 2007.[55]

It is well settled rule that narration of the incident by law enforcers, buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight.[56] This Court will not reverse the finding of facts of the trial court and appellate court on the basis of the denial and alibi of the two accused-appellants. Neither will this be done on the claim of extortion, substantiated only by their self-serving statements.

Accused-appellants relied heavily on their claim of broken chain of custody. Among these instances cited by the accused-appellants are the failure of PO2 Catuday to testify on the identity of the individual to whom he directly turned over the seized illegal drug and of PO2 Domecillo's failure to testify and disclose to whom he turned over the confiscated drug. Also, PI Santiago, the one who marked the specimen drug, was also not presented to disclose how he came to such possession and to whom he handed the same. Questions are also raised on how the possession of the illegal drug was turned over to PO2 Plopinio who thereafter delivered the specimen to the forensic laboratory and on the failure to show evidence on how the illegal specimens were handled and safeguarded pending their presentation in court.[57]

After review of the records and pleadings submitted, we remain firm in our decision for conviction.

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized

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[55] *Id.* at 133-168.

[56] *People v. Mamaril,* 6 October 2010, G.R. No. 171980, 632 SCRA 369, 379.

[57] Accused-Appellants' Supplemental Brief. *Rollo,* pp. 42-43.

item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.[58]

In the case of *People v. Kamad*,[59] the Court had the opportunity to enumerate the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

The Court finds that the different links to establish the chain of custody are here present. PO2 Catuday testified on the matter:

Q: And in return for that money, what did you receive?

A: I received a small sachet of *shabu*, sir.[60]

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Q: Where did you bring the two (2) suspects after that [the arrest]?

A: We brought them to our headquarters, sir.[61]

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[58] Section 1(b) of the Dangerous Board Resolution No. 1, Series of 2002.

[59] G.R. No. 174198, 19 January 2010, 610 SCRA 295, 307-308; *People v. Flordeliza Arriola y de Lara*, G.R. No. 187736, 8 February 2012.

[60] PO2 Catuday's testimony. TSN, 19 July 2006. Records, p. 29.

[61] *Id.* at 68.

xxx xxx xxx

Q: So what happened to the alleged *shabu* and the buy-bust money recovered from this *alias* Reyna and *alias* Roy?

A: The items that we recovered from the two (2) suspects, sir, we immediately forwarded it to the Crime Laboratory in Makati for examination.

Q: And did you have occasion to know the result of the examination conducted on the specimens submitted to that office?

A: Yes, sir.

Q: What is the result, if you know?

A: Positive for *shabu*.[62]

xxx xxx xxx

In his subsequent testimonies, he identified the *shabu* examined by Forensic Chemist Go as the same *shabu* which was given to him during the buy-bust operation through the marking RLB-1-21-05 placed on it.[63] Though he cannot recall who placed the marking, he testified that he was present inside the office when it was made.[64]

On the other hand, witness PO2 Plopinio was able to substantiate the testimony of PO2 Catuday and identify PI Santiago as the police officer who placed the marking on the specimen.[65]

The prosecution and the defense have already stipulated on the testimony of Forensic Chemist Go, hence, what is left are the examination and appreciation of the pertinent pieces of evidence. Upon examining Exhibits "A" and "C" of the prosecution, the Request for Laboratory Examination and

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[62] *Id.* at 70-71.

[63] *Id.* at 86-88.

[64] *Id.* at 88-89.

[65] PO2 Plopinio's testimony. TSN, 13 August 2007. *Id.* at 152-153.

Chemistry Report respectively, this Court is convinced that there were: (1) proper turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (2) submission of the marked illegal drug seized by the forensic chemist to the court. The Request for Examination,[66] readily reveals that Parañaque City Police Station, Station Anti-Illegal Drug Operation Task Force requested the Chief of Physical Science Section of PNP Camp Crame for a laboratory examination of three (3) heat sealed transparent plastic sachets, all containing white crystalline substance believed to be MHCL or better known as *shabu* marked as SBB-21-10-05, RLB-21-10-05 and RLB-1-21-10-05. The samples were delivered to the Camp Crame by PO2 Plopinio on 21 October 2005.[67] The examination eventually yielded positive results for methamphetamine hydrochloride as verified by Forensic Chemist Go. This result is submitted to the Court as Exhibit "C" and stipulated on by both parties.[68]

The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[69]

The accused-appellants also highlighted the non-compliance of certain requisites provided under Sec. 21, Art. II of R.A. 9165

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[66] Exhibit "A". *Id.* at 171.

[67] *Id.*

[68] *Id.* at 172.

[69] *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011, 640 SCRA 635, 653 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 521; *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 334-335.

and the implementing rules such as lack of physical inventory and photograph.[70]

Sec. 21, Art. II of R.A. No. 9165 provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*.— The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
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> xxx xxx xxx
>
> (8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

However, the substantial compliance with the procedure is provided for in Sec. 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165 which reads:

Sec. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,*

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[70] Accused-Appellants' Supplemental Brief, CA *rollo*, p. 55.

Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory so confiscated, seized and/or surrendered, for disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given copy thereof. Provided, that the physical inventory and the photograph shall be conducted at the place where the search warrant is served; or at least the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officer, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied)

Clearly, the implementing rules sanction substantial compliance with the procedure to establish a chain of custody, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officer.

Jurisprudence supports the acceptance of substantial compliance with the procedure on custody of evidence in drug cases. As held in *People of the Philippines v. Ara:*[71]

RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. xxx We have emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

[71] G.R. No. 185011, 23 December 2009, 609 SCRA 304, 325.

Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.

In *People v. Lorena*:[72]

People v. Pringas[73] teaches that non- compliance by the apprehending/buy-bust team with Section 21 is not necessarily fatal. Its non- compliance will not automatically render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. We recognize that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.[74]

WHEREFORE, the instant appeal is **DENIED**. Accordingly, the decision of the Court of Appeals dated 15 July 2009 in CA-G.R. CR-H.C. No. 03335 is hereby **AFFIRMED.** No costs.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes,[*] and *Perlas-Bernabe, JJ.*, concur.

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[72] G.R. No. 184954, 10 January 2011, 639 SCRA 139.

[73] G.R. No. 175928, 31 August 2007, 531 SCRA 828.

[74] *People v. Lorena*, *supra* note 72 at 151.

[*] Designated additional member per Raffle dated 10 September 2012.

SECOND DIVISION

[G.R. No. 178584. October 8, 2012]

ASSOCIATED MARINE OFFICERS AND SEAMEN'S UNION OF THE PHILIPPINES PTGWO-ITF, *petitioner, vs.* **NORIEL DECENA,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL; DEFINED.— It is basic that a contract is what the law defines it to be, and not what it is called by the contracting parties. A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds itself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.

2. ID.; ID.; ID.; ID.; PARTIES IN CASE AT BAR ENTERED INTO A CONTRACT TO SELL IN THE GUISE OF A REIMBURSEMENT SCHEME REQUIRING RESPONDENT TO MAKE MONTHLY REIMBURSEMENT PAYMENTS WHICH ARE, IN ACTUALITY, INSTALLMENT PAYMENTS FOR THE VALUE OF THE SUBJECT HOUSE AND LOT; SINCE THE BASIS FOR RESPONDENT'S OCCUPATION OF THE SUBJECT PREMISES IS A CONTRACT TO SELL, THE CONTRACTUAL RELATIONS BETWEEN THE PARTIES ARE MORE THAN THAT OF A LESSOR-LESSEE.— The Shelter Contract Award granted to respondent expressly stipulates that "(u)pon completion of payment of the amount of US$28,563 representing the full value of the House and Lot subject of (the) Contract Award, the UNION shall execute a Deed of Transfer and shall cause the issuance of the corresponding Transfer Certificate of Title in favor of and in the name of the AWARDEE." It cannot be denied, therefore, that the parties herein entered into a contract to sell in the guise of a reimbursement scheme requiring respondent to make monthly

reimbursement payments which are, in actuality, installment payments for the value of the subject house and lot. While respondent occupied the subject premises, title nonetheless remained with petitioner. Considering, therefore, that the basis for such occupation is a contract to sell the premises on installment, the contractual relations between the parties are more than that of a lessor-lessee. The appellate court thus correctly ruled that the Shelter Contract Award has not been converted into one of lease.

3. ID.; ID.; ID.; REALTY INSTALLMENT BUYER PROTECTION ACT (R.A. 6552); THE CANCELLATION OF A CONTRACT BY THE SELLER REQUIRES A NOTARIAL ACT OF RESCISSION AND THE REFUND TO THE BUYER OF THE FULL PAYMENT OF THE CASH SURRENDER VALUE OF THE PAYMENTS ON THE PROPERTY.— Petitioner tried, *albeit* in vain, to mislead the Court that the nature of the agreement between the parties, and even the validity of the termination thereof, were never raised in the trial courts. In the pre-trial brief filed by respondent before the MTC, the first issue he presented is "whether or not the present action is a simple case of or an action for unlawful detainer or an action for rescission of the Contract of Shelter Award which is outside of the jurisdiction of [the] Honorable Court." In the parallel case of *Pagtalunan v. Dela Cruz Vda. De Manzano*, which likewise originated as an action for unlawful detainer, we affirmed the finding of the appellate court that, since the contract to sell was not validly cancelled or rescinded under Section 3(b) of R.A. No. 6552, the respondent therein had the right to continue occupying unmolested the property subject thereof. x x x As we emphasized in *Pagtalunan*, "R.A. No. 6552, otherwise known as the Realty Installment Buyer Protection Act, recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force." While we agreed that the cancellation of a contract to sell may be done outside of court, however, "the cancellation by the seller must be in accordance with Sec. 3(b) of R.A. No. 6552, which requires a notarial act of rescission and the refund to the buyer of the full payment of

the cash surrender value of the payments on the property." In the present case, as aptly pointed out by the appellate court, petitioner failed to prove that the Shelter Contract Award had been cancelled in accordance with R.A. No. 6552, which would have been the basis for the illegality of respondent's possession of the subject premises. Hence, the action for ejectment must necessarily fail.

4. ID.; ID.; ID.; THE ARGUMENT OF PETITIONER THAT RESPONDENT IS NOT A REALTY INSTALLMENT BUYER THAT NEEDS TO BE PROTECTED BY THE LAW HAS NO LEG TO STAND ON.— A reading of the Decision in its entirety reveals a vacillation on the part of the HLURB in classifying the transaction between petitioner and its members. While the HLURB held that there is no sale as contemplated under the first paragraph of the aforequoted provision "for the reason that there is no valuable consideration involved in the transaction," yet it went on to opine that the second paragraph of the same provision "appears to have an apparent application in the instant case although the same is not clear." Then, in its final disposition, the HLURB required petitioner to secure a Certificate of Registration and License to Sell for its subdivision project thereby effectively bringing it under the jurisdiction of said office. Clearly, the argument of petitioner that respondent is not a realty installment buyer that needs to be protected by the law has no leg to stand on.

5. ID.; DAMAGES; ACTUAL OR COMPENSATORY; FOR THE DELAY IN HIS REIMBURSEMENT PAYMENTS RESPONDENT SHOULD PAY INTEREST AT THE RATE OF 6% PER ANNUM ON THE UNPAID BALANCE APPLYING ARTICLE 2209 OF THE CIVIL CODE, THERE BEING NO STIPULATION IN THE SHELTER CONTRACT FOR SUCH INTEREST.— In the interest, however, of putting an end to the controversy between the parties herein that had lasted for more than ten (10) years, as in the cited case of *Pagtalunan*, the Court orders respondent to pay his arrears and settle the balance of the full value of the subject premises. He had enjoyed the use thereof since 1995. After defaulting in August 1999, respondent had not made any subsequent reimbursement payments. Thus, for the delay in his reimbursement payments, we award interest at the rate of 6% per annum on the unpaid balance applying Article 2209

of the Civil Code, there being no stipulation in the Shelter Contract Award for such interest. For purposes of computing the legal interest, the reckoning period should be the notice of final demand, conformably with Articles 1169 and 1589 of the same Code, which, as found by the MTC, was sent by petitioner to respondent on August 21, 2001.

APPEARANCES OF COUNSEL

Algarra Miranda and Associates for petitioner.
Franco Loyola for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari* seeks the reversal of the Decision[1] of the Court of Appeals (CA) dated July 31, 2006, as well as the Resolution[2] dated June 20, 2007, which dismissed the complaint for unlawful detainer filed by petitioner against respondent on the ground of **prematurity**, as petitioner has not shown that it complied with the mandatory requirements for a valid and effective cancellation of the contract to sell a house and lot.

The Factual Antecedents

Associated Marine Officers and Seamen's Union of the Philippines – PTGWO-ITF (petitioner) is a duly registered labor organization engaged in an on-going Shelter Program, which offers residential lots and fully-furnished houses to its members-seafarers under a reimbursement scheme requiring no down payment and no interest on the principal sum advanced for the acquisition and development of the land and the construction of the house.

[1] Penned by Presiding Justice Ruben T. Reyes, with Associate Justices Rebecca De Guia-Salvador and Monina Arevalo-Zenarosa, concurring. *Rollo*, pp. 45-56.

[2] *Id*. at 57-60.

On April 27, 1995, petitioner entered into a contract[3] under the Shelter Program with one of its members, Noriel Decena (respondent), allowing the latter to take possession of a house and lot described as 7 STOLT MODEL, Lot 16, Block 7, in the Seamen's Village, Sitio Piela, Barangay Paliparan, Dasmariñas, Cavite, with the obligation to reimburse petitioner the cost (US$28,563)[4] thereof in 180 equal monthly payments. It was stipulated in said contract that, in case respondent fails to remit three (3) monthly reimbursement payments, he shall be given a 3-month grace period within which to remit his arrears, otherwise, the contract shall be automatically revoked or cancelled and respondent shall voluntarily vacate the premises without need of demand or judicial action.[5]

Subsequently, respondent failed to pay twenty-five (25) monthly reimbursement payments covering the period August 1999 to August 2001, despite demands. Hence, petitioner cancelled the contract and treated all his reimbursement payments as rental payments for his occupancy of the house and lot.

On August 21, 2001, petitioner sent respondent a notice of final demand[6] requiring him to fulfill his obligation within a 30-day grace period. Thereafter, on October 18, 2001, his wife received a notice to vacate[7] the premises. For failure of respondent to heed said notices, petitioner filed a complaint before the *barangay lupon* and, eventually, a case for unlawful detainer, docketed as Civil Case No. 1210[8] before the Municipal Trial Court (MTC) of Dasmariñas, Cavite.

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[3] Shelter Contract Award No. 31. *Id*. at 62-68.

[4] *Id*. at 63.

[5] *Id*. at 64.

[6] *Id*. at 405.

[7] *Id*. at 406.

[8] *Id*. at 72-76.

The Ruling of the MTC

On December 4, 2002, the MTC found petitioner's case meritorious and, thus, rendered judgment[9] ordering respondent to (1) vacate the premises; (2) pay monthly rental in the amount of ₱8,109.00 from August 1999 with legal interests thereon until he has actually and fully paid the same; and (3) pay attorney's fees in the amount of ₱30,000.00, as well as the costs of suit.

The Ruling of the RTC

On appeal (App. Civil Case No. 312-03), the Regional Trial Court (RTC) of Imus, Cavite, affirmed[10] *in toto* the decision of the MTC after finding that the cancellation and revocation of the contract for failure of respondent to remit 25 monthly reimbursement payments converted the latter's stay on the premises to one of "mere permission"[11] by petitioner, and that respondent's refusal to heed the notice to vacate the premises rendered his continued possession thereof unlawful.[12]

With respect to the issue raised by respondent that the instant case is covered by Republic Act No. 6552 (R.A. No. 6552),[13] the Maceda Law, the RTC ruled in the negative, ratiocinating that the Shelter Contract Award is neither a contract of sale nor a contract to sell. Rather, it is "more akin to a contract of lease with the monthly reimbursements as rentals."[14]

The Ruling of the Court of Appeals

On petition for review (CA-G.R. SP No. 81954) before the CA, the appellate court set aside the decision of the RTC and entered a new judgment[15] dismissing the complaint for unlawful

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[9] Penned by Presiding Judge Lorinda B. Toledo-Mupas. *Id.* at 104-106.

[10] Decision dated December 29, 2003. *Id*. at 141-149.

[11] *Id*. at 146.

[12] *Id*. at 147.

[13] Otherwise known as the "Realty Installment Buyer Act."

[14] *Supra* note 10, at 149.

[15] *Supra* note 1.

detainer and restoring respondent to the peaceful possession of the subject house and lot. The CA held that the contract between the parties is not a contract of lease, but a contract to sell, which stipulates that upon full payment of the value of the house and lot, respondent shall become the owner thereof.[16] The issues, which involve "the propriety of terminating the relationship contracted by the parties, as well as the demand upon [respondent] to deliver the premises and to pay unpaid reimbursements,"[17] extend beyond those commonly involved in unlawful detainer suits, thus, converting the instant case into one incapable of pecuniary estimation exclusively cognizable by the RTC.[18]

Moreover, the appellate court faulted petitioner for failing to comply with the mandatory twin requirements for a valid and effective cancellation of a contract to sell under Section 3 (b) of R.A. No. 6552: (1) to send a notarized notice of cancellation, and (2) to refund the cash surrender value of the payments on the property. Consequently, it held that the contract to sell still subsists, at least until properly rescinded, and the action for ejectment filed by petitioner is premature.[19]

Aggrieved, petitioner filed a motion for reconsideration, which was denied by the CA in its Resolution[20] dated June 20, 2007. Hence, petitioner is now before this Court alleging that –

The Issues

1. The Honorable Court of Appeals erred in changing the main issue to be resolved in the instant unlawful detainer case from who has the better right of possession to whether or not the agreement between the parties is a contract of lease or a contract to sell, especially when the nature

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[16] *Supra* note 1, at 53.

[17] *Supra* note 1, at 53-54.

[18] *Supra* note 1, at 54.

[19] *Supra* note 1, at 54-55.

[20] *Supra* note 2.

of the agreement between the parties was never questioned nor raised as an issue in the court *a quo*.

2. Even assuming that the Honorable Court of Appeals was correct in changing the main issue to be resolved, it nevertheless erred in determining that:

   a. The agreement between the parties is allegedly one of contract to sell – when the Housing and Land Use Regulatory Board itself already made a pronouncement that the Shelter Program and its contract award is not a sale of real estate.

   b. The action for unlawful detainer filed by petitioner AMOSUP is allegedly premature – especially considering that Republic Act No. 6552, which requires notarial notice of rescission, is not applicable to the case at bar and, thus, the written notice of termination previously served on the respondent is already sufficient.[21]

The Ruling of the Court

It is basic that a contract is what the law defines it to be, and not what it is called by the contracting parties. A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds itself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.[22]

The Shelter Contract Award granted to respondent expressly stipulates that "(u)pon completion of payment of the amount of US$28,563 representing the full value of the House and Lot subject of (the) Contract Award, the UNION shall execute a

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[21] Petition, *rollo*, pp. 15-16.

[22] *Nabus v. Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 350, *citing Coronel v. CA*, 331 Phil. 294, (1996).

Deed of Transfer and shall cause the issuance of the corresponding Transfer Certificate of Title in favor of and in the name of the AWARDEE."[23] It cannot be denied, therefore, that the parties herein entered into a contract to sell in the guise of a reimbursement scheme requiring respondent to make monthly reimbursement payments which are, in actuality, installment payments for the value of the subject house and lot.

While respondent occupied the subject premises, title nonetheless remained with petitioner. Considering, therefore, that the basis for such occupation is a contract to sell the premises on installment, the contractual relations between the parties are more than that of a lessor-lessee.[24] The appellate court thus correctly ruled that the Shelter Contract Award has not been converted into one of lease.

Petitioner tried, *albeit* in vain, to mislead the Court that the nature of the agreement between the parties, and even the validity of the termination thereof, were never raised in the trial courts. In the pre-trial brief filed by respondent before the MTC, the first issue he presented is "whether or not the present action is a simple case of or an action for unlawful detainer or an action for rescission of the Contract of Shelter Award which is outside of the jurisdiction of [the] Honorable Court."[25]

In the parallel case of *Pagtalunan v. Dela Cruz Vda. De Manzano*,[26] which likewise originated as an action for unlawful detainer, we affirmed the finding of the appellate court that, since the contract to sell was not validly cancelled or rescinded under Section 3(b) of R.A. No. 6552, the respondent therein had the right to continue occupying unmolested the property subject thereof. Section 3(b) reads:

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[23] *Supra* note 3, at 65.

[24] *Abaya Investments Corporation v. Merit Philippines*, G.R. No. 176324, April 16, 2008, 551 SCRA 646, 653, explaining *Nera v. Vacante*, 3 SCRA 505 (1961) and *Zulueta v. Mariano*, 197 SCRA 195 (1982).

[25] Memorandum for the Defendant, *rollo*, p. 116.

[26] G.R. No. 147695, September 13, 2007, 533 SCRA 242.

SEC. 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

xxx xxx xxx

(b) **If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property** equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: ***Provided*, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.** (Emphasis supplied)

As we emphasized in *Pagtalunan*, "R.A. No. 6552, otherwise known as the Realty Installment Buyer Protection Act, recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force." While we agreed that the cancellation of a contract to sell may be done outside of court, however, "the cancellation by the seller must be in accordance with Sec. 3(b) of R.A. No. 6552, which requires a notarial act of rescission and the refund to the buyer of the full payment of the cash surrender value of the payments on the property."[27] In the present case, as aptly pointed out by the appellate court, petitioner failed to prove that the Shelter Contract Award had been cancelled in accordance with R.A. No. 6552, which would have been the basis for the illegality of respondent's

[27] *Id*.

possession of the subject premises. Hence, the action for ejectment must necessarily fail.

Petitioner nonetheless insists on the inapplicability of R.A. No. 6552 in this case, capitalizing on the Decision[28] of the Housing and Land Use Regulatory Board in HLURB CASE No. IV6-090902-1842 entitled "*Seamen's Village Brotherhood Homeowners Association, Inc. v. Associated Marine Officers And Seamen's Union of the Philippines (AMOSUP)*" which held that the transaction between petitioner and the residents of Seamen's Village cannot be considered a sale within the purview of Presidential Decree (P.D.) No. 957.[29] It should be pointed out that the only issue resolved in that case is "whether or not the respondent (petitioner herein) is engaged in the business of selling real estate subdivisions, so as to fall under the ambit of P.D. 957, the resolution of which would determine whether or not respondent is required under the law to register with (the) Office and procure a license to sell."[30]

Section 2(b) of P.D. 957 defines a sale as follows:

> b.) Sale or Sell – "sale" or "sell" shall include every disposition, or attempt to dispose, for a valuable consideration, of a subdivision lot, including the building and other improvements thereon, if any, in a subdivision project or a condominium unit in a condominium project. "Sale" or "sell" shall include a contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell, directly or by an agent, or by a circular letter, advertisement or otherwise.
>
> A privilege given to a member of a cooperative, corporation, partnership, or any association and/or the issuance of a certificate or receipt evidencing or giving the right of participation in, or right to any land in consideration of payment of the membership fee or dues, shall be deemed a sale within the meaning of this definition.

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[28] Penned by HLU Arbiter Ma. Perpetua Y. Aquino. *Rollo*, pp. 256-270.

[29] Otherwise known as "The Subdivision and Condominium Buyers' Protective Decree."

[30] *Supra* note 28, at 262.

A reading of the Decision in its entirety reveals a vacillation on the part of the HLURB in classifying the transaction between petitioner and its members. While the HLURB held that there is no sale as contemplated under the first paragraph of the aforequoted provision "for the reason that there is no valuable consideration involved in the transaction,"[31] yet it went on to opine that the second paragraph of the same provision "appears to have an apparent application in the instant case although the same is not clear."[32] Then, in its final disposition,[33] the HLURB required petitioner to secure a Certificate of Registration and License to Sell for its subdivision project thereby effectively bringing it under the jurisdiction of said office. Clearly, the argument of petitioner that respondent is not a realty installment buyer that needs to be protected by the law has no leg to stand on.

In the interest, however, of putting an end to the controversy between the parties herein that had lasted for more than ten (10) years, as in the cited case of *Pagtalunan*, the Court orders respondent to pay his arrears and settle the balance of the full value of the subject premises. He had enjoyed the use thereof since 1995. After defaulting in August 1999, respondent had not made any subsequent reimbursement payments. Thus, for the delay in his reimbursement payments, we award interest at the rate of 6% per annum on the unpaid balance applying Article 2209[34] of the Civil Code, there being no stipulation in the Shelter Contract Award for such interest.[35] For purposes of computing the legal interest, the reckoning period should

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[31] *Supra* note 28, at 263.

[32] *Supra* note 28, at 264.

[33] *Supra* note 28, at 269.

[34] ART. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

[35] *Pagtalunan v. Dela Cruz Vda. De Manzano, supra* note 23.

be the notice of final demand, conformably with Articles 1169[36] and 1589[37] of the same Code, which, as found by the MTC, was sent by petitioner to respondent on August 21, 2001.[38]

In his Comment to the instant Petition, respondent claimed that he had made payments in the amount of ₱318,167.70.[39] The total amount for reimbursement for the subject house and lot is US$28,563, which the Shelter Contract Award requires to be paid in "180 equal monthly periodic reimbursements of US$159 or in equivalent Philippine Currency at the time the same falls due."[40] For lack of pertinent data with which to determine how many months respondent's alleged total payment of ₱318,167.70 is equivalent to, we direct petitioner to submit to the trial court an accounting of the payments made by respondent particularly showing the number of months he was able to make the required payments of US$159 or its peso equivalent. The balance of the full value of the subject premises shall then be computed on the basis of the following formula: [(180 months minus the number of months that respondent had already paid) multiplied by US$159 or its peso equivalent at the time of payment].

WHEREFORE, the Decision of the Court of Appeals dated July 31, 2006 and the Resolution dated June 20, 2007 are hereby **AFFIRMED** with the following **MODIFICATIONS:**

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[36] ART. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or **extrajudicially** demands from them the fulfillment of their obligation. x x x (Emphasis supplied)

[37] ART. 1589. The vendee shall owe interest for the period between the delivery of the thing and the payment of the price, in the following three cases:

xxx xxx xxx

(3) Should he be in default from the time of judicial or **extrajudicial** demand for the payment of the price. (Emphasis supplied)

[38] *Supra* note 9, at 105.

[39] *Rollo*, p. 280.

[40] *Supra* note 3, at 63.

1. The Municipal Trial Court of Dasmariñas, Cavite is directed to conduct a hearing, within a maximum period of thirty (30) days from receipt of this Decision, to determine: (a) the unpaid balance of the full value of the subject house and lot; and (b) the reasonable amount of rental for the subject property at present times.

2. Within sixty (60) days from the determination of the trial court of said balance, respondent shall pay the amount thereof to petitioner, with interest at six percent (6%) per annum from August 1, 2001 up to the date of actual payment;

3. Upon payment, petitioner shall execute a Deed of Absolute Sale of the subject property and deliver the transfer certificate of title in favor of respondent;

4. In case of failure to pay within the mandated 60-day period, respondent shall immediately vacate the premises without need of further demand. Petitioner, on the other hand, shall pay respondent the cash surrender value equivalent to 50% of the total reimbursement payments made. The Shelter Contract Award shall then be deemed cancelled thirty (30) days after receipt by respondent of the full payment of the cash surrender value. If respondent fails to vacate the premises, he shall be charged reasonable rental in the amount determined by the trial court.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

EN BANC

[A.M. No. RTJ-12-2316. October 9, 2012]
(Formerly A.M. No. 09-7-280-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. LIBERTY O. CASTAÑEDA, Presiding Judge, ATTY. PAULINO I. SAGUYOD, Clerk of Court, LOURDES E. COLLADO, Sheriff, MARYLINDA C. DOCTOR, EVELYN B. ANTONIO, ROSALIE P. SARSAGAT and CHERYL B. ESTEBAN, Court Stenographers, GEORGE P. CLEMENTE, Clerk, MARITONI FLORIAN C. CERVANTES, Court Interpreter, and RUBEN A. GIGANTE, Utility Worker, all of the REGIONAL TRIAL COURT, BRANCH 67, PANIQUI, TARLAC,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; DELAY IN THE DISPOSITION OF CASES; AN INEXCUSABLE FAILURE TO DECIDE A CASE WITHIN THE PRESCRIBED 90-DAY PERIOD CONSTITUTES GROSS INEFFICIENCY WARRANTING DISCIPLINARY SANCTION.— "Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases, making the 90-day period within which to decide cases mandatory." Corollarily, judges have always been exhorted to observe strict adherence to the rule on speedy disposition of cases. Delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay, for justice delayed is justice denied. In Judge Castañeda's case, both judicial audits conducted in the RTC of Paniqui, Tarlac, Branch 67 revealed that there were many cases that were undecided notwithstanding the lapse of the 90-day reglementary period within which they should be disposed, apart from those that have remained dormant or unacted upon for a considerable amount of time. Judge Castañeda failed to decide, within the prescribed period, **40**

cases from the first audit and **22** cases from the second audit, or a total of **62** cases. In the absence of an extension of time within which to decide these cases, which Judge Castañeda could have sought from the Court, her failure to assiduously perform her judicial duties is simply inexcusable. An inexcusable failure to decide a case within the prescribed 90-day period constitutes gross inefficiency warranting a disciplinary sanction.

2. ID.; ID.; FALSIFICATION OF THE CERTIFICATES OF SERVICE CONSTITUTES SERIOUS MISCONDUCT AND INEFFICIENCY.— A certificate of service is an instrument essential to the fulfillment by the judges of their duty to dispose of their cases speedily as mandated by the Constitution. A judge who fails to decide cases within the reglementary period but continues to collect his salaries upon his certification that he has no pending matters to resolve transgresses the constitutional right of the people to the speedy disposition of their cases. Notwithstanding her failure to dispose of cases within the prescribed period, Judge Castañeda made it appear in her monthly Certificates of Service that she had decided or resolved cases within 90 days from their submission. When she was preventively suspended in the Court's November 23, 2009 Resolution, which suspension she served from January 13, 2010 to March 21, 2010, she nonetheless misrepresented on her Certificates of Service in February and March 2010 that she rendered work for those months. Because of such dishonest conduct, she was able to receive her salaries for the months when she was supposedly under preventive suspension. A judge who falsifies her Certificate of Service is administratively liable for serious misconduct and inefficiency.

3. ID.; ID.; RESPONDENT JUDGE'S BLATANT DISREGARD OF THE PROVISIONS OF A.M. NOS. 02-11-SC AND 02-11-11-SC DISPLAYED HER UTTER LACK OF COMPETENCE AND PROBITY, AND CAN ONLY BE CONSIDERED AS GRAVE ABUSE OF AUTHORITY.— "A judge should observe the usual and traditional mode of adjudication requiring that he should hear both sides with patience and understanding to keep the risk of reaching an unjust decision at a minimum." Thus, "he must neither sacrifice for expediency's sake the fundamental requirements of due process nor forget that he must conscientiously endeavor each time to seek the truth, to know and aptly apply the law, and

to dispose of the controversy objectively and impartially." The serious infractions committed by Judge Castañeda were in cases involving petitions for nullity and annulment of marriage and legal separation, the most disturbing and scandalous of which was the haste with which she disposed of such cases. For the year 2010 alone, Judge Castañeda *granted* a total of **410** petitions of this nature. The audits likewise showed that she acted on these petitions despite the fact that it was not verified; that the OSG or the OPP were not furnished a copy of the petition within 5 days from its filing; that the petition did not recite the true residence of the parties, which should be within the territorial jurisdiction of Branch 67 for at least 6 months prior to the filing of the petition; or that the docket fees have not been fully paid and jurisdiction over the person of the respondents have not been acquired. x x x The OCA has extensively elucidated on the transgressions committed by Judge Castañeda, which the Court adopts in its entirety. For her blatant disregard of the provisions of A.M. Nos. 02-11-10-SC and 02-11-11-SC, Judge Castañeda is thus found guilty of gross ignorance of the law and procedure. x x x Moreover, the reprehensible haste with which she granted petitions for nullity and annulment of marriage and legal separation, despite non-compliance with the appropriate rules and evident irregularities in the proceedings, displayed her utter lack of competence and probity, and can only be considered as grave abuse of authority.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; INEFFICIENCY AND INCOMPETENCE; RESPONDENT CLERK OF COURT MISERABLY FAILED TO MEET THE STANDARDS REQUIRED OF AN EFFECTIVE AND COMPETENT CLERK OF COURT; RESPONDENT ARROGATED UNTO HIMSELF FUNCTIONS WHICH WERE NOT HIS, AND AT THE SAME TIME, FAILED TO PERFORM DUTIES WHICH WERE INCUMBENT UPON HIM TO DO.— In the extensive results of the judicial audits conducted by the OCA, Atty. Saguyod miserably failed to meet the standards required of an effective and competent clerk of court. He arrogated unto himself functions which were not his, and at the same time, failed to perform duties which were incumbent upon him to do. x x x As aptly pointed out by

the OCA, when he assumed the position of Clerk of Court of Branch 67, Atty. Saguyod is presumed to be ready, willing, and able to perform his tasks with utmost devotion and efficiency, failing which, he becomes administratively liable. Thus, Atty. Saguyod is administratively liable for inefficiency and incompetence in the performance of official duties.

5. ID.; ID.; ID.; SHERIFFS; REMINDED TO ENDEAVOR TO COMMIT TO MEMORY THE RULES ON PROPER SERVICE OF SUMMONS.— In *Manotoc v. Court of Appeals*, the Court expounded on the duty of the sheriff with respect to effecting a valid service of summons. x x x With Sheriff Collado's admission that she indeed failed to observe the requirements to effect a valid substituted service of summons set forth in *Manotoc v. Court of Appeals* in the 10 cases assigned to her, and upon her assurances to strictly observe these rules in the future, the Court therefore reminds Sheriff Collado to endeavor to commit to memory the rules on proper service of summons.

6. ID.; ID.; ID.; COURT PERSONNELS' FAILURE TO COMPLETE TASK ASSIGNED TO THEM CONSTITUTES NEGLECT OF DUTY.— Section 17 of Rule 136 of the Rules of Court provides for the functions and duties of a court stenographer. x x x Further, Administrative Circular No. 24-90 requires all stenographers to transcribe all stenographic notes and to attach the transcripts to the records of the case not later than 20 days from the time the notes were taken. Stenographers are also required to accomplish a verified monthly certification to monitor their compliance with this directive. In the absence of such certification or for failure or refusal to submit the certification, the stenographer's salary shall be withheld. In the Court's November 23, 2009 Resolution, issued pursuant to the results of the first audit conducted by the OCA, Stenographers Doctor, Antonio, Sarsagat and Esteban were already directed by the Court to attach their stenographic notes and transcripts of stenographic notes to the case records. Likewise, Clerk Clemente, who was in charge of civil cases, was advised to attach registry receipts and registry returns to their respective records, arrange papers chronologically, complete records pagination and update his docket book. Similarly, Court Interpreter Cervantes was ordered to prepare the Minutes of proceedings and mark exhibits properly, and

Utility Worker Gigante was tasked to stitch all court records properly. Unfortunately, by the time the second audit had been concluded on February 4, 2011, all of them miserably failed to complete the respective tasks assigned to them, for which they must be held administratively liable.

7. ID.; ID.; ID.; JUDGES, CLERKS OF COURTS AND ALL COURT EMPLOYEES ARE REMINDED THAT ALL OF THEM SHARE IN THE SAME DUTY AND OBLIGATION TO ASCERTAIN THAT JUSTICE IS DISPENSED PROMPTLY.— On this note, the Court takes the opportunity to remind judges, clerks of court, and other court employees that all of them share in the same duty and obligation to ascertain that justice is dispensed promptly. In order to realize this end, they must be able to work together and mutually assist one another. However, it bears to stress that it is the judge who has, at the end of the day, the ultimate responsibility to ensure that the professional competence of her staff is constantly displayed, and to take the necessary steps when she feels that the same is not observed or begins to take a downward path. Thus, judges should supervise their court personnel to guarantee the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

D E C I S I O N

***PER CURIAM*:**

This administrative matter is a consequence of the judicial audit and physical inventory of cases conducted from September 29, 2008 to October 8, 2008 in the Regional Trial Court (RTC) of Paniqui, Tarlac, Branch 67, presided over by Judge Liberty O. Castañeda (Judge Castañeda). A follow-up audit was subsequently conducted on February 1 to 4, 2011.

The Facts

The team from the Office of the Court Administrator (OCA) reported[1] that as of audit date, Branch 67 had a caseload of

[1] *Rollo*, Volume I, pp. 1-41.

1,123, consisting of **406** criminal cases and **717** civil cases. Of the **70** cases submitted for decision, **18** have not been decided notwithstanding the lapse of the 90-day period within which to resolve them. Likewise, of the seven (7) criminal and three (3) civil cases with pending incidents submitted for resolution, seven (7) have been awaiting resolution beyond the reglementary period.

However, notwithstanding her failure to decide the 18 cases and resolve the incidents in the seven (7) cases mentioned above, Judge Castañeda certified in her Certificates of Service from January to December 2008 that she has decided and resolved all cases and incidents within three (3) months from the date of submission.

The audit team also reported that **164** cases have not been acted upon for a considerable length of time; there are **14** cases with pending incidents; and no initial action has been taken in **27** cases. Apart from these figures, the audit team likewise noted that Branch 67 had a poor case and records management, particularly citing the absence of minutes of the court proceedings, lack of stamp receipts on the pleadings filed before it, official receipts reflecting that filing fees were paid days after the cases had been filed, registry receipts containing no registry numbers, and lack of proofs of receipts of court processes or issuances. Case records were not even properly stitched together.

The audit also revealed that there were criminal cases that were ordered archived even before the expiration of the 6-month period reckoned from the delivery of the warrant of arrest to the police authorities, in violation of OCA Circular No. 89-2004[2] dated August 12, 2004. In one case, Judge Castañeda arbitrarily reduced the bail bond of an accused from ₱120,000.00 to ₱10,000.00, and released another on recognizance on charges of violation of Section 11, Article II of Republic Act No. (R.A.)

[2] Item I(a) of OCA Circular No. 89-2004 states that "A criminal case may be archived only if after the issuance of the warrant of arrest, the accused remained at large for six (6) months from the delivery of the warrant to the proper peace officer." x x x

9165.[3] Similarly, another accused, who was charged with violation of R.A. 7610,[4] was released on recognizance despite the fact that the penalty therefor is *reclusion temporal* in its medium period to *reclusion perpetua*.

It was also found that Atty. Paulino I. Saguyod (Atty. Saguyod), the Branch Clerk of Court, issued commitment orders in two (2) criminal cases without written authority from Judge Castañeda, and that no certificates of arraignment were issued in some cases.

Prompted by reports that Branch 67 is fast becoming a haven for couples who want their marriages to be judicially declared null and void or annulled, or those who merely want to be legally separated, the audit team gave special attention to cases for declaration of nullity of marriage, annulment of marriage and legal separation, and found that of the **717** civil cases, **522** or **72.80%** involved nullity of marriage, annulment and legal separation.

Further investigation of these cases revealed various irregularities in the proceedings, consisting of blatant violations of A.M. No. 02-11-10-SC,[5] or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, as well as A.M. No. 02-11-11-SC,[6] or the Rule on Legal Separation.

First. Judge Castañeda allowed the petitions for nullity of marriage or annulment to prosper despite the impropriety of venue. The audit showed that most of the parties in these petitions are not actual residents of the places under the territorial jurisdiction of Branch 67, *i.e.*, Paniqui, Anao, Moncada and

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[3] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002 effective June 7, 2002.

[4] Otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act effective June 17, 1992.

[5] Dated March 4, 2003.

[6] Dated March 4, 2003.

San Miguel, all in Tarlac. A number of the addresses reflected on the pleadings are incomplete or vague, some are handwritten, typewritten or super-imposed on blanks, or even left completely blank. Many of the respondents raised the issue of improper venue, which Judge Castañeda ignored. One of the respondents, Lea Benaid, the respondent in Civil Case No. 254-P'07 (*Dodgie Benaid v. Lea Borreo-Benaid*) claimed, in a letter[7] dated October 8, 2008 addressed to the Chief Justice, that she and her petitioner-husband are not residents of Tarlac but of Infanta, Quezon, and that she never received any summons nor has she been notified of a collusion investigation by the public prosecutor. She also averred that she never met the clinical psychologist, whose report reflected that she was purportedly suffering from psychological incapacity. Neither was she subjected to any psychological test.

Second. In some cases, there are no proofs of payment of docket fees, while in others, summons and other initial court processes were issued even before the docket fees were fully paid.

Third. There are cases where the Office of the Solicitor General (OSG) and the Office of the Public Prosecutor (OPP) were not furnished copies of the petition, which under the rules must be done within five (5) days from the date of its filing, and proof of such service must be submitted to the court within the same period, otherwise, the petition may be outrightly dismissed. However, in those cases where it has been established that the OSG and OPP were not served copies of the petition, Judge Castañeda did not order the petitioners to comply.

Fourth. In several cases, the process server or sheriff merely resorted to substituted service of summons, without strict compliance with the rule[8] thereon as well as the Court's ruling

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[7] *Rollo*, Volume I, pp. 247-248.

[8] Rules of Court, Rule 14, Sec. 7. *Substituted service*. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable

in *Manotoc v. Court of Appeals*[9] elucidating on the requirements for effecting a valid substituted service. Nonetheless, Judge Castañeda acted on these petitions.

Fifth. Judge Castañeda likewise granted motions for depositions and allowed the advance taking of testimonies even without the respondent or public prosecutor being furnished copies of the motion. In several cases, she granted the motion on the very same day, or merely a day after it was filed.

Sixth. After having been served with summons, respondents were usually no longer notified of subsequent court orders or processes.

Seventh. In other cases, Judge Castañeda permitted the public prosecutor to conduct a collusion investigation even before the respondent has filed an answer, or the lapse of the prescribed period of 15 days. She would proceed with the pre-trial even without proof that respondent had been duly notified, or terminate the pre-trial for failure of respondent to file an answer and even without the prosecutor's collusion report. Worse, **eight (8)** petitions were granted despite the absence of an investigation report from the public prosecutor.

Eighth. Judge Castañeda allowed the pre-trial to proceed in several cases, notwithstanding the absence of the petitioner, or the fact that the latter failed to authorize his/her counsel, through a duly-executed special power of attorney (SPA), to represent him/her thereat. She also condoned the late filing of pre-trial briefs, as in fact, there were instances when the petitioner's pre-trial brief was filed on the day of the pre-trial conference itself.

Ninth. There are cases where the documentary evidence had been allegedly marked and formally offered, and which Judge Castañeda admitted, but which cannot be found in the records.

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age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

[9] G.R. No. 130974, August 16, 2006, 499 SCRA 21, 33.

In several cases, the petitioner would be allegedly cross-examined by the public prosecutor, but records are bereft of showing to establish such proceeding.

Tenth. Most of the pyschologists' reports are *pro forma* and mere photocopies, and the psychologists did not even testify in court. On the other hand, the respondent's failure to appear in court for purposes of presenting his/her evidence is considered a waiver thereof, despite lack of due notice.

Eleventh. At the time of the audit, Judge Castañeda had granted **175** cases involving nullity or annulment of marriage and legal separation. More particularly, the audit team observed the extraordinary speed and overzealousness with which Judge Castañeda acted in granting some **11** cases, which were decided between a period of a mere **16 days** to **four** (**4) months** from the date of their filing.

Finally, Judge Castañeda issued certificates of finality of decisions notwithstanding the lack of proof that the parties, counsels, the OSG and the OPP had been duly furnished with copies of the decisions.

Acting upon the report of the audit team, the Court, in its Resolution[10] dated November 23, 2009, resolved, *inter alia*, to:

(a) preventively suspend Judge Castañeda from office immediately upon receipt of notice, and direct her to explain, within 60 days from notice, why she should not be administratively dealt with for her numerous infractions above-enumerated, and to comment on the letter of Lea Benaid dated October 8, 2008, the respondent in Civil Case No. 254-P'07 (*Dodgie Benaid v. Lea Benaid*);

(b) direct Atty. Saguyod, the Clerk of Court of Branch 67, to:

(1) explain why he should not be administratively dealt with for issuing commitment orders without Judge Castañeda's written authority in two (2) criminal cases; failing to issue certificates of arraignment in several cases; failing to furnish respondents

[10] *Rollo*, Volume I, pp. 260-285.

copies of notice of pre-trial in some cases; allowing the issuance of notice of pre-trial in two (2) civil cases only two (2) days prior to the pre-trial conference; allowing the delay in the issuance of notice of pre-trial in Civil Case No. 228-07, which respondent received 16 days after the scheduled pre-trial; failing to furnish the respondent the court's order setting the presentation of respondent's evidence in several cases; and issuing the certificates of finality in many cases without the OSG having been furnished with copies of the court's decisions;

(2) explain why no initial action has been taken on several cases, to take appropriate action and to submit a report to the Court, through the OCA, on the status of these cases;

(c) direct Process Server Angel C. Vingua (Process Server Vingua) and Sheriff Lourdes E. Collado (Sheriff Collado), both of Branch 67, to explain within 15 days from notice why they failed to comply with the rules on personal service of summons and the requirements to effect a valid substituted service, in several cases;

(d) order Court Stenographers Marylinda C. Doctor (Doctor), Evelyn B. Antonio (Antonio), Rosalie P. Sarsagat (Sarsagat) and Cheryl B. Esteban (Esteban) to attach their stenographic notes and transcripts thereof to the case records;

(e) advise Clerk George P. Clemente (Clerk Clemente) and Court Interpreter Maritoni Florian C. Cervantes (Court Interpreter Cervantes), personnel in charge of the criminal and civil dockets, to attach the registry receipts and registry returns to the case records, arrange the pleadings and court orders chronologically according to the dates of receipt or issue, cause the pagination of records and update their respective dockets; and

(f) order Utility Worker Ruben A. Gigante (Utility Worker Gigante) to stitch all court records.

In her defense, Judge Castañeda claimed[11] that when she assumed her judicial functions on March 16, 2007, the court

[11] Comment dated February 26, 2010, *id*. at 572-583; Comment dated July 13, 2010, *id*. at 1459-1465.

was actually housed in a dilapidated old school building, with leaky ceilings and faulty wiring, and that the records were in bundles and complete disarray. When her predecessor retired, she inherited quite a number of cases, and she was taken to task with rickety typewriters, limited office supplies, and lack of personnel. In July 2008, when the construction of a new judiciary building commenced, the court was transferred to a 6x10 square-meter session hall in the barangay. Judge Castañeda declared that this was the situation in which the OCA team found Branch 67 when they conducted the audit.

More specifically, Judge Castañeda asseverated that her preventive suspension was a violation of her human rights, as well as her constitutional rights to due process and equal protection. She maintained that the undecided and unresolved cases which Judge Alipio C. Yumul, who took over her duties during her preventive suspension, was directed to decide included 2008 cases, which were either newly-filed, pending trial, or submitted for decision. Defending Atty. Saguyod's issuance of commitment orders, she insisted that it was sanctioned by the 2002 Manual for Clerks of Court, especially when the judge's signature could not be secured.

Judge Castañeda cited inadvertence with respect to the archiving of cases without the warrants of arrest having been returned, and claimed that the two (2) accused who allegedly have not yet been arraigned had, in fact, already been arraigned when she was appointed as judge. She averred that she reduced the bail bond of an accused charged with violation of RA No. 9165 from ₱120,000.00 to ₱10,000.00 because it was recommended by Provincial Prosecutor Aladin Bermudez, and that she released on recognizance two (2) other accused charged with violation of RA No. 7610 because they were minors, both of whom she referred to the Department of Social Welfare and Development.

With regard to her alleged failure to decide cases within the reglementary period, Judge Castañeda insisted that she had already resolved them, thereby prompting her to declare such fact, in good faith, in her Certificates of Service.

Finally, Judge Castañeda denied that she failed to observe the provisions of A.M. Nos. 02-11-10-SC and 02-11-11-SC. Instead, she asseverated that, since the petitions filed before her were all verified, it was no longer incumbent upon her to confirm the veracity of the contents thereof, including the parties' addresses. She contended that she merely allowed the issuance of summons even before the filing fees had been paid when no receipts were readily available to be issued. She likewise explained that it was not the duty of the court to order the petitioner to furnish the OSG or the OPP with copies of the petition, and that it was only upon the petitioner's failure to do so that the court arrogates unto itself the duty to furnish the OSG a copy of the petition.

With respect to the granting of motions to take depositions without the respondent and the OPP being furnished copies thereof, she asserted that only the OSG is required to be given a copy, not the respondent, who only learns of the case when summons is served upon him/her. On the other hand, she adopted the explanation offered by Sheriff Collado on the matter of resorting to substituted service and the failure to strictly observe the requirements on validly effecting it, as mandated by the rules.

Meanwhile, Judge Castañeda blamed the clerk in-charge for allegedly forgetting to attach the court orders requiring the public prosecutor to conduct a collusion investigation in declaration of nullity and annulment of marriage, and legal separation cases. She defended her stance to proceed with pre-trial conferences notwithstanding the absence of the public prosecutor's investigation report, maintaining that resetting the pre-trial for this reason alone would unduly delay the proceedings. She also proceeded with pre-trial despite lack of showing that respondent was duly notified thereof as the court merely presumes that he/she received it *via* registered mail within a period of 30 days. With regard to the absence of the petitioners themselves during pre-trial, or an SPA authorizing their counsels to act on their behalf, Judge Castañeda averred that the parties may have simply forgotten to sign the minutes, or the staff failed to make them

sign for some reason. As for those cases where there were no SPAs presented, or where the petitioner has yet to submit a pre-trial brief, she imputed the blame upon the clerk in charge, who she claimed had forgotten to attach them to the records or who may have even misplaced or misfiled them.

Judge Castañeda likewise avowed that she always checks all documents when she renders her decisions. Thus, even if there has been no proof that respondent was furnished with a copy of the notice of hearing for the presentation of respondent's evidence, she nonetheless issues Orders submitting them for decision, as to wait for the returns would unnecessarily delay case disposition. She also insisted that the public prosecutor's investigation reports were always in the case records, and if they were not, they might have been misplaced or accidentally removed. She also postulated that the OSG is always furnished with copies of the decisions in all cases.

With respect to the letter[12] sent by Lea Benaid, Judge Castañeda reiterated her earlier ratiocination that the petition filed by Lea's petitioner-husband was verified, thus, the court had no duty to investigate on the veracity of its contents. Judge Castañeda likewise pointed out that, despite having received summons, Lea did not file any responsive pleading, nor did her counsel appear before the court to participate in the proceedings.

For his part, Atty. Saguyod explained[13] that he issued the commitment orders without Judge Castañeda's written authority as he was empowered, under the 2002 Manual of Clerks of Court to issue a *mittimus* whenever the signature of the judge could not be secured, and there was an immediate necessity to detain an accused. He charged to mere inadvertence or oversight instances when the branch staff failed to have the accused or counsel affix their signatures on the certificates of arraignment. With regard to his alleged failure to furnish respondents copies of notice of pre-trial, Atty. Saguyod explained that these notices were actually sent on time but the proofs of mailing were not

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[12] *Supra* note 7.

[13] *Rollo*, Volume I, pp. 1436-1441.

immediately attached to the records, and unfortunately, these proofs were misplaced.

Further, Atty. Saguyod averred that there was a mere typographical error on the date of one notice of pre-trial, supposedly issued two (2) days before the pre-trial conference, which should have reflected "February 8, 2008" and not "February 18, 2008." In a civil case where the respondent received the notice of pre-trial only on February 22, 2008, 16 days after the scheduled pre-trial, Atty. Saguyod claimed that the notice of pre-trial was promptly mailed to respondent on February 1, 2008. Similarly, the order setting the hearing for the presentation of respondent's evidence was actually mailed, only that the proof of mailing was not attached to the case records.

Finally, Atty. Saguyod echoed the defense of Judge Castañeda that the OSG had always been furnished with copies of the court's decisions before the corresponding certificates of finality were issued.

In compliance with the Court's directive, Atty. Saguyod submitted a report[14] of the initial action taken on the cases mentioned in the Court's November 23, 2009 Resolution.

For her part, Sheriff Collado claimed[15] that she served summons only in 10 cases enumerated in the Court's November 23, 2009 Resolution, but admitted that she failed to observe the requirements to validly effect substituted service of summons set forth in *Manotoc v. Court of Appeals*,[16] as she was allegedly not aware thereof and because she was used to a *pro forma* return of service. However, she posited that it was an honest mistake and made assurances to strictly observe the rules in future services of summons.

On the other hand, records show that Process Server Vingua died on January 1, 2009.[17]

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[14] *Id.* at 307-311.

[15] *Id.* at 302-303.

[16] *Supra* note 9.

[17] *Rollo*, Volume II, p. 1535.

On March 12, 2010, Judge Castañeda manifested[18] that she will resume her duties as Presiding Judge of Branch 67 on March 22, 2010, asseverating that since she had already acted upon the cases cited in the Court's November 23, 2009 Resolution, and that any lapses thereon were not attributable to her but to her staff, she has the right to be reinstated to her position. Thus, Judge Castañeda reported back to her court on March 22, 2010 notwithstanding the lack of any action from the Court regarding her manifestation.

On February 1 to 4, 2011, a second audit was conducted in Branch 67, the results of which essentially mirrored those of the first audit.[19]

The Action and Recommendation of the OCA

In its Memorandum[20] dated March 22, 2011, the OCA recommended the following, *inter alia*:

(a) that Judge Castañeda be dismissed from the service, with forfeiture of all retirement benefits, except accrued leave credits, if any, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or -controlled corporations, for *dishonesty, gross ignorance of the law and procedure, gross misconduct and incompetency*;

(b) that Atty. Saguyod be suspended for six (6) months and one (1) day, without salaries and other benefits, with warning that a repetition of the same or similar acts will be dealt with more severely, for *inefficiency and incompetency*;

(c) that Sheriff Collado, Court Stenographers Doctor, Antonio, Sarsagat and Esteban, Clerk Clemente, Court Interpreter Cervantes, and Utility Worker Gigante be fined in the amount of ₱5,000.00 each, for *simple neglect of duties*, with warning that a repetition of the same or similar acts will be dealt with more severely; and,

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[18] *Rollo*, Volume I, pp. 1448-1449.

[19] *Rollo*, Volume II, p. 1522.

[20] *Id.* at 1490-1538.

(d) that Atty. Saguyod and Clerk Clemente be ordered to explain, within fifteen (15) days from notice, why they failed to present to the audit team, in the conduct of the second audit, the records of 241 nullity of marriage cases decided in 2010, and why 30 decided cases involving nullity of marriage were not reported in 2010.

In arriving at its recommendation insofar as Judge Castañeda is concerned, the OCA found that she failed to decide cases within the reglementary period, and that her inaction or procrastination was inexcusable. The OCA touted Judge Castañeda's explanation as unsatisfactory, especially since she attempted to use her staff as scapegoats to evade administrative liability.

Because she failed to conduct a semi-annual inventory of her case docket, Judge Castañeda failed to see that there were two (2) accused who were yet to be arraigned. With respect to the accused charged with an offense involving drugs whose bailbonds she drastically reduced from ₱120,000.00 to ₱10,000.00 purportedly upon the recommendation of the public prosecutor, records are bereft of such recommendation.

Moreover, the OCA also considered the irregularities and procedural lapses in the manner in which Judge Castañeda handled cases for nullity, annulment of marriage and legal separation, as she completely disregarded the basic provisions of A.M. Nos. 02-11-10-SC and 02-11-11-SC. For these infractions, the OCA found her guilty of gross ignorance of the law and procedure, and held her unjustifiable zeal and readiness in granting petitions for nullity, annulment and legal separation to be so gross, patent and deliberate that it reeks of utter bad faith. In fact, the OCA aptly took note of Judge Castañeda's alarming and indiscriminate granting of petitions for nullity and annulment of marriage, as evidenced by the fact that these cases would be usually submitted for decision within a month from the filing of the petition and decided in a mere 2 months' time. In 2010 alone, Judge Castañeda granted the extremely high total of **410** petitions of this nature. From this observation, the OCA explained that Judge Castañeda

demonstrated an utter lack of competence and integrity in performing her duties as a judge, which amounted to grave abuse of authority.

Finally, by submitting her Certificates of Service for February and March 2010 and falsely asserting therein that she rendered work for that period when, in fact, she served her preventive suspension from January 13, 2010 to March 21, 2010, Judge Castañeda deliberately committed acts of dishonesty.

In fine, Judge Castañeda violated the Code of Judicial Conduct, which enjoins judges to uphold the integrity of the judiciary, avoid impropriety or the appearance of impropriety in all activities and to perform their duties honestly and diligently. Thus, considering the number and severity of Judge Castañeda's infractions, the OCA indicated that the extreme penalty of dismissal may be imposed upon her.

On the other hand, the OCA found Atty. Saguyod administratively liable for inefficiency and incompetence in the performance of his duties, which is classified as a grave offense under the Uniform Rules on Administrative Cases in the Civil Service. The judicial audits showed that Atty. Saguyod went beyond the ministerial duties of a branch clerk of court and arrogated unto himself functions that belong to a judge by issuing commitment orders in two criminal cases. On the other hand, he was remiss in his mandated duties as a branch clerk of court when he accepted non-verified petitions for nullity, annulment and legal separation as well as petitions which were not within the territorial jurisdiction of Branch 67. He demonstrated inefficiency when he failed to: (1) issue certificates of arraignment in several criminal cases; (2) furnish respondents copies of notice of pre-trial; and (3) furnish the respondent the Order setting the case for presentation of the latter's evidence, as well as when he issued certificates of finality without furnishing the respondent and/or the public prosecutor with copies of the decision.

Moreover, Atty. Saguyod miserably failed in performing his mandated duty under the Rules of Court to oversee and exercise control and supervision over the orderly keeping of court records,

papers and files. Worse, he passed the blame to his subordinates and attributed the miserable state of their records to the condition of their office during the first audit. However, when the second audit was eventually conducted, the team observed no substantial improvement in case and records management despite the fact that Branch 67 had already transferred to a new building.

As for Sheriff Collado, the OCA held that she should endeavor to learn the rules on service of summons, and her claim that their office uses a *pro forma* return of service is no excuse to absolve her from liability. On the other hand, despite having been ordered in the Court's November 23, 2009 Resolution to attach the stenographic notes and transcripts of stenographic notes to the case records, Court Stenographers Doctor, Antonio, Sarsagat and Esteban still failed to do so. Similarly, Clerk Clemente failed to attach the registry receipts and registry returns to the case records, arrange the pleadings and court issuances chronologically, cause the pagination of records and update the court docket book. For her part, former Clerk and currently Court Interpreter Cervantes was found to have failed to prepare the minutes of the court proceedings and mark exhibits properly. Finally, Utility Worker Gigante still failed to stitch all court records accordingly.

For their respective infractions, the OCA found Sheriff Collado, Court Stenographers Doctor, Antonio, Sarsagat and Esteban, Clerk Clemente, Court Interpreter Cervantes, and Utility Worker Gigante liable for simple neglect of duties, which is classified as a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service, punishable by suspension for 1 month and 1 day to 6 months for the first offense. Instead of suspending them, however, the OCA recommended that a fine of ₱5,000.00 each be imposed upon them. The OCA refused to give credence to their defense that they cannot cope with their work because of the court's heavy caseload.

The Issue Before The Court

The sole issue before the Court is whether Judge Castañeda, Atty. Saguyod, Sheriff Collado, Court Stenographers Doctor,

Antonio, Sarsagat and Esteban, Clerk Clemente, Court Interpreter Cervantes, and Utility Worker Gigante should be imposed the penalties as recommended by the OCA, for their various and respective infractions in the performance of their official duties.

The Court's Ruling

After a judicious perusal of the records, the Court wholly concurs with the findings and recommendations of the OCA as enumerated above.

Judge Liberty O. Castañeda, Presiding Judge

A. On the Delay in the Disposition of Cases

"Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary provides that judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness."[21] Section 15 (1), Article VIII of the Constitution mandates trial court judges to decide a case within the reglementary period of 90 days, to wit:

> (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**. (Emphasis supplied)

Likewise, the Code of Judicial Conduct under Rule 3.05 of Canon 3 dictates:

> Rule 3.05 — A judge shall dispose of the court's business promptly and decide cases within the required periods.

Thus, "rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases, making the 90-day

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[21] *OCA v. Judge Trocino,* A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 271.

period within which to decide cases mandatory."[22] Corollarily, judges have always been exhorted to observe strict adherence to the rule on speedy disposition of cases.[23] Delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay, for justice delayed is justice denied.[24]

In Judge Castañeda's case, both judicial audits conducted in the RTC of Paniqui, Tarlac, Branch 67 revealed that there were many cases that were undecided notwithstanding the lapse of the 90-day reglementary period within which they should be disposed, apart from those that have remained dormant or unacted upon for a considerable amount of time. Judge Castañeda failed to decide, within the prescribed period, **40**[25] cases from the first audit and **22** cases from the second audit, or a total of **62** cases. In the absence of an extension of time within which to decide these cases, which Judge Castañeda could have sought from the Court, her failure to assiduously perform her judicial duties is simply inexcusable. An inexcusable failure to decide a case within the prescribed 90-day period constitutes gross inefficiency[26] warranting a disciplinary sanction.[27]

B. On the Falsification of the Certificates of Service

A certificate of service is an instrument essential to the fulfillment by the judges of their duty to dispose of their cases

[22] *OCA v. Judge Garcia-Blanco and Atty. Mercado,* A.M. No. RTJ-05-1941, April 25, 2006, 488 SCRA 109, 120.

[23] *Re: Judicial Audit Conducted in the RTC, Branch 73, Antipolo City*, A.M. No. 05-2-113-RTC, December 7, 2005, 476 SCRA 598, 599.

[24] *Re: Request of Judge Roberto S. Javellana, RTC,Br. 59, San Carlos City (Negros Occidental) for Extension of Time to Decide Civil Cases Nos. X-98 and RTC 363*, A.M. No. 01-6-314-RTC, June 19, 2003, 404 SCRA 373, 376.

[25] *Rollo*, Volume II, p. 1527.

[26] *Report on the Judicial Audit Conducted in the RTC, Branches 29 and 59, Toledo City,* A.M. No. 97-9-278-RTC, July 8, 1998, 292 SCRA 8, 23.

[27] *Tam v. Judge Regencia, MCTC, Asturias-Balamban, Cebu*, A.M. No. MTJ-05-1604, June 27, 2006, 493 SCRA 26, 42.

speedily as mandated by the Constitution.[28] A judge who fails to decide cases within the reglementary period but continues to collect his salaries upon his certification that he has no pending matters to resolve transgresses the constitutional right of the people to the speedy disposition of their cases.[29]

Notwithstanding her failure to dispose of cases within the prescribed period, Judge Castañeda made it appear in her monthly Certificates of Service that she had decided or resolved cases within 90 days from their submission. When she was preventively suspended in the Court's November 23, 2009 Resolution, which suspension she served from January 13, 2010 to March 21, 2010, she nonetheless misrepresented on her Certificates of Service in February and March 2010 that she rendered work for those months. Because of such dishonest conduct, she was able to receive her salaries for the months when she was supposedly under preventive suspension. A judge who falsifies her Certificate of Service is administratively liable for serious misconduct and inefficiency.[30]

C. On Disregarding the Provisions of A.M. Nos. 02-11-10-SC and 02-11-11-SC

"A judge should observe the usual and traditional mode of adjudication requiring that he should hear both sides with patience and understanding to keep the risk of reaching an unjust decision at a minimum."[31] Thus, "he must neither sacrifice for expediency's sake the fundamental requirements of due process nor forget

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[28] *Sabitsana, Jr. v. Villamor*, A.M. No. RTJ-90-474, October 4, 1991, 202 SCRA 435.

[29] *Request of Peter Ristig for Assistance Regarding the Delay in the Proceedings of Criminal Case No. 95227-R, entitled "People of the Philippines versus Henry Uy" Pending at MTCC, Branch 6, Cebu City*, A.M. No. 02-5-107-MTCC, December 9, 2004, 445 SCRA 538.

[30] *Re: Report on the Judicial Audit Conducted in the RTC, Branches 61, 134 and 147, Makati, Metro Manila*, A.M. Nos. 93-2-1001-RTC and A.M. No. P-93-944, September 5, 1995, 248 SCRA, 5, 31.

[31] *Dayawon v. Garfin*, A.M. No. MTJ-01-1367, September 5, 2002, 388 SCRA 341, 349, *citing Castillo v. Juan*, 62 SCRA 124, 127 (1975).

that he must conscientiously endeavor each time to seek the truth, to know and aptly apply the law, and to dispose of the controversy objectively and impartially."[32]

The serious infractions committed by Judge Castañeda were in cases involving petitions for nullity and annulment of marriage and legal separation, the most disturbing and scandalous of which was the haste with which she disposed of such cases. For the year 2010 alone, Judge Castañeda *granted* a total of **410** petitions of this nature. The audits likewise showed that she acted on these petitions despite the fact that it was not verified; that the OSG or the OPP were not furnished a copy of the petition within 5 days from its filing; that the petition did not recite the true residence of the parties, which should be within the territorial jurisdiction of Branch 67 for at least 6 months prior to the filing of the petition; or that the docket fees have not been fully paid and jurisdiction over the person of the respondents have not been acquired.

The Court takes special exception to Civil Case No. 254-P'07 (*Dodgie Benaid v. Lea Benaid*), which Judge Castañeda *granted* notwithstanding the following irregularities: (1) petitioner-husband Dodgie Benaid appeared to be a resident of Infanta, Quezon, contrary to the information reflected on the petition that he was a resident of Apulid, Paniqui, Tarlac; (2) respondent-wife Lea Benaid is not a resident, either, of Goldenland Subdivision, Mabalacat, Pampanga, but of Infanta, Quezon; and (3) Lea was neither interviewed nor investigated by the public prosecutor in arriving at the conclusion that no collusion exists between her and her husband. In fact, records show that Dodgie Benaid, the Chief of Police of Real, Quezon, was eventually found guilty of misconduct and dishonesty for falsely claiming in his petition for nullity of marriage that he was a resident of Apulid, Tarlac and that his wife, Lea, was a resident of Mabalacat, Pampanga.

The OCA has extensively elucidated on the transgressions committed by Judge Castañeda, which the Court adopts in its

[32] *Id., citing Young v. De Guzman,* 303 SCRA 254, 258 (1999).

entirety. For her blatant disregard of the provisions of A.M. Nos. 02-11-10-SC and 02-11-11-SC, Judge Castañeda is thus found guilty of gross ignorance of the law and procedure. Thus, in *Pesayco v. Layague,* the Court held:

> No less than the Code of Judicial conduct mandates that a judge shall be faithful to the laws and maintain professional competence. Indeed, competence is a mark of a good judge. A judge must be acquainted with legal norms and precepts as well as with procedural rules. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic rules of procedure must be at the palm of a judge's hands.[33]

Moreover, the reprehensible haste with which she granted petitions for nullity and annulment of marriage and legal separation, despite non-compliance with the appropriate rules and evident irregularities in the proceedings, displayed her utter lack of competence and probity, and can only be considered as grave abuse of authority.

Atty. Paulino I. Saguyod, Branch Clerk of Court

In *Office of the Court Administrator v. Judge Trocino,* the Court explained the functions and responsibilities of a clerk of court, to wit:

> Clerks of court perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns. Clerks of court are charged not only with the efficient recording, filing, and management of court records but also with administrative supervision over court personnel. A clerk of court is the personnel officer of the court who exercises general supervision over all court personnel, enforces regulations, initiates investigations of erring employees,

[33] A.M. No. RTJ-04-1889, December 22, 2004, 447 SCRA 450, 459, citations omitted.

and recommends appropriate action to the judge. They play a vital role in the complement of the court.[34]

In the extensive results of the judicial audits conducted by the OCA, Atty. Saguyod miserably failed to meet the standards required of an effective and competent clerk of court. He arrogated unto himself functions which were not his, and at the same time, failed to perform duties which were incumbent upon him to do.

Records further show that Branch 67 has been remiss in the submission of the reportorial requirements, as evidenced by the fact that as of March 21, 2011, the latest Docket Inventory of Cases submitted by Branch 67 is for January to June 2010, and the latest Monthly Report of Cases is for November 2010.[35] Clearly, Atty. Saguyod violated Administrative Circular No. 4-2004 dated February 4, 2004, which requires the Monthly Report of Cases to be filed with the Court on or before the 10th day of the succeeding month, as well as Administrative Circular No. 76-2007 dated August 31, 2007 which in turn requires all trial judges and their clerks of court to submit the docket inventory of cases not later than the first week of February and the first week of August each year.

As aptly pointed out by the OCA, when he assumed the position of Clerk of Court of Branch 67, Atty. Saguyod is presumed to be ready, willing, and able to perform his tasks with utmost devotion and efficiency, failing which, he becomes administratively liable. Thus, Atty. Saguyod is administratively liable for inefficiency and incompetence in the performance of official duties.

Sheriff Lourdes E. Collado

In *Manotoc v. Court of Appeals*, the Court expounded on the duty of the sheriff with respect to effecting a valid service of summons, thus:

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[34] *Supra* note 21, at 274.

[35] *Rollo*, Volume II, p. 1534.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. **For substituted service of summons to be available, there must be several attempts** by the sheriff **to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates**. In addition, the sheriff **must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted**. [36] (Emphasis supplied)

With Sheriff Collado's admission that she indeed failed to observe the requirements to effect a valid substituted service of summons set forth in *Manotoc v. Court of Appeals*[37] in the 10 cases assigned to her, and upon her assurances to strictly observe these rules in the future, the Court therefore reminds Sheriff Collado to endeavor to commit to memory the rules on proper service of summons.

Court Stenographers Marylinda C. Doctor, Evelyn B. Antonio, Rosalie P. Sarsagat and Cheryl B. Esteban; Clerk George P. Clemente; Court Interpreter Maritoni Florian C. Cervantes; Utility Worker Ruben A. Gigante

Section 17 of Rule 136 of the Rules of Court provides for the functions and duties of a court stenographer, which states in part:

SEC. 17. *Stenographer*. – It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has

[36] *Supra* note 9, at 35.

[37] *Supra* note 9.

taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed, the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Further, Administrative Circular No. 24-90[38] requires all stenographers to transcribe all stenographic notes and to attach the transcripts to the records of the case not later than 20 days from the time the notes were taken. Stenographers are also required to accomplish a verified monthly certification to monitor their compliance with this directive. In the absence of such certification or for failure or refusal to submit the certification, the stenographer's salary shall be withheld.

In the Court's November 23, 2009 Resolution, issued pursuant to the results of the first audit conducted by the OCA, Stenographers Doctor, Antonio, Sarsagat and Esteban were already directed by the Court to attach their stenographic notes and transcripts of stenographic notes to the case records. Likewise, Clerk Clemente, who was in charge of civil cases, was advised to attach registry receipts and registry returns to their respective records, arrange papers chronologically, complete records pagination and update his docket book. Similarly, Court Interpreter Cervantes was ordered to prepare the Minutes of proceedings and mark exhibits properly, and Utility Worker Gigante was tasked to stitch all court records properly.

Unfortunately, by the time the second audit had been concluded on February 4, 2011, all of them miserably failed to complete the respective tasks assigned to them, for which they must be held administratively liable.

On this note, the Court takes the opportunity to remind judges, clerks of court, and other court employees that all of them share in the same duty and obligation to ascertain that justice is dispensed promptly. In order to realize this end, they must be

[38] Revised Rules on Transcription of Stenographic Notes and their Transmission to Appellate Courts, dated July 12, 1990.

able to work together and mutually assist one another. However, it bears to stress that it is the judge who has, at the end of the day, the ultimate responsibility to ensure that the professional competence of her staff is constantly displayed, and to take the necessary steps when she feels that the same is not observed or begins to take a downward path. Thus, judges should supervise their court personnel to guarantee the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.[39]

WHEREFORE, in view of all the foregoing, the Court finds:

(a) **JUDGE LIBERTY O. CASTAÑEDA** guilty of dishonesty, gross ignorance of the law and procedure, gross misconduct and incompetency and hereby **DISMISSES** her from the service, with forfeiture of all retirement benefits, except accrued leave credits, if any, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or -controlled corporations;

(b) **ATTY. PAULINO I. SAGUYOD** guilty of inefficiency and incompetency and hereby **SUSPENDS** him for six (6) months and one (1) day, without salaries and other benefits, with warning that a repetition of the same or similar acts will be dealt with more severely;

(c) **SHERIFF LOURDES E. COLLADO; COURT STENOGRAPHERS MARYLINDA C. DOCTOR, EVELYN B. ANTONIO, ROSALIE P. SARSAGAT AND CHERYL B. ESTEBAN; CLERK GEORGE P. CLEMENTE; COURT INTERPRETER MARITONI FLORIAN C. CERVANTES and UTILITY WORKER RUBEN A. GIGANTE** guilty of simple neglect of duties and hereby imposes upon them a **FINE** in the amount of ₱5,000.00 each, with warning that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be attached to the records of Judge Castañeda, Atty. Saguyod, Sheriff Collado, Stenographers Doctor, Antonio, Sarsagat and Esteban, Clerk Clemente, Court

[39] *Supra* note 21, at 276.

Interpreter Cervantes and Utility Worker Gigante on file with the Court.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Perez, J., no part. Acted on matter as Court Adm.

EN BANC

[G.R. No. 176162. October 9, 2012]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **COURT OF APPEALS, DR. DANTE G. GUEVARRA and ATTY. AUGUSTUS F. CEZAR,** *respondents.*

[G.R. No. 178845. October 9, 2012]

ATTY. HONESTO L. CUEVA, *petitioner, vs.* **COURT OF APPEALS, DR. DANTE G. GUEVARRA and ATTY. AUGUSTUS F. CEZAR**, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (E.O. 292); AS THE CENTRAL PERSONNEL AGENCY OF THE GOVERNMENT, THE CIVIL SERVICE COMMISSION (CSC) HAS THE POWER TO APPOINT AND DISCIPLINE ITS OFFICIALS AND EMPLOYEES AND TO HEAR AND DECIDE ADMINISTRATIVE CASES INSTITUTED BY OR

BROUGHT BEFORE IT DIRECTLY OR ON APPEAL.— The CSC, as the central personnel agency of the government, has the power to appoint and discipline its officials and employees and to hear and decide administrative cases instituted by or brought before it directly or on appeal. Section 2(1), Article IX(B) of the 1987 Constitution defines the scope of the civil service: The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. By virtue of Presidential Decree (P.D.) No. 1341, PUP became a chartered state university, thereby making it a government-owned or controlled corporation with an original charter whose employees are part of the Civil Service and are subject to the provisions of E.O. No. 292.

2. ID.; ID.; ID.; A LITERAL INTERPRETATION OF E.O. 292 THAT A COMPLAINT MAY ONLY BE FILED DIRECTLY BY A PRIVATE CITIZEN WOULD EFFECTIVELY DIVEST THE COMMISSION OF ITS ORIGINAL JURISDICTION PROVIDED BY LAW AND WOULD ALSO BE TANTAMOUNT TO DISENFRANCHISING GOVERNMENT EMPLOYEES BY REMOVING FROM THEM AN ALTERNATIVE COURSE OF ACTION AGAINST ERRING PUBLIC OFFICIALS.— The Court is not unaware of the use of the words "private citizen" in the subject provision and the plain meaning rule of statutory construction which requires that when the law is clear and unambiguous, it must be taken to mean exactly what it says. The Court, however, finds that a simplistic interpretation is not in keeping with the intention of the statute and prevailing jurisprudence. It is a well-established rule that laws should be given a reasonable interpretation so as not to defeat the very purpose for which they were passed. As such, "a literal interpretation is to be rejected if it would be unjust or lead to absurd results." In *Secretary of Justice v. Koruga*, the Court emphasized this principle and cautioned us on the overzealous application of the plain meaning rule. xxx A literal interpretation of E.O. 292 would mean that only private citizens can file a complaint directly with the CSC. For administrative cases instituted by government employees against their fellow public servants, the CSC would only have appellate jurisdiction over those. Such a plain reading of the subject provision of E.O. 202 would effectively divest CSC of its original jurisdiction,

albeit shared, provided by law. Moreover, it is clearly unreasonable as it would be tantamount to disenfranchising government employees by removing from them an alternative course of action against erring public officials.

3. **ID.; ID.; ID.; NO COGENT REASON TO DIFFERENTIATE A COMPLAINT FILED BY A PRIVATE CITIZEN AND ONE FILED BY A MEMBER OF THE CIVIL SERVICE.—** There is no cogent reason to differentiate between a complaint filed by a private citizen and one filed by a member of the civil service, especially in light of Section 12(11), Chapter 3, Subtitle A, Title I, Book V of the same E.O. No. 292 which confers upon the CSC the power to "hear and decide administrative cases instituted by or brought before it directly or on appeal" without any qualification. In the case of *Camacho v. Gloria*, the Court stated that "under E.O. No. 292, a complaint against a state university official may be filed with either the university's Board of Regents or directly with the Civil Service Commission." It is important to note that the Court did not interpret the Administrative Code as limiting such authority to exclude complaints filed directly with it by a member of the civil service.

4. **ID.; ID.; ID.; THE IDENTITY OF THE COMPLAINANT IS IMMATERIAL TO THE ACQUISITION OF JURISDICTION OVER AN ADMINISTRATIVE CASE BY THE CSC; THE LAW IS QUITE CLEAR THAT THE COMMISSION MAY HEAR AND DECIDE ADMINISTRATIVE DISCIPLINARY CASES BROUGHT DIRECTLY BEFORE IT OR IT MAY DEPUTIZE ANY DEPARTMENT OR AGENCY TO CONDUCT AN INVESTIGATION.—** As early as in the case of *Hilario v. Civil Service Commission*, the Court interpreted Section 47, Chapter 7, Subtitle A, Title I, Book V of E.O. No. 292 as allowing the direct filing with the CSC by a public official of a complaint against a fellow government employee. In the said case, Quezon City Vice-Mayor Charito Planas directly filed with the CSC a complaint for usurpation, grave misconduct, being notoriously undesirable, gross insubordination, and conduct prejudicial to the best interest of the service against the City Legal Officer of Quezon City. The CSC issued a resolution ruling that the respondent official should not be allowed to continue holding the position of legal officer. In

a petition to the Supreme Court, the official in question asserted that the City Mayor was the only one who could remove him from office directly and not the CSC. The Court upheld the decision of the CSC, citing the same provision of the Administrative Code. x x x It has been argued that *Hilario* is not squarely in point. While it is true that the circumstances present in the two cases are not identical, a careful reading of *Hilario* reveals that petitioner therein questioned the authority of the CSC to hear the disciplinary case filed against him, alleging that the CSC's jurisdiction was only appellate in nature. Hence, the reference to the abovequoted passage in *Hilario* is very appropriate in this case as respondents herein pose a similar query before us. It cannot be overemphasized that the identity of the complainant is immaterial to the acquisition of jurisdiction over an administrative case by the CSC. The law is quite clear that the CSC may hear and decide administrative disciplinary cases brought directly before it or it may deputize any department or agency to conduct an investigation.

5. ID.; ID.; ID.; THE UNIFORM RULES OF ADMINISTRATIVE CASES IN THE CIVIL SERVICE GRANTED HEADS OF DEPARTMENTS, AGENCIES, PROVINCES, CITIES, MUNICIPALITIES AND OTHER INSTRUMENTALITIES ORIGINAL CONCURRENT JURISDICTION WITH THE CIVIL SERVICE COMMISSION OVER THEIR RESPECTIVE OFFICERS AND EMPLOYEES.— The Uniform Rules on Administrative Cases in the Civil Service *(the Uniform Rules)* explicitly allows the CSC to hear and decide administrative cases directly brought before it. x x x The CA construed the phrase "the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service" to mean that the CSC could only step in *after* the relevant disciplinary authority, in this case the Board of Regents of PUP, had investigated and decided on the charges against the respondents. Regrettably, the CA failed to take into consideration the succeeding section of the same rules which undeniably granted original *concurrent* jurisdiction to the CSC and belied its suggestion that the CSC could only take cognizance of cases on appeal: Section 7. Jurisdiction of Heads of Agencies. – Heads of Departments, agencies, provinces, cities, municipalities and other instrumentalities shall have

original concurrent jurisdiction, with the Commission, over their respective officers and employees.

6. **ID.; ID.; ID.; THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE DOES NOT CONTRADICT THE ADMINISTRATIVE CODE, RATHER, IT SIMPLY PROVIDES A REASONABLE INTERPRETATION OF THE RULES.—** It was also argued that although Section 4 of the Uniform Rules is silent as to who can file a complaint directly with the CSC, it cannot be construed to authorize one who is not a private citizen to file a complaint directly with the CSC. This is because a rule issued by a government agency pursuant to its law-making power cannot modify, reduce or enlarge the scope of the law which it seeks to implement. Following the earlier disquisition, it can be said that the Uniform Rules does not contradict the Administrative Code. Rather, the former simply provides a reasonable interpretation of the latter. Such action is perfectly within the authority of the CSC, pursuant to Section 12(2), Chapter 3, Subtitle A, Title I, Book V of E.O. No. 292, which gives it the power to "prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws."

7. **ID.; ID.; ID.; THE COURT DOES NOT CONSIDER SECTION 5 OF THE UNIFORM RULES AS LIMITATION TO THE ORIGINAL CONCURRENT JURISDICTION OF THE COMMISSION; SECTION 5 IS MERELY IMPLEMENTARY AND DIRECTORY AND NOT RESTRICTIVE OF THE COMMISSION'S POWER.—** It is the Court's position that the Uniform Rules did not supplant the law which provided the CSC with original jurisdiction. While the Uniform Rules may have so provided, the Court invites attention to the cases of *Civil Service Commission v. Alfonso* and *Civil Service Commission v. Sojor*, to be further discussed in the course of this decision, both of which buttressed the pronouncement that the Board of Regents shares its authority to discipline erring school officials and employees with the CSC. It can be presumed that, at the time of their promulgation, the members of this Court, in *Alfonso* and *Sojor*, were fully aware of all the existing laws and applicable rules and regulations pertaining to the jurisdiction of the CSC, including the Uniform Rules. In fact, *Sojor* specifically cited the Uniform Rules in support of its ruling allowing the CSC to take cognizance of an administrative

case filed directly with it against the president of a state university. As the Court, in the two cases, did not consider Section 5 of the Uniform Rules as a limitation to the original concurrent jurisdiction of the CSC, it can be stated that Section 5 is merely implementary. It is merely directory and not restrictive of the CSC's powers. The CSC itself is of this view as it has vigorously asserted its jurisdiction over this case through this petition.

8. ID.; ID.; ID.; R.A. NO. 8292 IS NOT IN CONFLICT WITH E.O. 292.— Basic is the principle in statutory construction that interpreting and harmonizing laws is the best method of interpretation in order to form a uniform, complete, coherent, and intelligible system of jurisprudence, in accordance with the legal maxim *interpretare et concordare leges legibus est optimus interpretandi modus*. Simply because a later statute relates to a similar subject matter as that of an earlier statute does not result in an implied repeal of the latter. A perusal of the abovequoted provision clearly reveals that the same does not indicate any intention to remove employees and officials of state universities and colleges from the ambit of the CSC. What it merely states is that the governing board of a school has the authority to discipline and remove faculty members and administrative officials and employees for cause. It neither supersedes nor conflicts with E.O. No. 292 which allows the CSC to hear and decide administrative cases filed directly with it or on appeal.

9. ID.; ID.; ID.; DESPITE THE ENACTMENT OF R.A. NO. 8292 GIVING THE BOARD OF REGENTS OR BOARD OF TRUSTEES OF A STATE SCHOOL THE AUTHORITY TO DISCIPLINE ITS EMPLOYEES, THE CSC STILL RETAINS JURISDICTION OVER THE SCHOOL AND ITS EMPLOYEES AND HAS CONCURRENT ORIGINAL JURISDICTION, TOGETHER WITH THE BOARD OF REGENTS OF A STATE UNIVERSITY, OVER ADMINISTRATIVE CASES AGAINST STATE UNIVERSITY OFFICIALS AND EMPLOYEES.— A different interpretation of the Administrative Code was suggested in order to harmonize the provisions of R.A. No. 8292 and E.O. 292. By allowing only a private citizen to file a complaint directly with the CSC, the CSC maintains its power to review on appeal decisions of the Board of Regents while at the same time the governing

board is not deprived of its power to discipline its officials and employees. To begin with, there is no incongruity between R.A. No. 8292 and E.O. No. 292, as previously explained in *Sojor*. Moreover, the Court fails to see how a complaint filed by a private citizen is any different from one filed by a government employee. If the grant to the CSC of concurrent original jurisdiction over administrative cases filed by private citizens against public officials would not deprive the governing bodies of the power to discipline their own officials and employees and would not be violative of R.A. No. 8292, it is inconceivable that a similar case filed by a government employee would do so. Such a distinction between cases filed by private citizens and those by civil servants is simply illogical and unreasonable. To accede to such a mistaken interpretation of the Administrative Code would be a great disservice to our developing jurisprudence. It is therefore apparent that despite the enactment of R.A. No. 8292 giving the board of regents or board of trustees of a state school the authority to discipline its employees, the CSC still retains jurisdiction over the school and its employees and has concurrent original jurisdiction, together with the board of regents of a state university, over administrative cases against state university officials and employees.

VELASCO, JR., *J., dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (E.O. 292); AS A GENERAL RULE, THE CIVIL SERVICE COMMISSION (CSC) SHALL HAVE APPELLATE JURISDICTION OVER "ALL ADMINISTRATIVE DISCIPLINARY CASES INVOLVING THE IMPOSITION OF A PENALTY OF SUSPENSION FOR MORE THAN THIRTY DAYS, OR FINE IN AN AMOUNT EXCEEDING THIRTY DAYS' SALARY DEMOTION IN RANK OR SALARY OR TRANSFER, REMOVAL OR DISMISSAL FROM OFFICE".— It is a basic legal precept that "[j]urisdiction over the subject matter of a case is conferred by law." In the instant case, the pertinent legal provision is Section 47, Chapter 7, Subtitle A, Title I, Book V of Executive Order No. 292 (otherwise known as the "Administrative Code"). x x x Based on the first paragraph of the above-quoted provision of the

Administrative Code, it is clear that, as a general rule, the CSC shall have **appellate jurisdiction** over "all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office." This jurisdictional grant complements the second paragraph of the same provision which vests upon the department secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities the **original jurisdiction** to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Concomitantly, the law even accords finality to their decisions "in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary."

2. **ID.; ID.; ID.; BY WAY OF EXCEPTION TO THE GENERAL RULE, E.O. 292 ALLOWS THE DIRECT FILING OF A COMPLAINT WITH THE CSC, BUT ONLY IF A PRIVATE CITIZEN IS THE COMPLAINANT IN WHICH CASE THE COMMISSION HAS CONCURRENT JURISDICTION WITH THE DEPARTMENT SECRETARIES AND HEADS OF AGENCIES AND INSTRUMENTALITIES, PROVINCES, CITIES AND MUNICIPALITIES.—** By way of exception, the same provision allows a complaint to be "filed **directly** with the Commission **by a private citizen** against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation." Evidently, the law sanctions the direct filing of a complaint with the CSC, but only if a private citizen is the complainant. Thus, the CSC has concurrent jurisdiction with the department secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities when the complaint is filed by a private citizen.

3. **ID.; ID.; ID.; THE ADMINISTRATIVE COMPLAINT FILED DIRECTLY WITH THE CSC BY THE CHIEF LEGAL COUNSEL OF THE POLYTECHNIC UNIVERSITY OF THE PHILIPPINES (PUP) FALLS UNDER THE ORIGINAL JURISDICTION OF THE DISCIPLINING AUTHORITY INVOLVED, WHICH IS THE BOARD OF REGENTS (BOR) OF THE UNIVERSITY SINCE THE**

COMPLAINANT IS A PUBLIC EMPLOYEE AND NOT A PRIVATE CITIZEN.— In this case, Cueva, then Chief Legal Counsel of the PUP, filed the administrative complaint directly with the CSC against respondents. Applying the abovementioned provision of the Administrative Code, since a public employee and not a private citizen filed the complaint, the case falls under the original jurisdiction of the disciplining authority involved, which is the Board of Regents (BOR) of the PUP. The CSC merely has appellate jurisdiction. As stated under Section 4(h) of R.A. No. 8292, otherwise known as the "Higher Education Modernization Act of 1997".

4. ID.; ID.; ID.; A RULE ISSUED BY A GOVERNMENT AGENCY PURSUANT TO ITS QUASI-LEGISLATIVE POWER CANNOT MODIFY, REDUCE OR ENLARGE THE SCOPE OF THE LAW WHICH IT SEEKS TO IMPLEMENT; SECTION 4 OF THE CIVIL SERVICE RULES CANNOT BE CONSTRUED AS AUTHORIZING ONE OTHER THAN A PRIVATE CITIZEN TO FILE A COMPLAINT DIRECTLY WITH THE CSC.— It is basic that a rule issued by a government agency pursuant to its quasi-legislative power cannot modify, reduce or enlarge the scope of the law which it seeks to implement. The discourse made by the Court in *Lokin, Jr. v. Commission on Elections* is instructive. x x x Moreover, in *Padunan v. Department of Agrarian Reform Adjudication Board*, this Court held: It must be stated at the outset that **it is the law that confers jurisdiction and not the rules.** Jurisdiction over a subject matter is conferred by the Constitution or the law and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law. Taking the foregoing into consideration, Sec. 4 of the Civil Service Rules cannot be construed as authorizing one other than a private citizen to file a complaint directly with the CSC, contrary to the ruling in the *ponencia*. Pertinently, even Sec. 7 of the Civil Service Rules cannot run counter to the clear provision of the Administrative Code. Sec. 7 of the Civil Service Rules reads: Section. 7. Jurisdiction of Heads of Agencies. – Heads of Departments, agencies, provinces, cities, municipalities and other instrumentalities shall have **original concurrent jurisdiction**, *with the Commission*, over their respective officers and employees. In this regard, "original concurrent jurisdiction" means that the CSC and the BOR have

original concurrent jurisdiction over complaints filed by a *private citizen* against a member of the civil service, but the BOR has *original and exclusive jurisdiction* over complaints filed by a *member of the civil service* against an officer or employee of the university. A contrary interpretation violates the explicit provision of the Administrative Code, as this is clearly covered by Sec. 47 of the said Code. Be that as it may, and considering that the Civil Service Rules does not explicitly mention who can file a complaint directly with the CSC, then the clear import of Sec. 47 of the Administrative Code should be controlling, that is, only private citizens can file administrative complaints directly with the CSC.

5. ID.; ID.; ID.; THE CIVIL SERVICE COMMISSION'S JURISDICTION TO HEAR AND DECIDE DISCIPLINARY CASES AGAINST ERRING GOVERNMENT OFFICIALS IS NOT WITHOUT LIMITATION.— Indeed, government employees, in general, being members of the civil service, are under the jurisdiction of the CSC. Thus, CSC's power to discipline erring government employees cannot be doubted. As this Court held in *Garcia v. Molina*: The civil service encompasses all branches and agencies of the Government, including government-owned or controlled corporations (GOCCs) with original charters, like the GSIS, or those created by special law. As such, the employees are part of the civil service system and are subject to the law and to the circulars, rules and regulations issued by the CSC on discipline, attendance and general terms and conditions of employment. **The CSC has jurisdiction to hear and decide disciplinary cases against erring employees.** Nonetheless, CSC's jurisdiction to hear and decide disciplinary cases against erring government officials is not without limitation. As discussed above, the Administrative Code vests the CSC appellate jurisdiction over "all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office." Original jurisdiction is vested upon the department secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction.

6. ID.; ID.; ID.; THE HIGHER EDUCATION MODERNIZATION ACT OF 1997 (R.A. 8292) VESTS THE GOVERNING BOARDS OF THE UNIVERSITIES AND COLLEGES WITH THE POWER TO DISCIPLINE THEIR ERRING ADMINISTRATIVE OFFICIALS AND EMPLOYEES.— Even if *Regino* involves the application of Presidential Decree No. 807 (PD 807), still, the doctrine enunciated therein is still applicable as the provision on the disciplinary jurisdiction of the CSC under PD 807 is retained almost verbatim in the Administrative Code. Such interpretation renders effectual the provisions of R.A. No. 8292, which vests the governing boards of the universities and colleges with the power to discipline their erring administrative officials and employees. Specifically, aside from its general powers of administration, the BOR as a governing board is granted with the specific power to appoint vice presidents, deans, directors, heads of departments, faculty members and other officials and employees. Consistent with its power to hire or appoint is the power to discipline its officials and personnel. Moreover, as mentioned above, R.A. No. 8292 also grants the BOR the power to remove its officials and employees for cause in accordance with the requirements of due process of law. Clearly, the power of the BOR to discipline university officials and employees cannot be denied.

7. ID.; ID.; ID.; A RULING THAT THE COMMISSION'S JURISDICTION TO HEAR AND DECIDE DISCIPLINARY CASES AGAINST ERRING GOVERNMENT OFFICIALS WITHOUT LIMITATION WILL INEVITABLY DEPRIVE THE BOR OF THE POWER TO DISCIPLINE ITS OWN OFFICIALS AND EMPLOYEES AND RENDER INUTILE THE LEGAL PROVISIONS ON DISCIPLINARY MEASURES WHICH MAY BE TAKEN BY IT.— A ruling that CSC's jurisdiction to hear and decide disciplinary cases against erring government officials without limitation will inevitably deprive the BOR of the power to discipline its own officials and employees and render inutile the legal provisions on disciplinary measures which may be taken by it. More importantly, if all the complaints filed by a civil service member against another government employee come under the concurrent jurisdiction of the CSC, then the day will come when the CSC will be swamped with all kinds of cases, including those where the penalty involved is suspension not exceeding 30 days or fine not exceeding 30 days' salary.

8. ID.; ID.; ID.; IT IS NOT THE COURT WHICH MAY LIMIT THE COMMISSION'S AUTHORITY TO ACQUIRE ORIGINAL JURISDICTION OVER ADMINISTRATIVE COMPLAINTS FILED BY A MEMBER OF THE CIVIL SERVICE.— The *ponencia* cited several cases to support its ruling on the CSC's original jurisdiction to take cognizance of a complaint directly filed before it by a government employee or official. The first is *Camacho v. Gloria*, which, as viewed in the *ponencia*, did not limit CSC's authority to exclude complaints filed directly with it by a member of the civil service. On such point, it is worth mentioning that there is no need for the Court to limit CSC's authority in said case because the facts therein do not call for such delineation. As a matter of fact, petitioner therein contends that "the Board of Regents has no jurisdiction over his case considering that as a teacher, original jurisdiction over the administrative case against him is vested with a committee whose composition must be in accordance with [R.A.] No. 4670, the *Magna Carta for Public School Teachers*." Evidently, there was no issue on CSC's jurisdiction to take cognizance of a complaint directly filed before it by a member of the civil service. Moreover, it is not the Court which may limit CSC's authority to acquire original jurisdiction over administrative complaints filed by a member of the civil service. Rather, it is the law which may make such limitation, and in this particular case, it is the clear provision of the Administrative Code.

9. ID.; ID.; ID.; LAWS SHOULD BE HARMONIZED WITH EACH OTHER IN ORDER TO RENDER IT EFFECTUAL AND OPERATIVE.— To the *ponencia*, Sec. 4(h) of R.A. No. 8292 (power of the governing board of universities and colleges to remove their administrative officials and employees for cause in accordance with the requirements of due process of law) "does not indicate any intention to remove employees and officials of state universities and colleges from the ambit of the CSC." This is true, to a point. In this regard, it bears stressing that with my submission that only a private citizen can file a complaint directly with the CSC, the latter is not deprived of its jurisdiction over administrative cases filed by a member of the civil service against other erring government employees. In such case, the CSC retains the power of review over the decisions of the governing boards of the colleges or universities when these decisions are brought before it, on

> appeal, pursuant to Sec. 47 of the Administrative Code. At the same time, with such interpretation, these governing boards are not unduly deprived of the power to discipline their own officials and employees under R.A. No. 8292 and the Administrative Code. This way, not only are laws harmonized with each other, all of them are also rendered effectual and operative. In view of the foregoing, I submit that the CSC does not have original jurisdiction to take cognizance of the complaint directly filed before it by Cueva, then PUP legal counsel. Only a private citizen can directly file a complaint with the CSC and no other.

APPEARANCES OF COUNSEL

Honesto L. Cueva for petitioner in G.R. No. 178845.
The Solicitor General for CSC.
Magsino Sanchez Reyna & Associates Law Offices for private respondents.

D E C I S I O N

MENDOZA, *J.*:

These are consolidated petitions for review under Rule 45 of the Revised Rules of Civil Procedure assailing the December 29, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 95293, entitled "*Dr. Dante G. Guevarra and Atty. Augustus Cezar v. Civil Service Commission and Atty. Honesto L. Cueva*."

The Facts

Respondents Dante G. Guevarra (*Guevarra*) and Augustus F. Cezar (*Cezar*) were the Officer-in-Charge/President and the Vice President for Administration, respectively, of the Polytechnic University of the Philippines (*PUP*)[2] in 2005.

On September 27, 2005, petitioner Honesto L. Cueva (*Cueva*), then PUP Chief Legal Counsel, filed an administrative case

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[1] *Rollo* (G.R. No. 176162), pp. 57-72.

[2] *Id.* at 57.

against Guevarra and Cezar for gross dishonesty, grave misconduct, falsification of official documents, conduct prejudicial to the best interest of the service, being notoriously undesirable, and for violating Section 4 of Republic Act (R.A.) No. 6713.[3] Cueva charged Guevarra with falsification of a public document, specifically the Application for Bond of Accountable Officials and Employees of the Republic of the Philippines, in which the latter denied the existence of his pending criminal and administrative cases. As the head of the school, Guevarra was required to be bonded in order to be able to engage in financial transactions on behalf of PUP.[4] In his Application for Bond of Accountable Officials and Employees of the Republic of the Philippines (General Form No. 58-A), he answered Question No. 11 in this wise:

> 11. Do you have any criminal or administrative records? — NO. If so, state briefly the nature thereof — NO.[5]

This was despite the undisputed fact that, at that time, both Guevarra and Cezar admittedly had 17 pending cases for violation of Section 3 (e) of R.A. No. 3019 before the Sandiganbayan.[6] Cezar, knowing fully well that both he and Guevarra had existing cases before the Sandiganbayan, endorsed and recommended the approval of the application.[7]

The respondents explained that they believed "criminal or administrative records" to mean final conviction in a criminal or administrative case.[8] Thus, because their cases had not yet been decided by the Sandiganbayan, they asserted that Guevarra responded to Question No. 11 in General Form No. 58-A correctly and in good faith.[9]

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[3] *Id*. at 97.

[4] *Id*. at 196-197.

[5] *Id*. at 196.

[6] *Id*. at 98, 197.

[7] *Id*. at 197.

[8] *Id*. at 107.

[9] *Id*. at 110.

On March 24, 2006, the Civil Service Commission (CSC) issued Resolution No. 060521[10] formally charging Guevarra with Dishonesty and Cezar with Conduct Prejudicial to the Best Interest of the Service after a *prima facie* finding that they had committed acts punishable under the Civil Service Law and Rules.

Subsequently, the respondents filed their Motion for Reconsideration and Motion to Declare Absence of *Prima Facie* Case[11] praying that the case be suspended immediately and that the CSC declare a complete absence of a *prima facie* case against them. Cueva, on the other hand, filed an Urgent *Ex-Parte* Motion for the Issuance of Preventive Suspension[12] and an Omnibus Motion[13] seeking the issuance of an order of preventive suspension against Guevarra and Cezar and the inclusion of the following offenses in the formal charge against them: Grave Misconduct, Falsification of Official Document, Conduct Prejudicial to the Best Interest of the Service, Being Notoriously Undesirable, and Violation of Section 4 of R.A. No. 6713.

In Resolution No. 061141, dated June 30, 2006,[14] the CSC denied the motion for reconsideration filed by the respondents for being a non-responsive pleading, akin to a motion to dismiss, which was a prohibited pleading under Section 16 of the Uniform Rules on Administrative Cases in the Civil Service Commission.[15]

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[10] *Id.* at 196-199.

[11] *Id.* at 106-120.

[12] *Id.* at 146-148.

[13] *Id.* at 155-162.

[14] *Id.* at 200-212.

[15] Section 16. Formal Charge. — After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of xxx

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

The disciplining authority shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to

It also denied Cueva's motion to include additional charges against the respondents. The CSC, however, placed Guevarra under preventive suspension for ninety (90) days, believing it to be necessary because, as the officer-in-charge of PUP, he was in a position to unduly influence possible witnesses against him.

Aggrieved, Guevarra and Cezar filed a petition for *certiorari* and prohibition before the CA essentially questioning the jurisdiction of the CSC over the administrative complaint filed against them by Cueva. On December 29, 2006, the CA rendered its Decision granting the petition and nullifying and setting aside the questioned resolutions of the CSC for having been rendered without jurisdiction. According to the CA, Section 47, Chapter 7, Subtitle A, Title I, Book V of Executive Order No. 292 (The Administrative Code of 1987), the second paragraph of which states that heads of agencies and instrumentalities "shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction," bestows upon the Board of Regents the jurisdiction to investigate and decide matters involving disciplinary action against respondents Guevarra and Cezar. In addition, the CA noted that the CSC erred in recognizing the complaint filed by Cueva, reasoning out that the latter should have exhausted all administrative remedies by first bringing his grievances to the attention of the PUP Board of Regents.

Hence, these petitions.

THE ISSUE

In G.R. No. 176162, petitioner CSC raises the sole issue of:

Whether or not the Civil Service Commission has original concurrent jurisdiction over administrative cases falling under the jurisdiction of heads of agencies.

The same issue is among those raised by petitioner Cueva in G.R. No. 178845.

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delay the administrative proceedings. If any of these pleadings are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such. [Underscoring supplied]

The Court agrees that the only question which must be addressed in this case is whether the CSC has jurisdiction over administrative cases filed directly with it against officials of a chartered state university.

The Court's Ruling

The petitions are meritorious.

Both CSC and Cueva contend that because the CSC is the central personnel agency of the government, it has been expressly granted by Executive Order (E.O.) No. 292 the authority to assume original jurisdiction over complaints directly filed with it. The CSC explains that under the said law, it has appellate jurisdiction over all administrative disciplinary proceedings and original jurisdiction over complaints against government officials and employees filed before it by private citizens.[16] Accordingly, the CSC has concurrent original jurisdiction, together with the PUP Board of Regents, over the administrative case against Guevarra and Cezar and it can take cognizance of a case filed directly with it, despite the fact that the Board of Regents is the disciplining authority of university employees.

Respondents Guevarra and Cezar, on the other hand, fully adopted the position of the CA in its questioned decision and propounded the additional argument that the passage of R.A. No. 8292 has effectively removed from the CSC the authority to hear and decide on cases filed directly with it.

CSC has jurisdiction over cases filed directly with it, regardless of who initiated the complaint

The CSC, as the central personnel agency of the government, has the power to appoint and discipline its officials and employees and to hear and decide administrative cases instituted by or brought before it directly or on appeal.[17] Section 2 (1),

[16] *Rollo* (G.R. No. 176162), pp. 730-731.

[17] Constitution (1987), Article IX (B), Section 2; Executive Order No. 292 (1987), Book V, Title I, Subtitle A, Chapter 3, Section 12 (6) and (11).

Article IX (B) of the 1987 Constitution defines the scope of the civil service:

> The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

By virtue of Presidential Decree (P.D.) No. 1341,[18] PUP became a chartered state university, thereby making it a government-owned or controlled corporation with an original charter whose employees are part of the Civil Service and are subject to the provisions of E.O. No. 292.[19]

The parties in these cases do not deny that Guevarra and Cezar are government employees and part of the Civil Service. The controversy, however, stems from the interpretation of the disciplinary jurisdiction of the CSC as specified in Section 47, Chapter 7, Subtitle A, Title I, Book V of E.O. No. 292:

> SECTION 47. Disciplinary Jurisdiction. — (1) **The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation.** The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.
>
> (2) **The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have**

[18] (1978).

[19] Executive Order No. 292 (1987), Book V, Title I, Subtitle A, Chapter 2, Section 6:

> SECTION 6. Scope of the Civil Service. — (1) The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned. [Emphases and underscoring supplied]

While in its assailed decision, the CA conceded that paragraph one of the same provision abovequoted allows the filing of a complaint directly with the CSC, it makes a distinction between a complaint filed by a private citizen and that of an employee under the jurisdiction of the disciplining authority involved. The CA resolved that because Cueva was then the Dean of the College of Law and the Chief Legal Counsel of PUP when he filed the complaint with the CSC, he was under the authority of the PUP Board of Regents. Thus, it is the Board of Regents which had exclusive jurisdiction over the administrative case he initiated against Guevarra and Cezar.

The Court finds itself unable to sustain the reading of the CA.

The issue is not novel.

The understanding by the CA of Section 47, Chapter 7, Subtitle A, Title I, Book V of E.O. No. 292 which states that "a complaint may be filed directly with the Commission by a private citizen against a government official or employee" is that the CSC can only take cognizance of a case filed directly before it if the complaint was made by a private citizen.

The Court is not unaware of the use of the words "private citizen" in the subject provision and the plain meaning rule of statutory construction which requires that when the law is clear and unambiguous, it must be taken to mean exactly what it says. The Court, however, finds that a simplistic interpretation is not in keeping with the intention of the statute and prevailing

jurisprudence. It is a well-established rule that laws should be given a reasonable interpretation so as not to defeat the very purpose for which they were passed. As such, "a literal interpretation is to be rejected if it would be unjust or lead to absurd results."[20] In *Secretary of Justice v. Koruga*,[21] the Court emphasized this principle and cautioned us on the overzealous application of the plain meaning rule:

> The general rule in construing words and phrases used in a statute is that in the absence of legislative intent to the contrary, they should be given their plain, ordinary, and common usage meaning. However, a literal interpretation of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contract the evident meaning of the statute taken as a whole. After all, statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences.[22]

A literal interpretation of E.O. 292 would mean that only private citizens can file a complaint directly with the CSC. For administrative cases instituted by government employees against their fellow public servants, the CSC would only have appellate jurisdiction over those. Such a plain reading of the subject provision of E.O. 202 would effectively divest CSC of its original jurisdiction, albeit shared, provided by law. Moreover, it is clearly unreasonable as it would be tantamount to disenfranchising government employees by removing from them an alternative course of action against erring public officials.

There is no cogent reason to differentiate between a complaint filed by a private citizen and one filed by a member of the civil service, especially in light of Section 12 (11), Chapter 3, Subtitle A, Title I, Book V of the same E.O. No. 292 which confers upon the CSC the power to "hear and decide administrative

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[20] *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 96.

[21] G.R. No. 166199, April 24, 2009, 586 SCRA 513.

[22] *Id.* at 523-524.

cases instituted by or brought before it directly or *on* appeal" without any qualification.

In the case of *Camacho v. Gloria*,[23] the Court stated that "under E.O. No. 292, a complaint against a state university official may be filed with either the university's Board of Regents or directly with the Civil Service Commission."[24] It is important to note that the Court did not interpret the Administrative Code as limiting such authority to exclude complaints filed directly with it by a member of the civil service.

Moreover, as early as in the case of *Hilario v. Civil Service Commission*,[25] the Court interpreted Section 47, Chapter 7, Subtitle A, Title I, Book V of E.O. No. 292 as allowing the direct filing with the CSC by a public official of a complaint against a fellow government employee. In the said case, Quezon City Vice-Mayor Charito Planas directly filed with the CSC a complaint for usurpation, grave misconduct, being notoriously undesirable, gross insubordination, and conduct prejudicial to the best interest of the service against the City Legal Officer of Quezon City. The CSC issued a resolution ruling that the respondent official should not be allowed to continue holding the position of legal officer. In a petition to the Supreme Court, the official in question asserted that the City Mayor was the only one who could remove him from office directly and not the CSC. The Court upheld the decision of the CSC, citing the same provision of the Administrative Code:

> Although respondent Planas is a public official, there is nothing under the law to prevent her from filing a complaint directly with the CSC against petitioner. Thus, when the CSC determined that petitioner was no longer entitled to hold the position of City Legal Officer, it was acting within its authority under the Administrative Code to hear and decide complaints filed before it.[26] [Underscoring supplied]

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[23] 456 Phil. 399 (2003).

[24] *Id.* at 411.

[25] 312 Phil. 1157 (1995).

[26] *Id.* at 1165.

It has been argued that *Hilario* is not squarely in point.[27] While it is true that the circumstances present in the two cases are not identical, a careful reading of *Hilario* reveals that petitioner therein questioned the authority of the CSC to hear the disciplinary case filed against him, alleging that the CSC's jurisdiction was only appellate in nature. Hence, the reference to the abovequoted passage in *Hilario* is very appropriate in this case as respondents herein pose a similar query before us.

It cannot be overemphasized that the identity of the complainant is immaterial to the acquisition of jurisdiction over an administrative case by the CSC. The law is quite clear that the CSC may hear and decide administrative disciplinary cases brought directly before it or it may deputize any department or agency to conduct an investigation.

CSC has concurrent original jurisdiction with the Board of Regents over administrative cases

The Uniform Rules on Administrative Cases in the Civil Service[28] (*the Uniform Rules*) explicitly allows the CSC to hear and decide administrative cases directly brought before it:

> Section 4. Jurisdiction of the Civil Service Commission. — **The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal,** including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.
>
> Except as otherwise provided by the Constitution or by law, **the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service** and upon all matters relating to the conduct, discipline and efficiency of such officers and employees. [Emphases and underscoring supplied]

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[27] Dissenting Opinion (*J.* Velasco, Jr.), pp. 10-11.

[28] Civil Service Commission Resolution No. 99-1936 (1999) in Memorandum Circular No. 19 (1999).

The CA construed the phrase "the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service" to mean that the CSC could only step in *after* the relevant disciplinary authority, in this case the Board of Regents of PUP, had investigated and decided on the charges against the respondents. Regrettably, the CA failed to take into consideration the succeeding section of the same rules which undeniably granted original *concurrent* jurisdiction to the CSC and belied its suggestion that the CSC could only take cognizance of cases on appeal:

> Section 7. Jurisdiction of Heads of Agencies. — Heads of Departments, agencies, provinces, cities, municipalities and other instrumentalities shall have **original concurrent jurisdiction**, with the Commission, over their respective officers and employees.[29] [Emphasis supplied]

It was also argued that although Section 4 of the Uniform Rules is silent as to who can file a complaint directly with the CSC, it cannot be construed to authorize one who is not a private citizen to file a complaint directly with the CSC. This is because a rule issued by a government agency pursuant to its law-making power cannot modify, reduce or enlarge the scope of the law which it seeks to implement.[30]

Following the earlier disquisition, it can be said that the Uniform Rules does not contradict the Administrative Code. Rather, the former simply provides a reasonable interpretation of the latter. Such action is perfectly within the authority of the CSC, pursuant to Section 12 (2), Chapter 3, Subtitle A, Title I, Book V of E.O. No. 292, which gives it the power to "prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws."

Another view has been propounded that the original jurisdiction of the CSC has been further limited by Section 5 of the Uniform

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[29] *Id*.

[30] Dissenting Opinion (*J*. Velasco, Jr.), pp. 6-7.

Rules, such that the CSC can only take cognizance of complaints filed directly with it which: (1) are brought against personnel of the CSC central office, (2) are against third level officials who are not presidential appointees, (3) are against officials and employees, but are not acted upon by the agencies themselves, or (4) otherwise require direct or immediate action in the interest of justice:

> Section 5. Jurisdiction of the Civil Service Commission Proper. — The Civil Service Commission Proper shall have jurisdiction over the following cases:
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> A. Disciplinary
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> 1. Decisions of the Civil Service Regional Offices brought before it on petition for review;
> 2. Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities, imposing penalties exceeding thirty days suspension or fine in an amount exceeding thirty days salary brought before it on appeal;
> 3. Complaints brought against Civil Service Commission Proper personnel;
> 4. Complaints against third level officials who are not presidential appointees;
> 5. Complaints against Civil Service officials and employees which are not acted upon by the agencies and such other complaints requiring direct or immediate action, in the interest of justice;
> 6. Requests for transfer of venue of hearing on cases being heard by Civil Service Regional Offices;
> 7. Appeals from the Order of Preventive Suspension; and
> 8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumerations.

It is the Court's position that the Uniform Rules did not supplant the law which provided the CSC with original jurisdiction. While the Uniform Rules may have so provided, the Court invites

attention to the cases of *Civil Service Commission v. Alfonso*[31] and *Civil Service Commission v. Sojor*,[32] to be further discussed in the course of this decision, both of which buttressed the pronouncement that the Board of Regents shares its authority to discipline erring school officials and employees with the CSC. It can be presumed that, at the time of their promulgation, the members of this Court, in *Alfonso* and *Sojor*, were fully aware of all the existing laws and applicable rules and regulations pertaining to the jurisdiction of the CSC, including the Uniform Rules. In fact, *Sojor* specifically cited the Uniform Rules in support of its ruling allowing the CSC to take cognizance of an administrative case filed directly with it against the president of a state university. As the Court, in the two cases, did not consider Section 5 of the Uniform Rules as a limitation to the original concurrent jurisdiction of the CSC, it can be stated that Section 5 is merely implementary. It is merely directory and not restrictive of the CSC's powers. The CSC itself is of this view as it has vigorously asserted its jurisdiction over this case through this petition.

The case of *Alfonso*[33] is on all fours with the case at bench. The case involved a complaint filed before the CSC against a PUP employee by two employees of the same university. The CA was then faced with the identical issue of whether it was the CSC or the PUP Board of Regents which had jurisdiction over the administrative case filed against the said PUP employee. The CA similarly ruled that the CSC could take cognizance of an administrative case if the decisions of secretaries or heads of agencies, instrumentalities, provinces, cities and municipalities were appealed to it or if a private citizen directly filed with the CSC a complaint against a government official or employee. Because the complainants in the said case were PUP employees and not private citizens, the CA held that the CSC had no jurisdiction to hear the administrative case. It further posited

[31] G.R. No. 179452, June 11, 2009, 589 SCRA 88.

[32] G.R. No. 168766, May 22, 2008, 554 SCRA 160.

[33] *Civil Service Commission v. Alfonso*, *supra* note 31.

that even assuming the CSC had the authority to do so, immediate resort to the CSC violated the doctrine of exhaustion of administrative remedies as the complaint should have been first lodged with the PUP Board of Regents to allow them the opportunity to decide on the matter. This Court, however, *reversed* the said decision and declared the following:

> x x x Admittedly, the CSC has appellate jurisdiction over disciplinary cases decided by government departments, agencies and instrumentalities. **However, a complaint may be filed directly with the CSC, and the Commission has the authority to hear and decide the case, although it may opt to deputize a department or an agency to conduct the investigation. x x x**
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> xxx xxx xxx
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> We are not unmindful of certain special laws that allow the creation of disciplinary committees and governing bodies in different branches, subdivisions, agencies and instrumentalities of the government to hear and decide administrative complaints against their respective officers and employees. **Be that as it may, we cannot interpret the creation of such bodies nor the passage of laws such as — R.A. Nos. 8292 and 4670 allowing for the creation of such disciplinary bodies — as having divested the CSC of its inherent power to supervise and discipline government employees, including those in the academe.** To hold otherwise would not only negate the very purpose for which the CSC was established, *i.e.*, to instill professionalism, integrity, and accountability in our civil service, but would also impliedly amend the Constitution itself.
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> xxx xxx xxx
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> But it is not only for this reason that Alfonso's argument must fail. Equally significant is the fact that he had already submitted himself to the jurisdiction of the CSC when he filed his counter-affidavit and his motion for reconsideration and requested for a change of venue, not from the CSC to the BOR of PUP, but from the CSC-Central Office to the CSC-NCR. It was only when his motion was denied that he suddenly had a change of heart and raised the question of proper jurisdiction. This cannot be allowed because it would violate the doctrine of *res judicata*, a legal principle that is applicable to administrative cases as well. At the very least,

respondent's active participation in the proceedings by seeking affirmative relief before the CSC already bars him from impugning the Commission's authority under the principle of estoppel by laches.

In this case, the complaint-affidavits were filed by two PUP employees. These complaints were not lodged before the disciplinary tribunal of PUP, but were instead filed before the CSC, with averments detailing respondent's alleged violation of civil service laws, rules and regulations. After a fact-finding investigation, the Commission found that a *prima facie* case existed against Alfonso, prompting the Commission to file a formal charge against the latter. **Verily, since the complaints were filed directly with the CSC, and the CSC has opted to assume jurisdiction over the complaint, the CSC's exercise of jurisdiction shall be to the exclusion of other tribunals exercising concurrent jurisdiction.** To repeat, it may, however, choose to deputize any department or agency or official or group of officials such as the BOR of PUP to conduct the investigation, or to delegate the investigation to the proper regional office. But the same is merely permissive and not mandatory upon the Commission.[34] [Emphases and underscoring supplied]

It has been opined that *Alfonso* does not apply to the case at bar because respondent therein submitted himself to the jurisdiction of the CSC when he filed his counter-affidavit before it, thereby preventing him from later questioning the jurisdiction of the CSC. Such circumstance is said to be totally absent in this case.[35]

The records speak otherwise. As in *Alfonso*, respondents herein submitted themselves to the jurisdiction of the CSC when they filed their Joint Counter-Affidavit.[36] It was only when their Motion for Reconsideration and Motion to Declare Absence of *Prima Facie* Case[37] was denied by the CSC that they thought to put in issue the jurisdiction of the CSC before the CA, clearly a desperate attempt to evade prosecution by the CSC. As in *Alfonso*,

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[34] *Id*. at 96-100.

[35] Dissenting Opinion (*J*. Velasco, Jr.), p. 10.

[36] *Rollo* (G.R. No. 176162), pp. 232-235.

[37] *Id.* at 106-132.

respondents are also estopped from questioning the jurisdiction of the CSC.

Based on all of the foregoing, the inescapable conclusion is that the CSC may take cognizance of an administrative case filed directly with it against an official or employee of a chartered state college or university. This is regardless of whether the complainant is a private citizen or a member of the civil service and such original jurisdiction is shared with the Board of Regents of the school.

Gaoiran not applicable

In its decision, the CA relied heavily on *Gaoiran v. Alcala*[38] to support its judgment that it is the Board of Regents, and not the CSC, which has jurisdiction over the administrative complaint filed against the respondents. A thorough study of the said case, however, reveals that it is irrelevant to the issues discussed in the case at bench. *Gaoiran* speaks of a complaint filed against a high school teacher of a state-supervised school by another employee of the same school. The complaint was referred to the Legal Affairs Service of the Commission on Higher Education (*LAS-CHED*). After a fact-finding investigation established the existence of a *prima facie* case against the teacher, the Officer-in-Charge of the Office of the Director of LAS-CHED issued a formal charge for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, together with the Order of Preventive Suspension. The newly-appointed Director of LAS-CHED, however, dismissed the administrative complaint on the ground that the letter-complaint was not made under oath. Unaware of this previous resolution, the Chairman of the CHED issued another resolution finding petitioner therein guilty of the charges against him and dismissing him from the service. The trial court upheld the resolution of the director of LAS-CHED but on appeal, this was reversed by the CA, affirming the decision of the CHED chairman removing petitioner from service. One of the issues raised therein before this Court was whether the

[38] 486 Phil. 657 (2004).

CA erred in disregarding the fact that the complaint was not made under oath as required by the Omnibus Rules Implementing Book V of E.O. 292.

In the said case, the Court concurred with the findings of the CA that it was the formal charge issued by the LAS-CHED which constituted the complaint, and because the same was initiated by the appropriate disciplining authority, it need not be subscribed and sworn to and CHED acquired jurisdiction over the case. The Court further affirmed the authority of the heads of agencies to investigate and decide matters involving disciplinary action against their officers and employees. It bears stressing, at this point, that there is nothing in the case that remotely implies that this Court meant to place upon the Board of Regent exclusive jurisdiction over administrative cases filed against their employees.

In fact, following the ruling in *Gaoiran*, it can be argued that it was CSC Resolution No. 060521 which formally charged respondents that constituted the complaint, and since the complaint was initiated by the CSC itself as the disciplining authority, the CSC properly acquired jurisdiction over the case.

R.A. No. 8292 is not in conflict with E.O. No. 292.

In addition, the respondents argue that R.A. No. 8292, which granted to the board of regents or board of trustees disciplinary authority over school employees and officials of chartered state colleges and universities, should prevail over the provisions of E.O. No. 292.[39] They anchor their assertion that the Board of Regents has exclusive jurisdiction over administrative cases on Section 4 of R.A. No. 8292,[40] to wit:

Section 4. Powers and duties of Governing Boards. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise

[39] *Rollo* (G.R. No. 176162), pp. 603-604.

[40] (1997).

of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68 otherwise known as the Corporation Code of the Philippines;

xxx xxx xxx

(h) to fix and adjust salaries of faculty members and administrative officials and employees subject to the provisions of the revised compensation and classification system and other pertinent budget and compensation laws governing hours of service, and such other duties and conditions as it may deem proper; to grant them, at its discretion, leaves of absence under such regulations as it may promulgate, any provisions of existing law to the contrary not with standing; and **to remove them for cause in accordance with the requirements of due process of law**. [Emphasis supplied]

The respondents are mistaken.

Basic is the principle in statutory construction that interpreting and harmonizing laws is the best method of interpretation in order to form a uniform, complete, coherent, and intelligible system of jurisprudence, in accordance with the legal maxim *interpretare et concordare leges legibus est optimus interpretandi modus*.[41] Simply because a later statute relates to a similar subject matter as that of an earlier statute does not result in an implied repeal of the latter.[42]

A perusal of the abovequoted provision clearly reveals that the same does not indicate any intention to remove employees and officials of state universities and colleges from the ambit of the CSC. What it merely states is that the governing board of a school has the authority to discipline and remove faculty members and administrative officials and employees for cause. It neither supersedes nor conflicts with E.O. No. 292 which allows the CSC to hear and decide administrative cases filed directly with it or on appeal.

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[41] *Valencia v. Court of Appeals*, 449 Phil. 711, 726 (2003) and *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466, 474.

[42] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827 (1948).

In addition to the previously cited case of *Alfonso*, the case of *The Civil Service Commission v. Sojor*[43] is likewise instructive. In the said case, this Court ruled that the CSC validly took cognizance of the administrative complaints directly filed with it concerning violations of civil service rules committed by a university president. This Court acknowledged that the board of regents of a state university has the sole power of administration over a university, in accordance with its charter and R.A. No. 8292. With regard to the disciplining and removal of its employees and officials, however, such authority is not exclusive to it because all members of the civil service fall under the jurisdiction of the CSC:

> **Verily, the BOR of NORSU has the sole power of administration over the university. But this power is not exclusive in the matter of disciplining and removing its employees and officials.**
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> **Although the BOR of NORSU is given the specific power under R.A. No. 9299 to discipline its employees and officials, there is no showing that such power is exclusive.** When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter.
>
> **All members of the civil service are under the jurisdiction of the CSC, unless otherwise provided by law.** Being a non-career civil servant does not remove respondent from the ambit of the CSC. Career or non-career, a civil service official or employee is within the jurisdiction of the CSC.[44] [Emphases and underscoring supplied]

It has been pointed out that the case of *Sojor* is not applicable to the case at bar because the distinction between a complaint filed by a private citizen and one filed by a government employee was not taken into consideration in the said case.[45] The dissent fails to consider that *Sojor* is cited in the *ponencia* to support

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[43] *Supra* note 32.

[44] *Id*. at 176.

[45] Dissenting Opinion (*J*. Velasco, Jr.), p. 10.

the ruling that R.A. No. 8292 is not in conflict with E.O. No. 292 and to counter respondents' flawed argument that the passage of R.A. No. 8292 granted the Board of Regents exclusive jurisdiction over administrative cases against school employees and officials of chartered state colleges and universities. Also noteworthy is the fact that the complainants before the CSC in *Sojor* were faculty members of a state university and were, thus, government employees. Nevertheless, despite this, the Court allowed the CSC to assert jurisdiction over the administrative case, proclaiming that the power of the Board of Regents to discipline its officials and employees is *not exclusive* but is *concurrent* with the CSC.[46]

The case of *University of the Philippines v. Regino*[47] was also cited to bolster the claim that original jurisdiction over disciplinary cases against government officials is vested upon the department secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities, whereas the CSC only enjoys appellate jurisdiction over such cases.[48] The interpretation therein of the Administrative Code supposedly renders effectual the provisions of R.A. No. 8292 and does not "deprive the governing body of the power to discipline its own officials and employees and render inutile the legal provisions on disciplinary measures which may be taken by it."[49]

The Court respectfully disagrees. *Regino* is obviously inapplicable to this case because there, the school employee had already been found guilty and dismissed by the Board of Regents of the University of the Philippines. Therefore, the issue put forth before this Court was whether the CSC had appellate jurisdiction over cases against university employees, considering the university charter which gives it academic freedom allegedly encompassing institutional autonomy. In contrast, no

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[46] *Civil Service Commission v. Sojor*, *supra* note 32, at 174.

[47] G.R. No. 88167, May 3, 1993, 221 SCRA 598.

[48] Dissenting Opinion (*J.* Velasco, Jr.), p. 8.

[49] *Id*. at 9.

administrative case was filed before the Board of Regents of PUP because the case was filed directly with the CSC and so, the question here is whether the CSC has original concurrent jurisdiction over disciplinary cases. Rationally, the quoted portions in *Regino* find no application to the case at bench because those statements were made to uphold the CSC's appellate jurisdiction which was being contested by petitioner therein. At the risk of being repetitive, it is hereby stressed that the authority of the CSC to hear cases on appeal has already been established in this case. What is in question here is its original jurisdiction over administrative cases.

A different interpretation of the Administrative Code was suggested in order to harmonize the provisions of R.A. No. 8292 and E.O. 292. By allowing only a private citizen to file a complaint directly with the CSC, the CSC maintains its power to review on appeal decisions of the Board of Regents while at the same time the governing board is not deprived of its power to discipline its officials and employees.[50]

To begin with, there is no incongruity between R.A. No. 8292 and E.O. No. 292, as previously explained in *Sojor*. Moreover, the Court fails to see how a complaint filed by a private citizen is any different from one filed by a government employee. If the grant to the CSC of concurrent original jurisdiction over administrative cases filed by private citizens against public officials would not deprive the governing bodies of the power to discipline their own officials and employees and would not be violative of R.A. No. 8292, it is inconceivable that a similar case filed by a government employee would do so. Such a distinction between cases filed by private citizens and those by civil servants is simply illogical and unreasonable. To accede to such a mistaken interpretation of the Administrative Code would be a great disservice to our developing jurisprudence.

It is therefore apparent that despite the enactment of R.A. No. 8292 giving the board of regents or board of trustees of a state school the authority to discipline its employees, the CSC

[50] *Id.* at 11.

still retains jurisdiction over the school and its employees and has concurrent original jurisdiction, together with the board of regents of a state university, over administrative cases against state university officials and employees.

Finally, with regard to the concern that the CSC may be overwhelmed by the increase in number of cases filed before it which would result from our ruling,[51] it behooves us to allay such worries by highlighting two important facts. Firstly, it should be emphasized that the CSC has original concurrent jurisdiction shared with the governing body in question, in this case, the Board of Regents of PUP. This means that if the Board of Regents first takes cognizance of the complaint, then it shall exercise jurisdiction to the exclusion of the CSC.[52] Thus, not all administrative cases will fall directly under the CSC. Secondly, Section 47, Chapter 7, Subtitle A, Title I, Book V of the Administrative Code affords the CSC the option of whether to decide the case or to deputize some other department, agency or official to conduct an investigation into the matter, thereby considerably easing the burden placed upon the CSC.

Having thus concluded, the Court sees no need to discuss the other issues raised in the petitions.

WHEREFORE, the petitions are **GRANTED.** The December 29, 2006 Decision of the Court of Appeals is hereby **REVERSED** and **SET ASIDE.** Resolution Nos. 060521 and 061141 dated March 24, 2006 and June 30, 2006, respectively, of the Civil Service Commission are **REINSTATED.**

SO ORDERED.

Carpio, Leonardo-de Castro, del Castillo, Villarama, Jr., Perez, and *Perlas-Bernabe, JJ.,* concur.

Sereno, C.J., Brion, Bersamin, and *Abad, JJ.,* join the dissent of *J.* Velasco, Jr.

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[51] *Id.* at 9.

[52] *Puse v. Delos Santos-Puse*, G.R. No. 183678, March 15, 2010, 615 SCRA 500.

Velasco, Jr., J., see dissenting opinion.

Peralta and *Reyes, JJ.,* no part.

DISSENTING OPINION

VELASCO, JR., *J.*:

Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the Court has no choice but to see to it that its mandate is obeyed.[1]

The Case

For consideration before the Court are consolidated petitions for review on *certiorari* assailing the December 29, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 95293, nullifying and setting aside the resolutions of the Civil Service Commission (CSC) on jurisdictional ground.

The Facts

On September 27, 2005, petitioner Honesto L. Cueva (Cueva), then Chief Legal Counsel of the Polytechnic University of the Philippines (PUP), filed an administrative complaint with the CSC against respondents Dante G. Guevarra (Guevarra) and Augustus F. Cezar (Cezar), who were the Officer-in-Charge/ President and the Vice-President for Administration, respectively, of the PUP. The charge was for gross dishonesty, grave misconduct, falsification of official documents, conduct prejudicial to the best interest of the service, notorious undesirability and violation of Section 4 of Republic Act (R.A.) No. 6713.[3]

According to Cueva, Guevarra falsified General Form No. 58-A (Application for Bond of Accountable Officials and

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[1] *Abello v. Commissioner of Internal Revenue*, G.R. No. 120721, February 23, 2005, 452 SCRA 162; citations omitted.

[2] *Rollo* (G.R. No. 176162), pp. 57-72.

[3] *Id.* at 97.

Employees of the Republic of the Philippines), a public document, which he was required to accomplish as the head of PUP in order to be bonded and consequently engage in financial transactions on said institution's behalf.[4] Guevarra allegedly committed falsification when he wrote on the application that he has no pending criminal and administrative cases when both respondents at that time have seventeen (17) pending cases for violation of Sec. 3 (e) of R.A. No. 3019 before the Sandiganbayan.[5] Guevarra also claimed that Cezar, notwithstanding his knowledge of these existing cases against them, still endorsed and recommended for approval said application.[6]

On their part, respondents clarified that it was their understanding that the phrase "criminal or administrative records" pertain to final conviction in a criminal administrative case. They add that, inasmuch as the adverted seventeen (17) cases had not yet been decided by the Sandiganbayan, Guevarra's negative answer to Question No. 11 in General Form No. 58-A which states, "Do you have any criminal or administrative records?" was correct.[7]

After a *prima facie* finding that respondents committed acts punishable under the Civil Service Law and Rules, the CSC, on March 24, 2006, issued Resolution No. 060521[8] formally charging Guevarra with Dishonesty and Cezar with Conduct Prejudicial to the Best Interest of the Service.

Thereafter, respondents filed their Motion for Reconsideration and Motion to Declare Absence of *Prima Facie* Case,[9] therein praying, among other things, that the case be immediately suspended. Cueva, on the other hand, interposed an Urgent *Ex-Parte* Motion for the Issuance of Preventive Suspension,[10] as

[4] *Id*. at 197.

[5] *Id*. at 98, 197 and 233.

[6] *Id*. at 197.

[7] *Id*. at 107.

[8] *Id*. at 196-199.

[9] *Id*. at 106-120.

[10] *Id*. at 146-148.

well as an Omnibus Motion,[11] praying that an order of preventive suspension against respondents issue and the inclusion of the certain offenses in the formal charge against the two, particularly: grave misconduct, falsification of official document, conduct prejudicial to the best interest of the service, being notoriously undesirable, and violation of Sec. 4 of R.A. No. 6713.

By Resolution No. 061141 dated June 30, 2006, the CSC denied both respondents' motion for reconsideration and Cueva's motion to include additional charges against respondents.[12] Nonetheless, the CSC placed Guevarra under preventive suspension for ninety (90) days.

Therefrom, respondents went to the CA on a petition for *certiorari* and prohibition questioning the jurisdiction of the CSC over the administrative complaint filed against them. On December 29, 2006, the CA rendered a Decision granting the petition and nullifying the resolution issued by the CSC for lack of jurisdiction.

Aggrieved, petitioners have filed the instant separate petitions.

Issue

WHETHER THE CIVIL SERVICE COMMISSION HAS ORIGINAL CONCURRENT JURISDICTION OVER ADMINISTRATIVE CASES FALLING UNDER THE JURISDICTION OF HEADS OF AGENCIES.

Discussion

The petitions are bereft of merit.

Jurisdiction as conferred by law

It is a basic legal precept that "[j]urisdiction over the subject matter of a case is conferred by law."[13] In the instant case, the pertinent legal provision is Section 47, Chapter 7, Subtitle A,

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[11] *Id*. at 155-162.

[12] *Id*. at 200-212.

[13] *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011.

Title I, Book V of Executive Order No. 292 (otherwise known as the "Administrative Code"), which reads:

> Sec. 47. Disciplinary Jurisdiction. — (1) **The Commission** shall decide **upon appeal** all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed **directly** with the Commission *by a private citizen* against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.
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> (2) **The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities** shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be **final** in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days'salary. **In case the decision rendered by a bureau or office head is appealable to the Commission**, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned. (Emphasis supplied.)

Based on the first paragraph of the above-quoted provision of the Administrative Code, it is clear that, as a general rule, the CSC shall have **appellate jurisdiction** over "all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office." This jurisdictional grant complements the second paragraph of the same provision which vests upon the department secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities the **original jurisdiction** to investigate and decide matters involving disciplinary action against officers and employees under their

jurisdiction. Concomitantly, the law even accords finality to their decisions "in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary."

By way of exception, the same provision allows a complaint to be "filed **directly** with the Commission **by a private citizen** against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation." Evidently, the law sanctions the direct filing of a complaint with the CSC, but only if a private citizen is the complainant. Thus, the CSC has concurrent jurisdiction with the department secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities when the complaint is filed by a private citizen.

In this case, Cueva, then Chief Legal Counsel of the PUP, filed the administrative complaint directly with the CSC against respondents. Applying the abovementioned provision of the Administrative Code, since a public employee and not a private citizen filed the complaint, the case falls under the original jurisdiction of the disciplining authority involved, which is the Board of Regents (BOR) of the PUP.[14] The CSC merely has appellate jurisdiction. As stated under Section 4 (h) of R.A. No. 8292, otherwise known as the "Higher Education Modernization Act of 1997":

Section 4. *Powers and duties of Governing Boards.* — The governing board[15] shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68 otherwise known as the Corporation Code of the Philippines:

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[14] Section 4 (h) of Republic Act No. 8292 or the Higher Education Modernization Act of 1997.

[15] Under Section 3 (a) of R.A. No. 8292, "[t]he governing body of state universities and colleges is hereby in the Board of Regents for universities and in the Board of Trustees for Colleges xxx."

xxx xxx xxx

(h) xxx and **to remove [faculty members and administrative officials and employees] for cause in accordance with the requirements of due process of law**. (Emphasis supplied.)

Admittedly, the Revised Uniform Rules on Administrative Cases in the Civil Service[16] (Civil Service Rules) is silent as to who can file a complaint directly with the CSC. The pertinent provision of the Civil Service Rules provides:

Sec. 4. Jurisdiction of the Civil Service Commission. — The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, **directly or on appeal**, including contested appointments, and shall review decisions and actions of its offices and of agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the **final authority** to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees. (Emphasis supplied.)

It is basic that a rule issued by a government agency pursuant to its quasi-legislative power cannot modify, reduce or enlarge the scope of the law which it seeks to implement. The discourse made by the Court in *Lokin, Jr. v. Commission on Elections* is instructive:

The authority to make IRRs in order to carry out an express legislative purpose, or to effect the operation and enforcement of a law is not a power exclusively legislative in character, but is rather administrative in nature. **The rules and regulations adopted and promulgated must not, however, subvert or be contrary to existing statutes**. The function of promulgating IRRs may be legitimately exercised **only for the purpose of carrying out the provisions of a law**. The power of administrative agencies is confined to implementing the law or putting it into effect. **Corollary to this is**

[16] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

that administrative regulation cannot extend the law and amend a legislative enactment. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation. Indeed, administrative or executive acts shall be valid only when they are not contrary to the laws or the Constitution.[17] (Emphasis supplied.)

Moreover, in *Padunan v. Department of Agrarian Reform Adjudication Board,*[18] this Court held:

It must be stated at the outset that **it is the law that confers jurisdiction and not the rules.** Jurisdiction over a subject matter is conferred by the Constitution or the law and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law. (Emphasis supplied.)

Taking the foregoing into consideration, Sec. 4 of the Civil Service Rules cannot be construed as authorizing one other than a private citizen to file a complaint directly with the CSC, contrary to the ruling in the *ponencia*. Pertinently, even Sec. 7 of the Civil Service Rules cannot run counter to the clear provision of the Administrative Code. Sec. 7 of the Civil Service Rules reads:

Section 7. Jurisdiction of Heads of Agencies. — Heads of Departments, agencies, provinces, cities, municipalities and other instrumentalities shall have **original concurrent jurisdiction,** *with the Commission,* over their respective officers and employees. (Emphasis supplied.)

In this regard, "original concurrent jurisdiction" means that the CSC and the BOR have *original concurrent jurisdiction* over complaints filed by a *private citizen* against a member of the civil service, but the BOR has *original and exclusive jurisdiction* over complaints filed by a *member of the civil service*

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[17] G.R. Nos. 179431-32, June 22, 2010, 621 SCRA 385; citing *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 349-350.

[18] G.R. No. 132163, January 28, 2003, 396 SCRA 196.

against an officer or employee of the university. A contrary interpretation violates the explicit provision of the Administrative Code, as this is clearly covered by Sec. 47 of the said Code.

Be that as it may, and considering that the Civil Service Rules does not explicitly mention who can file a complaint directly with the CSC, then the clear import of Sec. 47 of the Administrative Code[19] should be controlling, that is, only private citizens can file administrative complaints directly with the CSC.

Power to discipline administrative officials and employees

Indeed, government employees, in general, being members of the civil service, are under the jurisdiction of the CSC. Thus, CSC's power to discipline erring government employees cannot be doubted. As this Court held in *Garcia v. Molina*:

> The civil service encompasses all branches and agencies of the Government, including government-owned or controlled corporations (GOCCs) with original charters, like the GSIS, or those created by special law. As such, the employees are part of the civil service system and are subject to the law and to the circulars, rules and regulations issued by the CSC on discipline, attendance and general terms and conditions of employment. **The CSC has jurisdiction to hear and decide disciplinary cases against erring employees**.[20] (Emphasis supplied; citations omitted.)

Nonetheless, CSC's jurisdiction to hear and decide disciplinary cases against erring government officials is not without limitation. As discussed above, the Administrative Code vests the CSC appellate jurisdiction over "all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office." Original jurisdiction is vested upon the department secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities to investigate and decide matters involving disciplinary action against officers and employees under

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[19] Section 47, Chapter 7, Subtitle A, Title I, Book V of the Administrative Code.

[20] G.R. Nos. 157383 & 174137, August 10, 2010, 627 SCRA 540.

their jurisdiction. In *University of the Philippines v. Regino*,[21] this Court held:

> **The Civil Service Law (PD 807) expressly vests in the Commission appellate jurisdiction in administrative disciplinary cases involving members of the Civil Service**. Section 9(j) mandates that the Commission shall have the power to "hear and decide administrative disciplinary cases instituted directly with it in accordance with Section 37 or brought to it on appeal." And Section 37(a), provides that, "The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office."
>
> Under the 1972 Constitution, all government-owned or controlled corporations, regardless of the manner of their creation, were considered part of the Civil Service. Under the 1987 Constitution only government-owned or controlled corporations with original charters fall within the scope of the Civil Service pursuant to Article IX-B, Section 2(1), which states:
>
> > The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations with original charters.
>
> As a mere government-owned or controlled corporation, UP was clearly a part of the Civil Service under the 1973 Constitution and now continues to be so because it was created by a special law and has an original charter. **As a component of the Civil Service, UP is therefore governed by PD 807 and administrative cases involving the discipline of its employees come under the appellate jurisdiction of the Civil Service Commission**. (Emphasis supplied.)

Even if *Regino* involves the application of Presidential Decree No. 807[22] (PD 807), still, the doctrine enunciated therein is still applicable as the provision on the disciplinary jurisdiction

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[21] G.R. No. 88167, May 3, 1993, 221 SCRA 598.

[22] The Civil Service Law.

of the CSC under PD 807 is retained almost verbatim in the Administrative Code.

Such interpretation renders effectual the provisions of R.A. No. 8292, which vests the governing boards of the universities and colleges with the power to discipline their erring administrative officials and employees. Specifically, aside from its general powers of administration, the BOR as a governing board is granted with the specific power to appoint vice presidents, deans, directors, heads of departments, faculty members and other officials and employees.[23] Consistent with its power to hire or appoint is the power to discipline its officials and personnel. Moreover, as mentioned above, R.A. No. 8292 also grants the BOR the power to remove its officials and employees for cause in accordance with the requirements of due process of law.[24] Clearly, the power of the BOR to discipline university officials and employees cannot be denied.

Concomitantly, a ruling that CSC's jurisdiction to hear and decide disciplinary cases against erring government officials without limitation will inevitably deprive the BOR of the power to discipline its own officials and employees and render inutile the legal provisions on disciplinary measures which may be taken by it.

More importantly, if all the complaints filed by a civil service member against another government employee come under the concurrent jurisdiction of the CSC, then the day will come when the CSC will be swamped with all kinds of cases, including those where the penalty involved is suspension not exceeding 30 days or fine not exceeding 30 days' salary.

Cases cited

The *ponencia* cited several cases to support its ruling on the CSC's original jurisdiction to take cognizance of a complaint directly filed before it by a government employee or official.

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[23] Sec. 4 (g) of R.A. No. 8292.

[24] Sec. 4 (h) of R.A. No. 8292.

The first is *Camacho v. Gloria*,[25] which, as viewed in the *ponencia*, did not limit CSC's authority to exclude complaints filed directly with it by a member of the civil service. On such point, it is worth mentioning that there is no need for the Court to limit CSC's authority in said case because the facts therein do not call for such delineation. As a matter of fact, petitioner therein contends that "the Board of Regents has no jurisdiction over his case considering that as a teacher, original jurisdiction over the administrative case against him is vested with a committee whose composition must be in accordance with [R.A.] No. 4670, the *Magna Carta for Public School Teachers*." Evidently, there was no issue on CSC's jurisdiction to take cognizance of a complaint directly filed before it by a member of the civil service. Moreover, it is not the Court which may limit CSC's authority to acquire original jurisdiction over administrative complaints filed by a member of the civil service. Rather, it is the law which may make such limitation, and in this particular case, it is the clear provision of the Administrative Code.

The second is *Civil Service Commission v. Alfonso*, [26] which I submit does not also apply to the case at bar. The significant difference between the instant case and *Alfonso* lies in the fact that respondent therein submitted himself to the jurisdiction of the CSC when he filed his counter-affidavit before it. Significantly, respondent therein questioned CSC's jurisdiction over the complaint filed against him only when his motion for reconsideration was denied. Thus, he was already estopped from questioning the jurisdiction of the CSC. Such circumstance is totally absent in the instant case. Clearly, *Alfonso* is not, and should not be, a precedent to the case at bar. Moreover, *Alfonso* is a stray decision which runs counter to the clear provision of Sec. 47 of the Administrative Code.

The third, *Civil Service Commission v. Sojor*,[27] is also not binding in the instant case. As it were, the issue concerning the

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[25] G.R. No. 138862, August 15, 2003, 409 SCRA 174.

[26] G.R. No. 179452, June 11, 2009, 589 SCRA 88.

[27] G.R. No. 168766, May 22, 2008, 554 SCRA 160.

distinction between a complaint filed by a private citizen and one filed by a government employee was not taken into consideration in *Sojor*.

Finally, *Hilario v. Civil Service Commission*[28] is also not squarely in point. For one, at the time the administrative complaint was filed against petitioner therein before the CSC, he was already considered resigned by then Quezon City (QC) Mayor Ismael A. Mathay, Jr. (Mayor Mathay) almost about a year ago. Therefore, if then QC Vice-Mayor Charito L. Planas would still file the case against petitioner before the Office of the Mayor, this would just evidently be an exercise in futility. And for another, considering the fact that petitioner was already considered resigned by Mayor Mathay, it would be absurd if the latter would still be required to take cognizance of an administrative complaint filed against him, who is, for all intents and purposes, already separated from employment.

Laws harmonized and rendered effectual

To the *ponencia*, Sec. 4 (h) of R.A. No. 8292 (power of the governing board of universities and colleges to remove their administrative officials and employees for cause in accordance with the requirements of due process of law) "does not indicate any intention to remove employees and officials of state universities and colleges from the ambit of the CSC." This is true, to a point.

In this regard, it bears stressing that with my submission that only a private citizen can file a complaint directly with the CSC, the latter is not deprived of its jurisdiction over administrative cases filed by a member of the civil service against other erring government employees. In such case, the CSC retains the power of review over the decisions of the governing boards of the colleges or universities when these decisions are brought before it, on appeal, pursuant to Sec. 47 of the Administrative Code. At the same time, with such interpretation, these governing boards are not unduly deprived of the power to discipline their

[28] G.R. No. 116041, March 31, 1995, 243 SCRA 206.

own officials and employees under R.A. No. 8292 and the Administrative Code. This way, not only are laws harmonized with each other, all of them are also rendered effectual and operative.

In view of the foregoing, I submit that the CSC does not have original jurisdiction to take cognizance of the complaint directly filed before it by Cueva, then PUP legal counsel. Only a private citizen can directly file a complaint with the CSC and no other.

Accordingly, I vote to deny the petitions and affirm the appealed December 29, 2006 Decision of the Court of Appeals.

EN BANC

[G.R. No. 176579. October 9, 2012]

HEIRS OF WILSON P. GAMBOA,* *petitioners, vs.* **FINANCE SECRETARY MARGARITO B. TEVES, FINANCE UNDERSECRETARY JOHN P. SEVILLA, AND COMMISSIONER RICARDO ABCEDE OF THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) IN THEIR CAPACITIES AS CHAIR AND MEMBERS, RESPECTIVELY, OF THE PRIVATIZATION COUNCIL, CHAIRMAN ANTHONI SALIM OF FIRST PACIFIC CO., LTD. IN HIS CAPACITY AS DIRECTOR OF METRO PACIFIC ASSET HOLDINGS, INC., CHAIRMAN MANUEL V. PANGILINAN OF PHILIPPINE LONG**

* The Heirs of Wilson P. Gamboa substituted petitioner Wilson P. Gamboa per Resolution dated 17 April 2012 which noted the Manifestation of Lauro Gamboa dated 12 April 2012.

DISTANCE TELEPHONE COMPANY (PLDT) IN HIS CAPACITY AS MANAGING DIRECTOR OF FIRST PACIFIC CO., LTD., PRESIDENT NAPOLEON L. NAZARENO OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, CHAIR FE BARIN OF THE SECURITIES AND EXCHANGE COMMISSION, and PRESIDENT FRANCIS LIM OF THE PHILIPPINE STOCK EXCHANGE, *respondents*. **PABLITO V. SANIDAD and ARNO V. SANIDAD,** *petitioners-in-intervention.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE FAR-REACHING IMPLICATIONS OF THE LEGAL ISSUE JUSTIFY THE TREATMENT OF PETITION FOR DECLARATORY RELIEF AS ONE FOR *MANDAMUS*.— Contrary to Pangilinan's narrow view. xxx [T]he serious economic consequences resulting in the interpretation of the term "capital" in Section 11, Article XII of the Constitution undoubtedly demand an immediate adjudication of this issue. Simply put, the far-reaching implications of this issue justify the treatment of the petition as one for *mandamus*. In *Luzon Stevedoring Corp. v. Anti-Dummy Board,* the Court deemed it wise and expedient to resolve the case although the petition for declaratory relief could be outrightly dismissed for being procedurally defective. There, appellant admittedly had already committed a breach of the Public Service Act in relation to the Anti-Dummy Law since it had been employing non-American aliens long before the decision in a prior similar case. However, the main issue in *Luzon Stevedoring* was of transcendental importance, involving the exercise or enjoyment of rights, franchises, privileges, properties and businesses which only Filipinos and qualified corporations could exercise or enjoy under the Constitution and the statutes. Moreover, the same issue could be raised by appellant in an appropriate action. Thus, in *Luzon Stevedoring* the Court deemed it necessary to finally dispose of the case for the guidance of all concerned, despite the apparent procedural flaw in the petition. The circumstances surrounding the present

case, such as the supposed procedural defect of the petition and the pivotal legal issue involved, resemble those in *Luzon Stevedoring*. Consequently, in the interest of substantial justice and faithful adherence to the Constitution, we opted to resolve this case for the guidance of the public and all concerned parties.

2. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; SECTION II, ARTICLE XII THEREOF; NO REDEFINITION OF THE TERM "CAPITAL".— For more than 75 years since the 1935 Constitution, the Court has not interpreted or defined the term "capital" found in various economic provisions of the 1935, 1973 and 1987 Constitutions. There has never been a judicial precedent interpreting the term "capital" in the 1935, 1973 and 1987 Constitutions, until now. Hence, it is patently wrong and utterly baseless to claim that the Court in defining the term "capital" in its 28 June 2011 Decision modified, reversed, or set aside the purported long-standing definition of the term "capital," which supposedly refers to the total outstanding shares of stock, whether voting or non-voting. To repeat, until the present case there has never been a Court ruling categorically defining the term "capital" found in the various economic provisions of the 1935, 1973 and 1987 Philippine Constitutions. The opinions of the SEC, as well as of the Department of Justice (DOJ), on the definition of the term "capital" as referring to both voting and non-voting shares (combined total of common and preferred shares) are, in the first place, conflicting and inconsistent. There is no basis whatsoever to the claim that the SEC and the DOJ have consistently and uniformly adopted a definition of the term "capital" contrary to the definition that this Court adopted in its 28 June 2011 Decision.

3. COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); THE OPINIONS ISSUED BY THE INDIVIDUAL COMMISSIONERS OR THE LEGAL OFFICERS OF THE SEC DO NOT HAVE THE FORCE AND EFFECT OF SEC RULES AND REGULATIONS BECAUSE IT IS ONLY THE SEC *EN BANC* THAT IS EMPOWERED TO ISSUE OPINIONS AND APPROVE RULES AND REGULATIONS.— The opinions issued by SEC legal officers do not have the force and effect of SEC rules and regulations because only the SEC *en banc* can adopt

rules and regulations. As expressly provided in Section 4.6 of the Securities Regulation Code, the SEC cannot delegate to any of its individual Commissioner or staff the power to adopt any rule or regulation. Further, **under Section 5.1 of the same Code, it is *the SEC as a collegial body,* and not any of its legal officers, that is empowered to issue *opinions* and approve rules and regulations.** x x x. Thus, the act of the individual Commissioners or legal officers of the SEC in issuing opinions that have the effect of SEC rules or regulations is *ultra vires*. Under Sections 4.6 and 5.1 (g) of the Code, only the SEC *en banc* can "issue opinions" that have the force and effect of rules or regulations. Section 4.6 of the Code bars the SEC *en banc* from delegating to any individual Commissioner or staff the power to adopt rules or regulations. **In short, any opinion of individual Commissioners or SEC legal officers does not constitute a rule or regulation of the SEC.** Both the Voting Control Test and the Beneficial Ownership Test must be applied to determine whether a corporation is a "Philippine national." The interpretation by legal officers of the SEC of the term "capital," embodied in various opinions which respondents relied upon, is merely preliminary and an opinion only of such officers. To repeat, any such opinion does not constitute an SEC rule or regulation. In fact, many of these opinions contain a disclaimer which expressly states: "xxx **the foregoing opinion** is based solely on facts disclosed in your query and relevant only to the particular issue raised therein and **shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances.**" Thus, the opinions clearly make a *caveat* that they do not constitute binding precedents on any one, not even on the SEC itself.

4. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; THE OPINIONS OF THE SEC *EN BANC,* AS WELL AS THE DEPARTMENT OF JUSTICE, INTERPRETING THE LAW ARE NEITHER CONCLUSIVE NOR CONTROLLING AND THUS, DO NOT BIND THE COURT; THE POWER TO MAKE A FINAL INTERPRETATION OF THE TERM "CAPITAL" LIES WITH THE COURT.— [T]he opinions of the SEC *en banc*, as well as of the DOJ, interpreting the law are neither conclusive nor controlling and thus, do not bind the Court. It

is hornbook doctrine that any interpretation of the law that administrative or quasi-judicial agencies make is only preliminary, never conclusive on the Court. The power to make a final interpretation of the law, in this case the term "capital" in Section 11, Article XII of the 1987 Constitution, lies with this Court, not with any other government entity.

5. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; SECTION 11, ARTICLE XII THEREOF; FILIPINIZATION OF PUBLIC UTILITIES; ANY FORM OF AUTHORIZATION FOR THE OPERATION OF PUBLIC UTILITIES SHALL BE GRANTED ONLY TO CITIZENS OF THE PHILIPPINES OR TO CORPORATIONS OR ASSOCIATIONS ORGANIZED UNDER THE LAWS OF THE PHILIPPINES AT LEAST SIXTY PER CENTUM OF WHOSE CAPITAL IS OWNED BY PHILIPPINE NATIONALS.— Under Section 10, Article XII of the 1987 Constitution, Congress may "reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments." Thus, in numerous laws Congress has reserved certain areas of investments to Filipino citizens or to corporations at least sixty percent of the "**capital**" of which is owned by Filipino citizens. x x xWith respect to public utilities, the 1987 Constitution specifically ordains: Section 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty** *per centum* **of whose capital is owned by such citizens** xxx. This provision, which mandates the Filipinization of public utilities, requires that any form of authorization for the operation of public utilities shall be granted only to "citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens." "**The provision is [an express] recognition of the sensitive and vital position of public utilities both in the national economy and for national security**." The 1987 Constitution reserves the ownership and operation of public utilities exclusively to (1) Filipino citizens,

or (2) corporations or associations at least 60 percent of whose "capital" is owned by Filipino citizens. Hence, in the case of individuals, only Filipino citizens can validly own and operate a public utility. In the case of corporations or associations, at least 60 percent of their "capital" must be owned by Filipino citizens. **In other words, under Section 11, Article XII of the 1987 Constitution, to own and operate a public utility a corporation's capital must at least be 60 percent owned by *Philippine nationals.***

6. ID.; ID.; ID.; ID.; ID.; TERM "PHILIPPINE NATIONALS," DEFINED.— The FIA is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment. The FIA spells out the procedures by which non-Philippine nationals can invest in the Philippines. Among the key features of this law is the concept of a negative list or the Foreign Investments Negative List. xxx. Section 8 of the FIA enumerates the investment areas "reserved to Philippine nationals." **Foreign Investment Negative List A consists of "*areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws*," where foreign equity participation in any enterprise shall be limited to the maximum percentage expressly prescribed by the Constitution and other specific laws. In short, to own and operate a public utility in the Philippines one must be a "Philippine national" as defined in the FIA. The FIA is abundant notice to foreign investors to what extent they can invest in public utilities in the Philippines.** To repeat, among the areas of investment covered by the Foreign Investment Negative List A is the ownership and operation of public utilities, which the Constitution expressly reserves to Filipino citizens and to corporations at least 60% owned by Filipino citizens. **In other words, Negative List A of the FIA reserves the ownership and operation of public utilities only to "Philippine nationals," defined in Section 3 (a) of the FIA as** "(1) a citizen of the Philippines; xxx or (3) **a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock *outstanding and entitled to vote* is owned and held by citizens of the Philippines**; or (4) a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of

the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals." Clearly, from the effectivity of the Investment Incentives Act of 1967 to the adoption of the Omnibus Investments Code of 1981, to the enactment of the Omnibus Investments Code of 1987, and to the passage of the present Foreign Investments Act of 1991, or **for more than four decades, the statutory definition of the term "Philippine national" has been uniform and consistent: it means a Filipino citizen, or a domestic corporation at least 60% of the *voting stock* is owned by Filipinos. Likewise, these same statutes have uniformly and consistently required that only "Philippine nationals" could own and operate public utilities in the Philippines.**

7. ID.; ID.; ID.; ID.; MERE NON-AVAILMENT OF TAX FISCAL AND INCENTIVES BY A NON-PHILIPPINE NATIONAL CANNOT EXEMPT IT FROM SECTION II, ARTICLE XII OF THE CONSTITUTION REGULATING FOREIGN INVESTMENTS IN PUBLIC UTILITIES.— The FIA does not grant tax or fiscal incentives to any enterprise. Tax and fiscal incentives to investments are granted separately under the Omnibus Investments Code of 1987, not under the FIA. In fact, the FIA expressly repealed Articles 44 to 56 of Book II of the Omnibus Investments Code of 1987, which articles previously regulated foreign investments in nationalized or partially nationalized industries. The FIA is the applicable law regulating foreign investments in nationalized or partially nationalized industries. There is nothing in the FIA, or even in the Omnibus Investments Code of 1987 or its predecessor statutes, that states, expressly or impliedly, that the FIA or its predecessor statutes do not apply to enterprises not availing of tax and fiscal incentives under the Code. The FIA and its predecessor statutes apply to investments in all domestic enterprises, whether or not such enterprises enjoy tax and fiscal incentives under the Omnibus Investments Code of 1987 or its predecessor statutes. **The reason is quite obvious — mere non-availment of tax and fiscal incentives by a non-Philippine national cannot exempt it from Section 11, Article XII of**

the Constitution regulating foreign investments in public utilities.

8. ID.; ID.; ID.; ID.; CONSTITUTIONAL REQUIREMENT OF AT LEAST 60 PERCENT FILIPINO OWNERSHIP APPLIES NOT ONLY TO VOTING CONTROL OF THE CORPORATION BUT ALSO TO THE BENEFICIAL OWNERSHIP OF THE CORPORATION; MUST APPLY UNIFORMLY AND ACROSS THE BOARD TO ALL CLASSES OF SHARES, REGARDLESS OF NOMENCLATURE AND CATEGORY, COMPRISING THE CAPITAL OF A CORPORATION.— The 28 June 2011 Decision declares that the 60 percent Filipino ownership required by the Constitution to engage in certain economic activities applies not only to voting control of the corporation, but **also to the beneficial ownership of the corporation**. To repeat, we held: Mere legal titile is insufficient to meet the 60 percent Filipino-owned "capital" required in the Consitution. **Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required.** The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]." This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by "a trustee of funds for pension or other employee retirement or separation benefits," the trustee is a Philippine national if "at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals." Likewise, Section 1 (b) of the Implementing Rules of the FIA provides that "for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential.**" Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock consists

of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.

9. ID.; ID.; ID.; ID.; APPLYING UNIFORMLY THE 60-40 OWNERSHIP REQUIREMENT IN FAVOR OF FILIPINO CITIZENS TO EACH CLASS OF SHARES, REGARDLESS OF DIFFERENCES IN VOTING RIGHTS, PRIVILEGES AND RESTRICTIONS, GUARANTEES EFFECTIVE FILIPINO CONTROL OF PUBLIC UTILITIES AND INSURES THAT THE "CONTROLLING INTEREST" IN PUJBLIC UTILITIES ALWAYS LIES IN THE HANDS OF FILIPINO CITIZENS.— Since a specific class of shares may have rights and privileges or restrictions different from the rest of the shares in a corporation, the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution must apply not only to shares with voting rights but also to shares without voting rights. Preferred shares, denied the right to vote in the election of directors, are anyway still entitled to vote on the eight specific corporate matters mentioned above**. Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos.** Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.** This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution. Moreover, such uniform application to each class of shares insures that the "controlling interest" in public utilities always lies in the hands of Filipino citizens.

10. ID.; ID.; ID.; ID.; THE FRAMERS OF THE CONSTITUTION INTEND TO RESERVE EXCLUSIVELY TO PHILIPPINE NATIONALS THE "CONTROLLING INTEREST" IN PUBLIC UTILITIES.— The use of the term "capital" was intended to replace the word "stock" because associations without stocks can operate public utilities as long as they meet the 60-40 ownership requirement in favor of Filipino citizens prescribed in Section 11, Article XII of the Constitution. However, this did not change the intent of the framers of the Constitution to reserve exclusively to Philippine nationals the "**controlling interest**" in public utilities. During the drafting of the 1935 Constitution, economic protectionism was "the battle-cry of the nationalists in the Convention." The same battle-cry resulted in the nationalization of the public utilities. This is also the same intent of the framers of the 1987 Constitution who adopted the exact formulation embodied in the 1935 and 1973 Constitutions on foreign equity limitations in partially nationalized industries.

11. ID.; ID.; ID.; ID.; QUESTION OF WHETHER THE CORPORATION VIOLATED THE 60-40 OWNERSHIP REQUIREMENT IN FAVOR OF FILIPINO CITIZEN CALLS FOR A PRESENTATION AND DETERMINATION OF EVIDENCE THROUGH HEARING, WHICH IS OUTSIDE THE PROVINCE OF THE COURT'S JURISDICTION, BUT WELL WITHIN THE SEC'S STATUTORY POWERS.— [T]he Court did not decide, and in fact refrained from ruling on the question of whether PLDT violated the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the 1987 Constitution. Such question indisputably calls for a presentation and determination of evidence through a hearing, which is generally outside the province of the Court's jurisdiction, but well within the SEC's statutory powers. Thus, for obvious reasons, the Court limited its decision on the purely legal and threshold issue on the definition of the term "capital" in Section 11, Article XII of the Constitution and directed the SEC to apply such definition in determining the exact percentage of foreign ownership in PLDT.

12. CIVIL LAW; PARTIES; INDISPENSABLE PARTY; THE PHILIPPINE LONG DISTANCE COMPANY (PLDT) IS

NOT AN INDISPENSABLE PARTY FOR A COMPLETE RESOLUTION OF THE PURELY LEGAL ISSUE ON THE DEFINITION OF THE TERM "CAPITAL" IN SECTION II, ARTICLE XII OF THE 1987 CONSTITTUTION.— [T]he Court can validly, properly, and fully dispose of the fundamental legal issue in this case even without the participation of PLDT since defining the term "capital" in Section 11, Article XII of the Constitution does not, in any way, depend on whether PLDT was impleaded. Simply put, PLDT is not indispensable for a complete resolution of the purely legal question in this case. In fact, the Court, by treating the petition as one for *mandamus*, merely directed the SEC to apply the Court's definition of the term "capital" in Section 11, Article XII of the Constitution in determining whether PLDT committed any violation of the said constitutional provision. **The dispositive portion of the Court's ruling is addressed not to PLDT but solely to the SEC, which is the administrative agency tasked to enforce the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution.**

13. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; NO DENIAL THEREOF IN CASE AT BAR.— Since the Court limited its resolution on the purely legal issue on the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution, and directed the SEC to investigate any violation by PLDT of the 60-40 ownership requirement in favor of Filipino citizens under the Constitution, there is no deprivation of PLDT's property or denial of PLDT's right to due process, contrary to Pangilinan and Nazareno's misimpression. Due process will be afforded to PLDT when it presents proof to the SEC that it complies, as it claims here, with Section 11, Article XII of the Constitution.

14. ID.; CONSTITUTIONAL LAW; 1987 CONSTITUTION; SECTION II, ARTICLE XII THEREOF; FILIPINIZATION OF PUBLIC UTILITIES; CONSTITUTIONAL PROVISIONS LIMITING FOREIGN OWNERSHIP IN PUBLIC UTILITIES SHALL BE UPHELD REGARDLESS OF THE EXPERIENCE OF OUR NEIGHBORING COUNTRIES.— If government ownership of public utilities is the solution, then foreign investments in our public utilities serve no purpose. Obviously, there can never be foreign

investments in public utilities if, as Dr. Villegas claims, the "solution is to make sure that those industries are in the hands of state enterprises." Dr. Villegas's argument that foreign investments in telecommunication companies like PLDT are badly needed to save our ailing economy contradicts his own theory that the solution is for government to take over these companies. Dr. Villegas is barking up the wrong tree since State ownership of public utilities and foreign investments in such industries are diametrically opposed concepts, which cannot possibly be reconciled. In any event, the experience of our neighboring countries cannot be used as argument to decide the present case differently for two reasons. First, the governments of our neighboring countries have, as claimed by Dr. Villegas, taken over ownership and control of their strategic public utilities like the telecommunications industry. Second, our Constitution has specific provisions limiting foreign ownership in public utilities which the Court is sworn to uphold regardless of the experience of our neighboring countries. In our jurisdiction, the Constitution expressly reserves the ownership and operation of public utilities to Filipino citizens, or corporations or associations at least 60 percent of whose capital belongs to Filipinos. Following Dr. Villegas's claim, the Philippines appears to be more liberal in allowing foreign investors to own 40 percent of public utilities, unlike in other Asian countries whose governments own and operate such industries.

15. ID.; ID.; ID.; ID.; ID.; PUBLIC UTILITIES THAT FAIL TO COMPLY WITH THE NATIONALITY REQUIREMENT UNDER SECTION II, ARTICLE XII AND THE FIA CAN CURE THEIR DEFICIENCIES PRIOR TO THE START OF THE ADMINISTRATIVE CASE OR INVESTIGATION.— In its Motion for Partial Reconsideration, the SEC sought to clarify the reckoning period of the application and imposition of appropriate sanctions against PLDT if found violating Section 11, Article XII of the Constitution. As discussed, the Court has directed the SEC to investigate and determine whether PLDT violated Section 11, Article XII of the Constitution. Thus, there is no dispute that it is only after the SEC has determined PLDT's violation, if any exists at the time of the commencement of the administrative case or investigation, that the SEC may impose the statutory sanctions

against PLDT. In other words, once the 28 June 2011 Decision becomes final, the SEC shall impose the appropriate sanctions only if it finds after due hearing that, at the start of the administrative case or investigation, there is an existing violation of Section 11, Article XII of the Constitution. Under prevailing jurisprudence, public utilities that fail to comply with the nationality requirement under Section 11, Article XII and the FIA can cure their deficiencies prior to the start of the administrative case or investigation.

16. ID.; ID.; ID.; ID.; ID.; ANY DEVIATION FROM THE 60 PERCENT FILIPINO OWNERSHIP AND CONTROL REQUIREMENT FOR PUBLIC UTILITIES NECESSITATES AN AMENDMENT TO THE CONSTITUTION.— The Constitution expressly declares as State policy the development of an economy "***effectively controlled***" by Filipinos. Consistent with such State policy, the Constitution explicitly reserves the ownership and operation of public utilities to Philippine nationals, who are defined in the Foreign Investments Act of 1991 as Filipino citizens, or corporations or associations at least 60 percent of whose capital ***with voting rights*** belongs to Filipinos. The FIA's implementing rules explain that "[f]or stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential**." In effect, the FIA clarifies, reiterates and confirms the interpretation that the term "capital" in Section 11, Article XII of the 1987 Constitution refers to ***shares with voting rights, as well as with full beneficial ownership.*** This is precisely because the right to vote in the election of directors, coupled with full beneficial ownership of stocks, translates to effective control of a corporation. Any other construction of the term "capital" in Section 11, Article XII of the Constitution contravenes the letter and intent of the Constitution. Any other meaning of the term "capital" openly invites alien domination of economic activities reserved exclusively to Philippine nationals. Therefore, respondents' interpretation will ultimately result in handing over effective control of our national economy to foreigners in patent violation of the Constitution, making Filipinos second-class citizens in their own country. x x x. The 1935, 1973 and 1987 Constitutions have the same 60 percent

Filipino ownership and control requirement for public utilities like PLDT. Any deviation from this requirement necessitates an amendment to the Constitution as exemplified by the Parity Amendment. This Court has no power to amend the Constitution for its power and duty is only to faithfully apply and interpret the Constitution.

VELASCO, JR., *J., dissenting opinion*:

1. STATUTORY CONSTRUCTION; 1987 CONSTITUTION; THE PRIMARY SOURCE FROM WHICH TO ASCERTAIN CONSTITUTIONAL INTENT OR PURPOSE IS THE LANGUAGE OF THE CONSTITUTION ITSELF.— It is settled though that the "primary source from which to ascertain constitutional intent or purpose is the language of the constitution itself." To this end, **the words used by the Constitution should as much as possible be understood in their ordinary meaning** as the Constitution is not a lawyer's document. This approach, otherwise known as **the verba legis rule, should be applied save where technical terms are employed.**

2. ID.; ID.; *VERBA LEGIS* RULE; WORDS USED BY THE CONSTITUTION SHOULD AS MUCH AS POSSIBLE BE GIVEN THEIR ORDINARY MEANING EXCEPT WHERE TECHNICAL TERMS ARE EMPLOYED IN WHICH CASE THE SIGNIFICANCE THUS ATTACHED TO THEM PREVAILS; ELUCIDATED.— *J.M. Tuason & Co., Inc. v. Land Tenure Administration* illustrates the verba legis rule. There, the Court cautions against departing from the commonly understood meaning of ordinary words used in the Constitution, *viz*.: We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the **words in which constitutional provisions are couched express the objective sought to be attained**. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, **its language as much**

as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus, there are cases where the need for construction is reduced to a minimum.

3. ID.; ID.; SECTION 11, ARTICLE XII THEREOF; TERM "CAPITAL," CONSTRUED.— "Capital" in the first sentence of Sec. 11, Art. XII must then be accorded a meaning accepted, understood, and used by an ordinary person not versed in the technicalities of law. As defined in a non-legal dictionary, capital stock or capital is ordinarily taken to mean "the **outstanding shares** of a joint stock company considered as an aggregate" or "the **ownership element** of a corporation divided into shares and represented by certificates." The term "capital" includes all the outstanding shares of a company that represent "the proprietary claim in a business." **It does not distinguish based on the voting feature of the stocks but refers to all shares, be they voting or non-voting.** Neither is the term limited to the management aspect of the corporation but clearly refers to the separate aspect of **ownership** of the corporate shares thereby encompassing all shares representing the equity of the corporation. This plain meaning, as understood, accepted, and used in ordinary parlance, hews with the definition given by Black who equates capital to capital stock and defines it as "the total number of shares of stock that a corporation may issue under its charter or articles of incorporation, **including both common stock and preferred stock."** This meaning is also reflected in legal commentaries on the Corporation Code. The respected commentator Ruben E. Agpalo defines "capital" as the "money, property or means contributed by stockholders for the business or enterprise for which the corporation was formed and generally implies that such money or property or means have been contributed in payment for stock issued to the contributors." Meanwhile, "capital stock" is "**the aggregate of the shares actually subscribed** [or] the amount subscribed and paid-in and upon which the corporation is to conduct its operations, or the amount paid-in by its stockholders in money, property or services with which it is to conduct its business."

4. ID.; ID.; ID.; RESORT TO EXTRANEOUS AIDS TO FERRET OUT CONSTITUTIONAL INTENT, WHEN IMPERATIVE.—

> [F]ollowing the *verba legis* approach, [the *ponente* sees] no reason to stray away from what appears to be a common and settled acceptation of the word "capital," given that, as used in the constitutional provision in question, **it stands unqualified** by any restrictive or expansive word as to reasonably justify a distinction or a delimitation of the meaning of the word. *Ubi lex non distinguit nos distinguere debemus*, when the law does not distinguish, we must not distinguish. Using this plain meaning of "capital" within the context of Sec. 11, Art. XII, foreigners are entitled to own **not more than 40% of the outstanding capital stock, w**hich would include both voting and non-voting shares. When the seeming ambiguity on the meaning of "capital" cannot be threshed out by looking at the language of the Constitution, then resort to extraneous aids has become imperative. The Court can utilize the following extraneous aids, to wit: (1) proceedings of the convention; (2) changes in phraseology; (3) history or realities existing at the time of the adoption of the Constitution; (4) prior laws and judicial decisions; (5) contemporaneous construction; and (6) consequences of alternative interpretations. [the *ponente* submits] that all these aids of constitutional construction affirm that the only acceptable construction of "capital" in the first sentence of Sec. 11, Art. XII of the 1987 Constitution is that it refers to **all** shares of a corporation, both voting and non-voting.

5. ID.; ID.; ID.; A PERSON, OBJECT OR THING OMITTED MUST HAVE BEEN OMITTED INTENTIONALLY; THE FRAMERS OF THE CONSTITUTION DID NOT INTEND TO LIMIT THE MEANING OF "CAPITAL" TO VOTING CAPITAL STOCK; THERE WAS NO CHANGE IN PHRASEOLOGY FROM THE 1935 AND 1973 CONSTITUTIONS, OR A TRANSITORY PROVISION THAT SIGNALS SUCH CHANGE, WITH RESPECT TO FOREIGN OWNERSHIP IN PUBLIC UTILITY.— The proceedings of the 1986 Constitutional Commission that drafted the 1987 Constitution were accurately recorded in the Records of the Constitutional Commission. To bring to light the true meaning of the word "capital" in the first line of Sec. 11, Art. XII, one must peruse, dissect and analyze the entire deliberations of the Constitutional Commission pertinent to the article on national economy and patrimony x x x.

> [N]owhere in the records of the CONCOM can it be deduced that the idea of full ownership of voting stocks presently parlayed by the majority was earnestly, if at all, considered. In fact, the framers decided that the term "capital," as used in the 1935 and 1973 Constitutions, should be properly interpreted as the "subscribed capital," which, again, does not distinguish stocks based on their board-membership voting features. x x x. If the framers wanted the word"capital" to mean voting capital stock, their terminology would have certainly been unmistakably limiting as to leave no doubt about their intention. But **the framers consciously and purposely excluded restrictive phrase,** such as "voting stocks" or "controlling interest," in the approved final draft, the proposal of the UP Law Center, Commissioner Davide and Commissioner Azcuna notwithstanding. Instead, they retained "capital" as "used in the 1935 and 1973 Constitutions." There was, therefore, a conscious design to avoid stringent words that would limit the meaning of "capital" in a sense insisted upon by the majority. *Cassus omissus pro omisso habendus est* — a person, object, or thing omitted must have been omitted intentionally. More importantly, by using the word "capital," the intent of the framers of the Constitution was to include all types of shares, whether voting or non-voting, within the ambit of the word.

6. ID.; ID.; ID.; A DOUBTFUL PROVISION IN THE CONSTITUTION MUST BE EXAMINED IN THE LIGHT OF THE HISTORY OF THE TIMES AND THE CONDITION AND CIRCUMSTANCES PREVAILING DURING THE DRAFTING PERIOD; HISTORY OR REALITIES OR CIRCUMSTANCES PREVAILING DURING THE DRAFTING OF THE CONSTITUTION VALIDATE THE ADOPTION OF THE PLAIN MEANING OF "CAPITAL".— This plain, non-exclusive interpretation of "capital" also comes to light considering the economic backdrop of the 1986 CONCOM when the country was still starting to rebuild the financial markets and regain the foreign investors' confidence following the changes caused by the toppling of the Martial Law regime. As previously pointed out, the Court, in construing the Constitution, must take into consideration the aims of its framers and the evils they wished to avoid and address. In *Civil Liberties Union v. Executive Secretary*, We held: A foolproof yardstick in constitutional

construction is the intention underlying the provision under consideration. Thus, it has been held that *the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any sought to be prevented or remedied.* A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. *The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.* It is, thus, proper to revisit the circumstances prevailing during the drafting period. In an astute observation of the economic realities in 1986, quoted by respondent Pangilinan, University of the Philippines School of Economics Professor Dr. Emmanuel S. de Dios examined the nation's dire need for foreign investments and foreign exchange during the time when the framers deliberated on what would eventually be the National Economy and Patrimony provisions of the Constitution x x x. Surely, it was far from the minds of the framers to alienate and disenfranchise foreign investors by imposing an indirect restriction that only exacerbates the dichotomy between management and ownership without the actual guarantee of giving control and protection to the Filipino investors. Instead, it can be fairly assumed that the framers intended to avoid further economic meltdown and so chose to attract foreign investors by allowing them to 40% equity ownership of the entirety of the corporate shareholdings but, wisely, imposing limits on their participation in the governing body to ensure that the effective control and ultimate economic benefits still remained with the Filipino shareholders.

7. ID.; ID.; ID.; JUDICIAL DECISIONS AND PRIOR LAWS USE THE TERM "CAPITAL" AS EQUIVALENT TO ENTIRE CAPITAL STOCKHOLDINGS IN A CORPORATION.— That the term "capital" in Sec. 11, Art. XII is equivalent to "capital stock," which encompasses all classes of shares regardless of their nomenclature or voting capacity, is easily determined by a review of various laws passed prior to the ratification of the 1987 Constitution. In 1936, for instance, the Public Service Act established the nationality requirement for corporations that may be granted the authority

to operate a "public service," which include most of the present-day public utilities, by referring to the paid-up "capital stock" of a corporation. x x x The heading of Sec. 2 of Commonwealth Act No. (CA) 108, or the Anti-Dummy Law, which was approved on October 30, 1936, similarly conveys the idea that the term "capital" is equivalent to "capital stock". x x x Pursuant to these legislative acts and under the aegis of the Constitutional nationality requirement of public utilities then in force, Congress granted various franchises upon the understanding that the "capital stock" of the grantee is at least 60% Filipino. In 1964, Congress, via Republic Act No. (RA) 4147, granted Filipinas Orient Airway, Inc. a legislative franchise to operate an air carrier upon the understanding that its "capital stock" was 60% percent Filipino-owned. x x x. The grant of a public utility franchise to Air Manila, Inc. to establish and maintain air transport in the country a year later pursuant to RA 4501 contained exactly the same Filipino capitalization requirement imposed in RA 4147 x x x. In like manner, RA 5514, which granted a franchise to the Philippine Communications Satellite Corporation in 1969, required of the grantee to execute management contracts only with corporations whose "capital or capital stock" are at least 60% Filipino. x x x. In 1968, RA 5207, otherwise known as the "Atomic Energy Regulatory Act of 1968," considered a corporation sixty percent of whose capital stock as domestic x x x. Anent pertinent judicial decisions, this Court has used the very same definition of capital as equivalent to the entire capital stockholdings in a corporation in resolving various other issues. In ***National Telecommunications Commission v. Court of Appeals,*** this Court, thus, held: **The term "capital" and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation. The capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for, which need not necessarily be, and can be more than, the par value of the shares. In fine, it is the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares.**

8. ID.; ID.; ID.; THE SECURITY AND EXCHANGE COMMISSION'S (SEC) LONG-STANDING INTERPRETATION OF THE TERM "CAPITAL" TO REFER TO THE OUTSTANDING CAPITAL STOCK, IRRESPECTIVE OF NOMENCLATURE OR CLASSIFICATION IS ENTITLED TO RESPECTFUL CONSIDERATION; THE SEC HAS REFLECTED THE POPULAR CONTEMPORANEOUS CONSTRUCTION OF CAPITAL IN COMPUTING THE NATIONALITY REQUIREMENT BASED ON THE TOTAL CAPITAL STOCK, NOT ONLY THE VOTING STOCK OF A CORPORATION.— The SEC has confirmed that, as an institution, it has always interpreted and applied the 40% maximum foreign **ownership** limit for public utilities to the total capital stock, and not just its total voting stock. x x x. It should be borne in mind that the SEC is the government agency invested with the jurisdiction to determine at the first instance the observance by a public utility of the constitutional nationality requirement prescribed vis-à-vis the ownership of public utilities and to interpret legislative acts, like the FIA. The rationale behind the doctrine of primary jurisdiction lies on the postulate that such administrative agency has the "special knowledge, experience and tools to determine technical and intricate matters of fact . . ." Thus, the determination of the SEC is afforded great respect by other executive agencies, like the Department of Justice (DOJ), and by the courts. x x x. In ***People v. Quasha,*** a case decided under the 1935 Constitution, this Court narrated that in 1946 the SEC approved the incorporation of a common carrier, a public utility, where Filipinos, while not holding the controlling vote, owned the majority of the capital. x x x. The SEC has, through the years, stood by this interpretation. In an Opinion dated November 21, 1989, the SEC held that the basis of the computation for the nationality requirement is the total outstanding capital stock x x x. The SEC again echoed the same interpretation in an Opinion issued last April 19, 2011 wherein it stated, thus: This is, thus, the general rule, such that when the provision merely uses the term "capital" without qualification (as in Section 11, Article XII of the 1987 Constitution, which deals with equity structure in a public utility company), the same should be interpreted to refer to the sum total of the outstanding

capital stock, irrespective of the nomenclature or classification as common, preferred, voting or non-voting. The above construal is in harmony with the letter and spirit of Sec. 11, Art. XII of the Constitution and its counterpart provisions in the 1935 and 1973 Constitution and, thus, is entitled to respectful consideration.

9. ID.; ID.; ID.; WHERE A STATUTE HAS RECEIVED A CONTEMPORANEOUS AND PRACTICAL INTERPRETATION AND THE STATUTE AS INTERPRETED IS RE-ENACTED, THE PRACTICAL INTERPRETATION IS ACCORDED GREATER WEIGHT THAN IT ORDINARILY RECEIVES, AND IS REGARDED AS PRESUMPTIVELY THE CORRECT INTERPRETATION OF THE LAW; OPINIONS ISSUED BY THE SEC-OFFICE OF THE GENERAL COUNSEL (OGC) DESERVES AS MUCH RESPECT AS THE OPINIONS ISSUED BY THE SEC *EN BANC*.— ***Laxamana v. Baltazar*** restates this long-standing dictum: "[w]here a statute has received a contemporaneous and practical interpretation and the statute as interpreted is re-enacted, the practical interpretation is accorded greater weight than it ordinarily receives, and is regarded as presumptively the correct interpretation of the law. The rule here is based upon the theory that the legislature is acquainted with the contemporaneous interpretation of a statute, especially when made by an administrative body or executive officers charged with the duty of administering or enforcing the law, and therefore impliedly adopts the interpretation upon re-enactment." Hence, it can be safely assumed that the framers, in the course of deliberating the 1987 Constitution, knew of the adverted SEC interpretation. Parenthetically, it is immaterial whether the SEC opinion was rendered by the banc or by the SEC-Office of the General Counsel (OGC) considering that the latter has been given the authority to issue opinions on the laws that the SEC implements under SEC-EXS. Res. No. 106, Series of 2002. The conferment does not violate Sec. 4.6 of the Securities and Regulation Code (SRC) that proscribes the non-delegation of the legislative rule making power of the SEC, which is in the nature of subordinate legislation. As may be noted, the same Sec. 4.6 does not mention the SEC's power to issue interpretative "opinions and provide guidance on and supervise compliance with such rules," which is

incidental to the SEC's enforcement functions. A legislative rule and an interpretative rule are two different concepts and the distinction between the two is established in administrative law. Hence, the various opinions issued by the SEC-OGC deserve as much respect as the opinions issued by the SEC *en banc*. x x x. In view of the foregoing, it is submitted that the long-established interpretation and mode of computing by the SEC of the total capital stock strongly recognize the intent of the framers of the Constitution to allow access to much-needed foreign investments confined to 40% of the capital stock of public utilities.

10. ID.; ID.; ID.; A CONSTRUCTION OF "CAPITAL" AS REFERRING TO THE TOTAL SHAREHOLDINGS OF THE COMPANY IS AN ACKNOWLEDGMENT OF THE EXISTENCE OF NUMEROUS CORPORATE ENHANCING MECHANISMS, BESIDES OWNERSHIP OF VOTING RIGHTS, THAT LIMITS THE PROPORTION BETWEEN THE SEPARATE AND DISTINCT CONCEPTS OF ECONOMIC RIGHT TO THE CASH FLOW OF THE CORPORATION AND THE RIGHT TO CORPORATE CONTROL.— A construction of "capital" as referring to the total shareholdings of the company is an acknowledgment of the existence of numerous corporate control-enhancing mechanisms, besides ownership of voting rights, that limits the proportion between the separate and distinct concepts of **economic right** to the cash flow of the corporation **and** the right to corporate **control** (hence, they are also referred to as proportionality-limiting measures). This corporate reality is reflected in SRC Rule 3 (E) of the Amended Implementing Rules and Regulations (IRR) of the SRC and Sec. 3 (g) of The Real Estate Investment Trust Act (REIT) of 2009, which both provide that control can exist **regardless of ownership of voting shares.** x x x. **[O]wnership of voting shares or power alone without economic control of the company does not necessarily equate to corporate control.** A *shareholder's agreement* can effectively clip the voting power of a shareholder holding voting shares. In the same way, a *voting right ceiling*, which is "a restriction prohibiting shareholders to vote above a certain threshold irrespective of the number of voting shares they hold," can limit the control that may be exerted by a person who

owns voting stocks but who does not have a substantial economic interest over the company. So also does the use of *financial derivatives* with attached conditions to ensure the acquisition of corporate control separately from the ownership of voting shares, or the use of *supermajority provisions* in the by-laws and articles of incorporation or association. Indeed, there are innumerable ways and means, both explicit and implicit, by which the *control of a corporation can be attained and retained even with very limited voting shares, i.e.,* there are a number of ways by which control can be disproportionately increased compared to ownership so long as economic rights over the majority of the assets and equity of the corporation are maintained. Hence, if We follow the construction of "capital" in Sec. 11, Art. XII stated in the *ponencia* of June 28, 2011 and turn a blind eye to these realities of the business world, **this Court may have veritably put a limit on the foreign ownership of common shares but have indirectly allowed foreigners to acquire greater economic right to the cash flow of public utility corporations**, which is a leverage to bargain for far greater control through the various enhancing mechanisms or proportionality-limiting measures available in the business world.

11. ID.; ID.; ID.; AMENDMENT OF THE CONSTITUTION CANNOT BE MADE THROUGH THE EXPEDIENCE OF A LEGISLATIVE ACTION THAT DIAGONALLY OPPOSES THE CLEAR PROVISIONS OF THE CONSTITUTION; A LAW CANNOT VALIDLY BROADEN OR RESTRICT THE THRUST OF A CONSTITUTIONAL PROVISION UNLESS EXPRESSLY SANCTIONED BY THE CONSTITUTION ITSELF.— The Constitution may only be amended through the procedure outlined in the basic document itself. An amendment cannot, therefore, be made through the expedience of a legislative action that diagonally opposes the clear provisions of the Constitution. Indeed, the **constitutional intent** on the equity prescribed by Sec. 11, Art. XII **cannot plausibly be fleshed out by a look through the prism of economic statutes passed <u>after</u> the adoption of the Constitution,** such as the cited FIA, the *Magna Carta* for Micro, Small and Medium Industries (Republic Act No. 6977) and other kindred laws envisaged to Filipinize certain areas of investment. It should be the other

way around. Surely, the definition of a "Philippine National" in the FIA, or for that matter, the 1987 OIC could not have influenced the minds of the 1986 CONCOM or the people when they ratified the Constitution. As heretofore discussed, the primary source whence to ascertain constitutional intent or purpose is the constitutional text, or, to be more precise, the language of the provision itself, as inquiry on any controversy arising out of a constitutional provision ought to start and end as much as possible with the provision itself. **Legislative enactments on commerce, trade and national economy must be so construed, when appropriate, to determine whether the purpose underlying them is in accord with the policies and objectives laid out in the Constitution. Surely, a law cannot validly broaden or restrict the thrust of a constitutional provision unless expressly sanctioned by the Constitution itself.** And the Court may not read into the Constitution an intent or purpose that is not there. Any attempt to enlarge the breadth of constitutional limitations beyond what its provision dictates should be stricken down. In fact, it is obvious from the FIA itself that its framers deemed it necessary to qualify the term "capital" with the phrase "stock outstanding and entitled to vote" in defining a "Philippine National" in Sec. 3 (a). This only supports the construal that the term "capital," standing alone as in Sec. 11, Art. XII of the Constitution, applies to all shares, whether classified as voting or non-voting, and **this is the interpretation in harmony with the Constitution.**

12. ID.; ID.; ID.; THE DEFINITION OF A "PHILIPPINE NATIONAL" IN THE FOREIGN INVESTMENT ACT (FIA) CANNOT APPLY TO THE OWNERSHIP STRUCTURE OF ENTERPRISES APPLYING FOR, AND THOSE GRANTED A FRANCHISE TO OPERATE AS A PUBLIC UTILITY.— Indeed, the definition of a "Philippine National" in the FIA cannot apply to the ownership structure of enterprises applying for, and those granted, a franchise to operate as a public utility under Sec. 11, Art. XII of the Constitution. As aptly observed by the SEC, the definition of a "Philippine National" provided in the FIA refers only to a corporation that is permitted to invest in an enterprise as a Philippine citizen (*investor-corporation*). **The FIA does not prescribe the equity ownership structure of the enterprise**

granted the franchise or the power to operate in a fully or partially nationalized industry (*investee-corporation*). This is apparent from the FIA itself, which also defines the act of an "investment" and "foreign investment": x x x. In fact, Sec. 7 of the FIA, as amended, allows aliens or non-Philippine nationals to **own** an enterprise up to the extent provided by the Constitution, existing laws or the FINL. x x x. Hence, pursuant to the Eight Regular FINL, List A, the foreign "*equity*" is up to 40% in enterprises engaged in the operation and management of public utilities while the remaining 60% of the "*equity*" is reserved to Filipino citizens and "Philippine Nationals" as defined in Sec. 3(a) of the FIA. Notably, the term "equity" refers to the "**ownership** interest in . . . a business" or a "share in a publicly traded company," and not to the "controlling" or "management" interest in a company. It necessarily includes all and every share in a corporation, whether voting or non-voting.

13. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; IF AN INDISPENSABLE PARTY IS NOT IMPLEADED, ANY PERSONAL JUDGMENT WOULD HAVE NO EFFECTIVENESS AS TO THEM FOR THE TRIBUNAL'S WANT OF JURISDICTION; THE JUNE 28, 2011 DECISION OF THE TRIAL COURT CANNOT BE GIVEN ANY EFFECT AND THUS NULL AND VOID FOR FAILURE TO IMPLEAD THE PLDT AND ITS FOREIGN SHAREHOLDERS WHO ARE INDISPENSABLE PARTIES TO THE CASE AT BAR.— [T]his Court cannot apply a new doctrine adopted in a precedent-setting decision to parties that have never been given the chance to present their own views on the substantive and factual issues involved in the precedent-setting case. To recall, the instant controversy arose out of an original petition filed in February 2007 for, among others, **declaratory relief** on Sec. 11, Art. XII of the 1987 Constitution "to clarify the intent of the Constitutional Commission that crafted the 1987 Constitution to determine the very nature of such limitation on foreign ownership." x x x. [N]either PLDT itself nor any of its stockholders were named as respondents in the petition x x x. [T]he petition seeks a judgment that can adversely affect PLDT and its foreign shareholders. If this Court were to accommodate the petition's

prayer, as the majority did in the June 28, 2011 Decision and proposes to do presently, PLDT stands to lose its franchise, while the foreign stockholders will be compelled to divest their voting shares in excess of 40% of PLDT's voting stock, if any, even at a loss. It cannot, therefore, be gainsaid that PLDT and its foreign shareholders are indispensable parties to the instant case under the terms of Secs. 2 and 7, Rule 3 of the Rules of Civil Procedure. x x x. Yet, again, PLDT and its foreign shareholders have not been given notice of this petition to appear before, much less heard by, this Court. Nonetheless, the majority has allowed such irregularity in contravention of the settled jurisprudence that an action cannot proceed unless indispensable parties are joined since the non-joinder of these indispensable parties deprives the court the jurisdiction to issue a decision binding on the indispensable parties that have not been joined or impleaded. In other words, if an indispensable party is not impleaded, any personal judgment would have no effectiveness as to them for the tribunal's want of jurisdiction. x x x. Hence, the June 28, 2011 Decision having been rendered in a case where the indispensable parties have not been impleaded, much less summoned or heard, cannot be given any effect and is, thus, null and void. *Ergo*, the assailed June 28, 2011 Decision is virtually a useless judgment, at least insofar as it tends to penalize PLDT and its foreign stockholders. It cannot bind and affect PLDT and the foreign stockholders or be enforced and executed against them. It is settled that **courts of law "should not render judgments which cannot be enforced by any process known to the law,"** hence, this Court should have refused to give cognizance to the petition.

14. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; PROCEDURAL DUE PROCESS IN JUDICIAL PROCEEDINGS, REQUISITES; NOT COMPLIED WITH.— [T]he Rules of Court is not a mere body of technical rules that can be disregarded at will whenever convenient. It forms an integral part of the basic notion of fair play as expressed in this Constitutional caveat: "No person shall be deprived of life, liberty or property without due process of law," and obliges this Court, as well as other courts and tribunals, to hear a person first before rendering a judgment for or against him. As Daniel Webster explained, "due process of law is more

clearly intended the general law, a law which hears before it condemns; which proceeds upon enquiry, and renders judgment only after trial." The principle of due process of law "contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property." Thus, this Court has stressed the strict observance of the following requisites of procedural due process in judicial proceedings in order to comply with this honored principle: (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) Jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) The defendant must be given an opportunity to be heard; and (4) Judgment must be rendered upon lawful hearing. Apparently, not one of these requisites has been complied with before the June 28, 2011 Decision was rendered. Instead, PLDT and its foreign stockholders were not given their day in court, even when they stand to lose their properties, their shares, and even the franchise to operate as a public utility.

15. ID.; ID.; 1987 CONSTITUTION; SECTION 11, ARTICLE XII THEREOF; NATIONAL ECONOMY AND PATRIMONY; PUBLIC UTILITY; A FRANCHISE IS A PROPERTY RIGHT WHICH CAN ONLY BE QUESTIONED IN A DIRECT PROCEEDING.— [T]he present petition partakes of a collateral attack on PLDT's franchise as a public utility. Giving due course to the recourse is contrary to the Court's ruling in ***PLDT v. National Telecommunications Commission***, where We declared a franchise to be a property right that can only be questioned in a direct proceeding. Worse, the June 28, 2011 Decision **facilitates and guarantees the success of that unlawful attack** by allowing it to be undertaken in the absence of PLDT.

16. REMEDIAL LAW; ESTOPPEL; A PERSON IS PREVENTED FROM GOING BACK ON HIS OWN ACT OR REPRESENTATION TO THE PREJUDICE OF ANOTHER WHO RELIED THEREIN; APPLICABLE TO CASE AT BAR; THE RULE ON NON-ESTOPPEL OF THE GOVERNMENT IS NOT DESIGNED TO PERPETRATE INJUSTICE.— The Philippine government's act of pushing for and approving the sale of the **PTIC** shares, which is

equivalent to 12 million **PLDT** common shares, to foreign investors precludes it from asserting that the purchase violates the Constitutional limit on foreign ownership of public utilities so that the foreign investors must now divest the common PLDT shares bought. The elementary principle that a person is prevented from going back on his own act or representation to the prejudice of another who relied thereon finds application in the present case. Art. 1431 of the Civil Code provides that an "admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against a person relying thereon." This rule is supported by Section 2(a) of Rule 131 of the Rules of Court on the burden of proof and presumptions. x x x. The government cannot plausibly hide behind the mantle of its general immunity to resist the application of this equitable principle for "[t]he rule on non-estoppel of the government is not designed to perpetrate an injustice."

17. ID.; ID.; THE STATE CANNOT BE PUT IN ESTOPPEL BY THE MISTAKES OR ERRORS OF ITS OFFICIALS OR AGENTS; EXCEPTIONS APPLIED; THE PHILIPPINE GOVERNMENT IS BARRED BY ESTOPPEL FROM ORDERING FOREIGN INVESTORS TO DIVEST VOTING SHARES IN PUBLIC UTILITIES IN EXCESS OF THE 40 PERCENT CAP.— [T]his Court has allowed several exceptions to the rule on the government's non-estoppel. As succinctly explained in ***Republic of the Philippines v. Court of Appeals***: The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exceptions, viz.: "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, **the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities** as well as against

private individuals." x x x. [I]n ***Ramos v. Central Bank of the Philippines***, this Court berated the government for reneging on its representations and urged it to keep its word x x x. The exception established in the foregoing cases is particularly appropriate presently since the "indirect" sale of PLDT common shares to foreign investors partook of a propriety business transaction of the government which was not undertaken as an incident to any of its governmental functions. Accordingly, the government, by concluding the sale, has descended to the level of an ordinary citizen and stripped itself of the vestiges of immunity that is available in the performance of governmental acts. Ergo, the government is vulnerable to, and cannot hold off, the application of the principle of estoppel that the foreign investors can very well invoke in case they are compelled to divest the voting shares they have previously acquired through the inducement of no less the government. In other words, the government is precluded from penalizing these alien investors for an act performed upon its guarantee, through its facilities, and with its imprimatur.

18. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; SECTION II ARTICLE XII THEREOF; PUBLIC UTILITY; AS A MATTER OF FAIRNESS, THE FOREIGN INVESTORS MUST BE ACCORDED THE RIGHT TO EXPECT THAT THE SAME LEGAL CLIMATE AND THE SAME SUBSTANTIVE SET OF RULES WILL REMAIN DURING THE PERIOD OF THEIR INVESTMENTS.— The Philippines, x x x cannot, without so much as a notice of policy shift, alter and change the legal and business environment in which the foreign investments in the country were made in the first place. These investors obviously made the decision to come in after studying the country's legal framework — its restrictions and incentives — and so, as a matter of fairness, they must be accorded the right to expect that the same legal climate and the same substantive set of rules will remain during the period of their investments. The representation that foreigners can invest up to 40% of the entirety of the total stockholdings, and not just the voting shares, of a public utility corporation is an implied covenant that the Philippines cannot renege without violating the FET guarantee. Especially in this case where the Philippines made specific commitments to countries like

Japan and China that their investing nationals can own up to 40% of the **equity** of a public utility like a telecommunications corporation.

19. ID.; ID.; ID.; ID.; ID.; THE SUDDEN AND UNEXPECTED DEVIATION FROM THE ACCEPTED AND CONSISTENT CONSTRUCTION OF THE TERM "CAPITAL" WILL CREATE A DOMINO EFFECT THAT MAY CRIPPLE OUR CAPITAL MARKETS.— This Court cannot turn oblivious to the fact that if We diverge from the prospectivity rule and implement the resolution on the present issue immediately and, without giving due deference to the foreign investors' rights to due process and the equal protection of the laws, compel the foreign stockholders to divest their voting shares against their wishes at prices lower than the acquisition costs, these foreign investors may very well shy away from Philippine stocks and avoid investing in the Philippines. Not to mention, the validity of the franchise granted to PLDT and similarly situated public utilities will be put under a cloud of doubt. Such uncertainty and the unfair treatment of foreign investors who merely relied in good faith on the policies, rules and regulations of the PSE and the SEC will likely upset the volatile capital market as it would have a negative impact on the value of these companies that will discourage investors, both local and foreign, from purchasing their shares. In which case, foreign direct investments (FDIs) in the country (which already lags behind our Asian neighbors) will take a nosedive. Indeed, it cannot be gainsaid that a sudden and unexpected deviation from the accepted and consistent construction of the term "capital" will create a domino effect that may cripple our capital markets. Therefore, in applying the new comprehensive interpretation of Sec. 11, Art. XII of the Constitution, the current voting shares of the foreign investors in public utilities in excess of the 40% capital shall be maintained and honored. Otherwise the due process guarantee under the Constitution and the long established precepts of justice, equity and fair play would be impaired.

20. STATUTORY CONSTRUCTION; STATUTES; JUDICIAL DECISION SETTING A NEW DOCTRINE OR PRINCIPLE SHALL NOT RETROACTIVELY APPLY TO PARTIES WHO RELIED IN GOOD FAITH ON THE PRINCIPLES AND DOCTRINES STANDING PRIOR TO THE

PROMULGATION THEREOF ESPECIALLY WHEN A RETROACTIVE APPLICATION OF THE PRECEDENT-SETTING DECISION WOULD IMPAIR THE RIGHTS AND OBLIGATIONS OF THE PARTIES.— The June 28, 2011 Decision construed "capital" in the first sentence of Section 11, Article XII of the Constitution as "full beneficial ownership of 60 percent of the outstanding capital stocks coupled with 60 percent of the voting rights." In the Resolution denying the motions for reconsideration, it further amplified the scope of the word "capital" by clarifying that "the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares whether common, preferred, preferred voting or any other class of shares." This is a radical departure from the clear intent of the framers of the 1987 Constitution and the long established interpretation ascribed to said word by the Securities and Exchange Commission — that "capital" in the first sentence of Sec. 11, Art. XII means capital stock or BOTH voting and non-voting shares. The recent interpretation enunciated in the June 28, 2011 and in the Resolution at hand can only be applied PROSPECTIVELY. It cannot be applied retroactively to corporations such as PLDT and its investors such as its shareholders who have all along relied on the consistent reading of "capital" by SEC and the Philippine government to apply it to a public utility's total capital stock. *Lex prospicit, non respicit* — "laws have no retroactive effect unless the contrary is provided." As a necessary corollary, judicial rulings should not be accorded retroactive effect since "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." It has been the constant holding of the Court that a judicial decision setting a new doctrine or principle ("precedent-setting decision") shall not retroactively apply to parties who relied in good faith on the principles and doctrines standing prior to the promulgation thereof ("old principles/ doctrines"), especially when a retroactive application of the precedent-setting decision would impair the rights and obligations of the parties. x x x. Indeed, pursuant to the doctrine of prospectivity, new doctrines and principles must be applied only to acts and events transpiring **after** the precedent-setting judicial decision, and not to those that occurred and were caused by persons who relied on the "old" doctrine and acted on the faith thereof.

ABAD *J., dissenting opinion*:

1. STATUTORY CONSTRUCTION; 1987 CONSTITUTION; SECTION 11, ARTICLE XII THEREOF; THE AUTHORITY TO DEFINE AND INTERPRET THE MEANING OF "CAPITAL" IS ADDRESSED TO THE SOUND DISCRETION OF THE LAWMAKING DEPARTMENT OF GOVERNMENT, NOT TO THE COURT, SINCE THE POWER TO AUTHORIZE AND CONTROL A PUBLIC UTILITY IS A PREROGATIVE THAT STEMS FROM CONGRESS.—[T]he authority to define and interpret the meaning of "capital" in Section 11, Article XII of the 1987 Constitution belongs, not to the Court, but to Congress, as part of its policy making powers. This matter is addressed to the sound discretion of the lawmaking department of government since the power to authorize and control a public utility is admittedly a prerogative that stems from Congress. It may very well in its wisdom define the limit of foreign ownership in public utilities.

2. ID.; ID.; ID.; NOT SELF-EXECUTING AND NEED SUFFICIENT DETAILS FOR A MEANINGFUL IMPLEMENTATION; WHEN THE OPERATION OF THE STATUTE IS LIMITED, THE LAW SHOULD RECEIVE A RESTRICTED CONSTRUCTION.— Section 11, Article XII of the 1987 Constitution x x x is one of the constitutional provisions that are not self-executing and need sufficient details for a meaningful implementation. While the provision states that no franchise for the operation of a public utility shall be granted to a corporation organized under Philippine laws unless at least 60% of its capital is owned by Filipino citizens, it does not provide for the meaning of the term "capital." As Fr. Joaquin G. Bernas, S.J. explained, acting as *Amicus Curiae*, the result of the absence of a clear definition of the term "capital," was to base the 60-40 proportion on the total outstanding capital stock, that is, the combined total of both common and non-voting preferred shares. But while this has become the popular and common understanding of the people, it is still incomplete. He added that in the Foreign Investments Act of 1991 (FIA), Congress tried to clarify this understanding by specifying what capital means for the purpose of determining corporate

citizenship x x x. Indeed, the majority opinion also resorted to the various investment laws in construing the term "capital." But while these laws admittedly govern foreign investments in the country, they do not expressly or impliedly seek to supplant the ambiguity in the definition of the term "capital" nor do they seek to modify foreign ownership limitation in public utilities. It is a rule that when the operation of the statute is limited, the law should receive a restricted construction.

3. ID.; ID.; ID.; THE FOREIGN INVESTMENTS ACT OF 1991 (FIA) IS NOT A SUPPLEMENTARY OR ENABLING LEGISLATION WHICH ACCURATELY DEFINES THE TERM "CAPITAL" BUT IT PROVIDES NEW RULES FOR INVESTING IN THE COUNTRY.— More particularly, much discussion was made on the FIA since it was enacted after the 1987 Constitution took effect. Yet it does not seem to be a supplementary or enabling legislation which accurately defines the term "capital." For one, it specifically applies only to companies which intend to invest in certain areas of investment. It does not apply to companies which intend to apply for a franchise, much less to those which are already enjoying their franchise. It aims "to attract, promote or welcome productive investments from foreign individuals, partnerships, corporations and government, including their political subdivisions, in activities which significantly contribute to national industrialization and socio-economic development." What the FIA provides are new rules for investing in the country. Moreover, with its adoption of the definition of the term "Philippine national," has the previous understanding that the term "capital" referred to the total outstanding capital stock, as Fr. Bernas explained, been supplanted or modified? While it is clear that the term "Philippine national" shall mean a corporation organized under Philippine laws at least 60% of the capital stock outstanding and entitled to vote is owned and held by Filipino citizens "as used in [the FIA]," it is not evident whether Congress intended this definition to be used in all other cases where the term "capital" presents itself as an issue.

4. ID.; ID.; ID.; TERM "CAPITAL" MUST BE INTERPRETED TO ENCOMPASS THE ENTIRETY OF A CORPORATION'S OUTSTANDING CAPITAL STOCK

BOTH COMMON AND PREFERRED SHARES, VOTING OR NON-VOTING; ELABORATED.— It must be interpreted to encompass the entirety of a corporation's outstanding capital stock (both common and preferred shares, voting or non-voting). First, the term "capital" is also used in the fourth sentence of Section 11, Article XII, as follows: Section 11. xxx The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. If the term "capital" as used in the first sentence is interpreted as pertaining only to shares of stock with the right to vote in the election of directors, then such sentence will already prescribe the limit of foreign participation in the election of the board of directors. On the basis of the first sentence alone, the capacity of foreign stockholders to elect the directors will already be limited by their ownership of 40% of the voting shares. This will then render the fourth sentence meaningless and will run counter to the principle that the provisions of the Constitution should be read in consonance with its other related provisions.

5. ID.; ID.; ID.; 60-40 PROPORTION IS BASED ON THE TOTAL OUTSTANDING CAPITAL STOCK, BOTH COMMON AND PREFERRED SHARES; UNDER THE DOCTRINE OF EQUALITY OF SHARES-ALL STOCKS ISSUED BY THE CORPORATION ARE PRESUMED EQUAL WITH THE SAME PRIVILEGES AND LIABILITIES, PROVIDED THAT THE ARTICLES OF INCORPORATION IS SILENT ON SUCH DIFFERENCES.— Dr. Bernardo M. Villegas, also an *Amicus Curiae*, who was the Chairman of the Committee on the National Economy that drafted Article XII of the 1987 Constitution, emphasized that by employing the term "capital," the 1987 Constitution itself did not distinguish among classes of shares. During their Committee meetings, Dr. Villegas explained that in both economic and business terms, the term "capital" found in the balance sheet of any corporation always meant the entire capital stock, both common and preferred. x x x Dr. Villegas observed that our existing policy on foreign ownership in public utilities already discourages, as it is, foreign investments to come in.

To impose additional restrictions, such as the restrictive interpretation of the term "capital," will only aggravate our already slow economic growth and incapacity to compete with our East Asian neighbours. The Court can simply adopt the interpretations given by Fr. Bernas and Dr. Villegas since they were both part of the Constitutional Commission that drafted the 1987 Constitution. No one is in a better position to determine the intent of the framers of the questioned provision than they are. Furthermore, their interpretations also coincide with the long-standing practice to base the 60-40 proportion on the total outstanding capital stock, that is, both common and preferred shares. For sure, both common and preferred shares have always been considered part of the corporation's capital stock. Its shareholders are no different from ordinary investors who take on the same investment risks. They participate in the same venture, willing to share in the profits and losses of the enterprise. Under the doctrine of equality of shares – all stocks issued by the corporation are presumed equal with the same privileges and liabilities, provided that the Articles of Incorporation is silent on such differences.

6. ID.; ID.; ID.; ALREADY PROVIDES THREE LIMITATIONS ON FOREIGN PARTICIPATION IN PUBLIC UTILITIES; HENCE, THE COURT NEED NOT ADD MORE BY FURTHER RESTRICTING THE MEANING OF THE TERM "CAPITAL" WHEN NONE WAS INTENDED BY THE FRAMERS OF THE 1987 CONSTITUTION.— [T]he Filipinization of public utilities under the 1987 Constitution is a recognition of the very strategic position of public utilities both in the national economy and for national security. The participation of foreign capital is enjoined since the establishment and operation of public utilities may require the investment of substantial capital which Filipino citizens may not afford. But at the same time, foreign involvement is limited to prevent them from assuming control of public utilities which may be inimical to national interest. Section 11, Article XII of the 1987 Constitution already provides three limitations on foreign participation in public utilities. The Court need not add more by further restricting the meaning of the term "capital" when none was intended by the framers of the 1987 Constitution.

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Office of the General Counsel (PSE) and *M.M. Lazaro & Associates* for Phil. Stock Exchange.

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Angara Abello Concepcion Regala and Cruz for Napoleon L. Nazareno.

Sycip Salazar Hernandez and Gatmaitan for Manuel V. Pangilinan.

Roel A. Refran & Ronald P. De Vera for Francis Ed Lim.

R E S O L U T I O N

CARPIO, *J.*:

This resolves the motions for reconsideration of the 28 June 2011 Decision filed by (1) the Philippine Stock Exchange's (PSE) President,[1] (2) Manuel V. Pangilinan (Pangilinan),[2] (3) Napoleon L. Nazareno (Nazareno),[3] and (4) the Securities and Exchange Commission (SEC)[4] (collectively, movants).

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[1] *Rollo* (Vol. III), pp. 1431-1451. Dated 11 July 2011.

[2] *Id.* at 1563-1613. Dated 14 July 2011.

[3] *Id.* at 1454-1537. Dated 15 July 2011.

[4] *Id.* at 1669-1680. Through its Office of the General Counsel and Commissioner Manuel Huberto B. Gaite. In its Manifestation and Omnibus Motion dated 29 July 2011, the SEC manifested that the position of the OSG on the meaning of the term "capital" does not reflect the view of the SEC. The SEC sought a partial reconsideration praying that the statement on SEC's unlawful neglect of its statutory duty be expunged and for clarification on the reckoning period of the imposition of any sanctions against PLDT.

The Office of the Solicitor General (OSG) initially filed a motion for reconsideration on behalf of the SEC,[5] assailing the 28 June 2011 Decision. However, it subsequently filed a Consolidated Comment on behalf of the State,[6] declaring expressly that it agrees with the Court's definition of the term "capital" in Section 11, Article XII of the Constitution. During the Oral Arguments on 26 June 2012, the OSG reiterated its position consistent with the Court's 28 June 2011 Decision.

We deny the motions for reconsideration.

I.

Far-reaching implications of the legal issue justify treatment of petition for declaratory relief as one for mandamus.

As we emphatically stated in the 28 June 2011 Decision, the interpretation of the term "capital" in Section 11, Article XII of the Constitution has far-reaching implications to the national economy. In fact, a resolution of this issue will determine whether Filipinos are masters, or second-class citizens, in their own country. What is at stake here is whether Filipinos or foreigners will have ***effective control*** of the Philippine national economy. Indeed, if ever there is a legal issue that has far-reaching implications to the entire nation, and to future generations of Filipinos, it is the threshold legal issue presented in this case.

Contrary to Pangilinan's narrow view, the serious economic consequences resulting in the interpretation of the term "capital" in Section 11, Article XII of the Constitution undoubtedly demand an immediate adjudication of this issue. **Simply put, the far-reaching implications of this issue justify the treatment of the petition as one for *mandamus*.**[7]

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[5] *Id.* at 1614-1627. Dated 13 July 2011. On behalf of the SEC, by special appearance. The OSG prayed that the Court's decision "be cured of its procedural defect which however should not prevail over the substantive aspect of the Decision."

[6] *Id.* at 2102-2124. Filed on 15 December 2011.

[7] *Salvacion v. Central Bank of the Philippines,* 343 Phil. 539 (1997).

In *Luzon Stevedoring Corp. v. Anti-Dummy Board*,[8] the Court deemed it wise and expedient to resolve the case although the petition for declaratory relief could be outrightly dismissed for being procedurally defective. There, appellant admittedly had already committed a breach of the Public Service Act in relation to the Anti-Dummy Law since it had been employing non-American aliens long before the decision in a prior similar case. However, the main issue in *Luzon Stevedoring* was of transcendental importance, involving the exercise or enjoyment of rights, franchises, privileges, properties and businesses which only Filipinos and qualified corporations could exercise or enjoy under the Constitution and the statutes. Moreover, the same issue could be raised by appellant in an appropriate action. Thus, in *Luzon Stevedoring* the Court deemed it necessary to finally dispose of the case for the guidance of all concerned, despite the apparent procedural flaw in the petition.

The circumstances surrounding the present case, such as the supposed procedural defect of the petition and the pivotal legal issue involved, resemble those in *Luzon Stevedoring*. Consequently, in the interest of substantial justice and faithful adherence to the Constitution, we opted to resolve this case for the guidance of the public and all concerned parties.

II.
No change of any long-standing rule; thus, no redefinition of the term "capital."

Movants contend that the term "capital" in Section 11, Article XII of the Constitution has long been settled and defined to refer to the total outstanding shares of stock, whether voting or non-voting. In fact, movants claim that the SEC, which is the administrative agency tasked to enforce the 60-40 ownership requirement in favor of Filipino citizens in the Constitution and various statutes, has consistently adopted this particular definition in its numerous opinions. Movants point out that with the 28 June 2011 Decision, the Court in effect introduced a "new" definition

[8] 150-B Phil. 380 (1972).

or "midstream redefinition"[9] of the term "capital" in Section 11, Article XII of the Constitution.

This is egregious error.

For more than 75 years since the 1935 Constitution, the Court has ***not*** interpreted or defined the term "capital" found in various economic provisions of the 1935, 1973 and 1987 Constitutions. There has never been a judicial precedent interpreting the term "capital" in the 1935, 1973 and 1987 Constitutions, until now. Hence, it is patently wrong and utterly baseless to claim that the Court in defining the term "capital" in its 28 June 2011 Decision modified, reversed, or set aside the purported long-standing definition of the term "capital," which supposedly refers to the total outstanding shares of stock, whether voting or non-voting. To repeat, until the present case there has never been a Court ruling categorically defining the term "capital" found in the various economic provisions of the 1935, 1973 and 1987 Philippine Constitutions.

The opinions of the SEC, as well as of the Department of Justice (DOJ), on the definition of the term "capital" as referring to both voting and non-voting shares (combined total of common and preferred shares) are, in the first place, conflicting and inconsistent. There is no basis whatsoever to the claim that the SEC and the DOJ have consistently and uniformly adopted a definition of the term "capital" contrary to the definition that this Court adopted in its 28 June 2011 Decision.

In DOJ Opinion No. 130, s. 1985,[10] dated 7 October 1985, the scope of the term "capital" in Section 9, Article XIV of the 1973 Constitution was raised, that is, whether the term "capital" includes "both preferred and common stocks." The issue was raised in relation to a stock-swap transaction between a Filipino and a Japanese corporation, both stockholders of a domestic corporation that owned lands in the Philippines. Then Minister of Justice Estelito P. Mendoza ruled that the resulting ownership

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[9] *Rollo* (Vol. III), p. 1583.

[10] Addressed to Gov. Lilia Bautista of the Board of Investments.

structure of the corporation would be **unconstitutional** because 60% of the voting stock would be owned by Japanese while Filipinos would own only 40% of the voting stock, although when the non-voting stock is added, Filipinos would own 60% of the combined voting and non-voting stock. **This ownership structure is remarkably similar to the current ownership structure of PLDT**. Minister Mendoza ruled:

xxx xxx xxx

Thus, the Filipino group still owns sixty (60%) of the entire subscribed capital stock (common and preferred) while the Japanese investors control sixty percent (60%) of the common (voting) shares.

It is your position that x x x since Section 9, Article XIV of the Constitution uses the word "capital," which is construed "to include both preferred and common shares" and "that where the law does not distinguish, the courts shall not distinguish."

xxx xxx xxx

In light of the foregoing jurisprudence, **it is my opinion that the stock-swap transaction in question may not be constitutionally upheld**. While it may be ordinary corporate practice to classify corporate shares into common voting shares and preferred non-voting shares, any arrangement which attempts to defeat the constitutional purpose should be eschewed. **Thus, the resultant equity arrangement which would place ownership of 60%**[11] **of the common (voting) shares in the Japanese group, while retaining 60% of the total percentage of common and preferred shares in Filipino hands would amount to circumvention of the principle of control by Philippine stockholders that is implicit in the 60% Philippine nationality requirement in the Constitution.** (Emphasis supplied)

In short, Minister Mendoza **categorically rejected** the theory that the term "capital" in Section 9, Article XIV of the 1973 Constitution includes "both preferred and common stocks" treated as the same class of shares regardless of differences in voting rights and privileges. Minister Mendoza stressed that the 60-40 ownership requirement in favor of Filipino citizens in the

[11] A typographical error in DOJ Opinion No. 130 where it states 80%.

Constitution is not complied with unless the corporation "**satisfies the criterion of beneficial ownership**" and that in applying the same "**the primordial consideration is situs of control**."

On the other hand, in Opinion No. 23-10 dated 18 August 2010, addressed to Castillo Laman Tan Pantaleon & San Jose, then SEC General Counsel Vernette G. Umali-Paco applied the **Voting Control Test**, that is, using only the voting stock to determine whether a corporation is a Philippine national. The Opinion states:

> Applying the foregoing, **particularly the Control Test**, MLRC is deemed as a Philippine national because: (1) sixty percent (60%) of its **outstanding capital stock *entitled to vote*** is owned by a Philippine national, the Trustee; and (2) at least sixty percent (60%) of the ERF will accrue to the benefit of Philippine nationals. **Still pursuant to the Control Test, MLRC's investment in 60% of BFDC's outstanding capital stock *entitled to vote* shall be deemed as of Philippine nationality, thereby qualifying BFDC to own private land**.
>
> Further, under, and for purposes of, the FIA, MLRC and BFDC are both Philippine nationals, considering that: (1) sixty percent (60%) of their respective **outstanding capital stock *entitled to vote*** is owned by a Philippine national (*i.e.*, by the Trustee, in the case of MLRC; and by MLRC, in the case of BFDC); and (2) at least 60% of their respective board of directors are Filipino citizens. (Boldfacing and italicization supplied)

Clearly, these DOJ and SEC opinions are compatible with the Court's interpretation of the 60-40 ownership requirement in favor of Filipino citizens mandated by the Constitution for certain economic activities. At the same time, these opinions highlight the conflicting, contradictory, and inconsistent positions taken by the DOJ and the SEC on the definition of the term "capital" found in the economic provisions of the Constitution.

The opinions issued by SEC legal officers do not have the force and effect of SEC rules and regulations because only the SEC *en banc* can adopt rules and regulations. As expressly provided in Section 4.6 of the Securities Regulation

Code,[12] the SEC cannot delegate to any of its individual Commissioner or staff the power to adopt any rule or regulation. Further, **under Section 5.1 of the same Code, it is *the SEC as a collegial body,* and not any of its legal officers, that is empowered to issue *opinions* and approve rules and regulations.** Thus:

> 4.6. The Commission may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission **except** its review or appellate authority and **its power to adopt, alter and supplement any rule or regulation.**
>
> The Commission may review upon its own initiative or upon the petition of any interested party any action of any department or office, individual Commissioner, or staff member of the Commission.
>
> SEC. 5. *Powers and Functions of the Commission.*- 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
>
> xxx xxx xxx
>
> **(g) Prepare, approve, amend or repeal rules, regulations and orders, and issue *opinions* and provide guidance on and supervise compliance with such rules, regulations and orders;**
>
> xxx xxx xxx (Emphasis supplied)

Thus, the act of the individual Commissioners or legal officers of the SEC in issuing opinions that have the effect of SEC rules or regulations is *ultra vires*. Under Sections 4.6 and 5.1(g) of the Code, only the SEC *en banc* can "issue opinions" that have the force and effect of rules or regulations. Section 4.6 of the Code bars the SEC *en banc* from delegating to any individual Commissioner or staff the power to adopt rules or regulations. **In short, any**

[12] Republic Act No. 8799.

opinion of individual Commissioners or SEC legal officers does not constitute a rule or regulation of the SEC.

The SEC admits during the Oral Arguments that only the SEC *en banc*, and not any of its individual commissioners or legal staff, is empowered to issue opinions which have the same binding effect as SEC rules and regulations, thus:

JUSTICE CARPIO:

> So, under the law, it is the Commission *En Banc* that can issue an SEC Opinion, correct?

COMMISSIONER GAITE:[13]

> That's correct, Your Honor.

JUSTICE CARPIO:

> Can the Commission *En Banc* delegate this function to an SEC officer?

COMMISSIONER GAITE:

> Yes, Your Honor, we have delegated it to the General Counsel.

JUSTICE CARPIO:

> It can be delegated. What cannot be delegated by the Commission *En Banc* to a commissioner or an individual employee of the Commission?

COMMISSIONER GAITE:

> Novel opinions that [have] to be decided by the *En Banc* …

JUSTICE CARPIO:

> What cannot be delegated, among others, is the power to adopt or amend rules and regulations, correct?

COMMISSIONER GAITE:

> That's correct, Your Honor.

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[13] General Counsel and Commissioner Manuel Huberto B. Gaite of the Securities and Exchange Commission.

JUSTICE CARPIO:

So, you combine the two (2), the SEC officer, if delegated that power, can issue an opinion but that opinion does not constitute a rule or regulation, correct?

COMMISSIONER GAITE:

Correct, Your Honor.

JUSTICE CARPIO:

So, all of these opinions that you mentioned they are not rules and regulations, correct?

COMMISSIONER GAITE:

They are not rules and regulations.

JUSTICE CARPIO:

If they are not rules and regulations, they apply only to that particular situation and will not constitute a precedent, correct?

COMMISSIONER GAITE:

Yes, Your Honor.[14] (Emphasis supplied)

Significantly, the SEC *en banc*, which is the collegial body statutorily empowered to issue rules and opinions on behalf of the SEC, has adopted even the Grandfather Rule in determining compliance with the 60-40 ownership requirement in favor of Filipino citizens mandated by the Constitution for certain economic activities. This prevailing SEC ruling, which the SEC correctly adopted to thwart any circumvention of the required Filipino "**ownership and control**," is laid down in the 25 March 2010 SEC *en banc* ruling in *Redmont Consolidated Mines, Corp. v. McArthur Mining, Inc., et al.*,[15] to wit:

The avowed purpose of the Constitution is to place in the hands of Filipinos the exploitation of our natural resources. **Necessarily, therefore, the Rule interpreting the constitutional provision should not diminish that right through the legal fiction of corporate**

[14] TSN (Oral Arguments), 26 June 2012, pp. 81-83. Emphasis supplied.

[15] SEC *En Banc* Case No. 09-09-177, 25 March 2010.

ownership and control. But the constitutional provision, as interpreted and practiced via the 1967 SEC Rules, has favored foreigners contrary to the command of the Constitution. ***Hence, the Grandfather Rule must be applied to accurately determine the actual participation, both direct and indirect, of foreigners in a corporation engaged in a nationalized activity or business***.

Compliance with the constitutional limitation(s) on engaging in nationalized activities must be determined by ascertaining if 60% of the investing corporation's outstanding capital stock is owned by "Filipino citizens", or as interpreted, by natural or individual Filipino citizens. If such investing corporation is in turn owned to some extent by another investing corporation, the same process must be observed. One must not stop until the citizenships of the individual or natural stockholders of layer after layer of investing corporations have been established, the very essence of the Grandfather Rule.

Lastly, it was the intent of the framers of the 1987 Constitution to adopt the Grandfather Rule. In one of the discussions on what is now Article XII of the present Constitution, the framers made the following exchange:

> MR. NOLLEDO. In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9, and 2/3-1/3 in Section 15.
>
> MR. VILLEGAS. That is right.
>
> MR. NOLLEDO. In teaching law, we are always faced with the question: 'Where do we base the equity requirement, is it on the authorized capital stock, on the subscribed capital stock, or on the paid-up capital stock of a corporation'? Will the Committee please enlighten me on this?
>
> MR. VILLEGAS. We have just had a long discussion with the members of the team from the UP Law Center who provided us a draft. The phrase that is contained here which we adopted from the UP draft is '60 percent of voting stock.'
>
> MR. NOLLEDO. That must be based on the subscribed capital stock, because unless declared delinquent, unpaid capital stock shall be entitled to vote.
>
> MR. VILLEGAS. That is right.

> MR. NOLLEDO. Thank you. With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, does the Committee adopt the grandfather rule?
>
> MR. VILLEGAS. Yes, that is the understanding of the Committee.
>
> MR. NOLLEDO. Therefore, we need additional Filipino capital?
>
> MR. VILLEGAS. Yes. (Boldfacing and underscoring supplied; italicization in the original)

This SEC *en banc* ruling conforms to our 28 June 2011 Decision that the 60-40 ownership requirement in favor of Filipino citizens in the Constitution to engage in certain economic activities applies not only to voting control of the corporation, but **also to the beneficial ownership of the corporation**. Thus, in our 28 June 2011 Decision we stated:

> Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. **Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required**. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]." (Emphasis supplied)

Both the Voting Control Test and the Beneficial Ownership Test must be applied to determine whether a corporation is a "Philippine national."

The interpretation by legal officers of the SEC of the term "capital," embodied in various opinions which respondents relied upon, is merely preliminary and an opinion only of such officers. To repeat, any such opinion does not constitute a SEC rule or regulation. In fact, many of these opinions contain a disclaimer which expressly states: "x x x **the foregoing opinion** is based solely on facts disclosed in your query and relevant only to the

particular issue raised therein and **shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances**."[16] Thus, the opinions clearly make a *caveat* that they do not constitute binding precedents on any one, not even on the SEC itself.

Likewise, the opinions of the SEC *en banc*, as well as of the DOJ, interpreting the law are neither conclusive nor controlling and thus, do not bind the Court. It is hornbook doctrine that any interpretation of the law that administrative or quasi-judicial agencies make is only preliminary, never conclusive on the Court. The power to make a final interpretation of the law, in this case the term "capital" in Section 11, Article XII of the 1987 Constitution, lies with this Court, not with any other government entity.

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[16] SEC Opinion No. 49-04, Re: Corporations considered as Philippine Nationals, dated 22 December 2004, addressed to Romulo Mabanta Buenaventura Sayoc & De Los Angeles and signed by General Counsel Vernette G. Umali-Paco; SEC-OGC Opinion No. 03-08, dated 15 January 2008, addressed to Attys. Ruby Rose J. Yusi and Rudyard S. Arbolado and signed by General Counsel Vernette G. Umali-Paco; SEC-OGC Opinion No. 09-09, dated 28 April 2009, addressed to Villaraza Cruz Marcelo Angangco and signed by General Counsel Vernette G. Umali-Paco; SEC-OGC Opinion No. 08-10, dated 8 February 2010, addressed to Mr. Teodoro B. Quijano and signed by General Counsel Vernette G. Umali-Paco; SEC-OGC Opinion No. 23-10, dated 18 August 2010, addressed to Castillo Laman Tan Pantaleon and San Jose and signed by General Counsel Vernette G. Umali-Paco; SEC-OGC Opinion No. 18-07, dated 28 November 2007, addressed to Mr. Rafael C. Bueno, Jr. and signed by General Counsel Vernette G. Umali-Paco.

In SEC Opinion No. 32-03, dated 2 June 2003, addressed to National Telecommunications Commissioner Armi Jane R. Borje, SEC General Counsel Vernette G. Umali-Paco stated:

In this light, it is imperative that we reiterate the policy of this Commission (SEC) in refraining from rendering opinions that might prejudice or affect the outcome of a case, which is subject to present litigation before the courts, or any other forum for that matter. The opinion, which may be rendered thereon, would not be binding upon any party who would in all probability, if the opinion happens to be adverse to his or its interest, take issue therewith and contest it before the proper venue. The Commission, therefore, has to refrain from giving categorical answers to your query.

In his motion for reconsideration, the PSE President cites the cases of *National Telecommunications Commission v. Court of Appeals*[17] and *Philippine Long Distance Telephone Company v. National Telecommunications Commission*[18] in arguing that the Court has already defined the term "capital" in Section 11, Article XII of the 1987 Constitution.[19]

The PSE President is grossly mistaken. In both cases of *National Telecommunications v. Court of Appeals*[20] and *Philippine Long Distance Telephone Company v. National Telecommunications Commission*,[21] the Court did not define the term "capital" as found in Section 11, Article XII of the 1987 Constitution. **In fact, these two cases never mentioned, discussed or cited Section 11, Article XII of the Constitution or any of its economic provisions**, **and thus cannot serve as precedent in the interpretation of Section 11, Article XII of the Constitution**. These two cases dealt solely with the determination of the correct regulatory fees under Section 40(e) and (f) of the Public Service Act, to wit:

(e) For annual reimbursement of the expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, twenty centavos for each one hundred pesos or fraction thereof, of the **capital stock subscribed or paid**, or if no shares have been issued, of the capital invested, or of the property and equipment whichever is higher.

(f) For the issue or increase of **capital stock**, twenty centavos for each one hundred pesos or fraction thereof, of the increased capital. (Emphasis supplied)

The Court's interpretation in these two cases of the terms "capital stock subscribed or paid," "capital stock" and "capital" does not pertain to, and cannot control, the definition of the

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[17] 370 Phil. 538 (1999).

[18] G.R. No. 152685, 4 December 2007, 539 SCRA 365.

[19] *Rollo* (Vol. III), pp. 1392-1393.

[20] *Supra*.

[21] *Supra*.

term "capital" as used in Section 11, Article XII of the Constitution, or any of the economic provisions of the Constitution where the term "capital" is found. The definition of the term "capital" found in the Constitution must not be taken out of context. A careful reading of these two cases reveals that the terms "capital stock subscribed or paid," "capital stock" and "capital" were defined solely to determine the basis for computing the supervision and regulation fees under Section 40(e) and (f) of the Public Service Act.

III.
Filipinization of Public Utilities

The Preamble of the 1987 Constitution, as the prologue of the supreme law of the land, embodies the ideals that the Constitution intends to achieve.[22] The Preamble reads:

> We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, **conserve and develop our patrimony**, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution. (Emphasis supplied)

Consistent with these ideals, Section 19, Article II of the 1987 Constitution declares as State policy the development of a national economy "***effectively controlled***" by Filipinos:

> Section 19. The State shall develop a self-reliant and independent national economy ***effectively controlled by Filipinos***.

Fortifying the State policy of a Filipino-controlled economy, the Constitution decrees:

> Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at

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[22] De Leon, Hector S., *TEXTBOOK ON THE PHILIPPINE CONSTITUTION*, 2005 Edition, pp. 32, 33.

least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.[23]

Under Section 10, Article XII of the 1987 Constitution, Congress may "reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments." Thus, in numerous laws Congress has reserved certain areas of investments to Filipino citizens or to corporations at least sixty percent of the "**capital**" of which is owned by Filipino citizens. Some of these laws are: (1) Regulation of Award of Government Contracts or R.A. No. 5183; (2) Philippine Inventors Incentives Act or R.A. No. 3850; (3) Magna Carta for Micro, Small and Medium Enterprises or R.A. No. 6977; (4) Philippine Overseas Shipping Development Act or R.A. No. 7471; (5) Domestic Shipping Development Act of 2004 or R.A. No. 9295; (6) Philippine Technology Transfer Act of 2009 or R.A. No. 10055; and (7) Ship Mortgage Decree or P.D. No. 1521.

With respect to public utilities, the 1987 Constitution specifically ordains:

Section 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty *per centum* of whose capital is owned by such citizens;** nor shall such franchise, certificate, or authorization be exclusive in

[23] Section 10, Article XII of the 1987 Constitution.

character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Emphasis supplied)

This provision, which mandates the Filipinization of public utilities, requires that any form of authorization for the operation of public utilities shall be granted only to "citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens." **"The provision is [an express] recognition of the sensitive and vital position of public utilities both in the national economy and for national security."**[24]

The 1987 Constitution reserves the ownership and operation of public utilities exclusively to (1) Filipino citizens, or (2) corporations or associations at least 60 percent of whose "capital" is owned by Filipino citizens. Hence, in the case of individuals, only Filipino citizens can validly own and operate a public utility. In the case of corporations or associations, at least 60 percent of their "capital" must be owned by Filipino citizens. **In other words, under Section 11, Article XII of the 1987 Constitution, to own and operate a public utility a corporation's capital must at least be 60 percent owned by *Philippine nationals*.**

IV.
Definition of "Philippine National"

Pursuant to the express mandate of Section 11, Article XII of the 1987 Constitution, Congress enacted Republic Act No. 7042 or the *Foreign Investments Act of 1991* (FIA), as amended, which defined a "**Philippine national**" as follows:

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[24] Bernas, Joaquin G., S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 1996 Edition, p. 1044, citing *Smith, Bell and Co. v. Natividad*, 40 Phil. 136, 148 (1919); *Luzon Stevedoring Corporation v. Anti-Dummy Board*, 150-B Phil. 380, 403-404 (1972).

SEC. 3. Definitions. - As used in this Act:

a. The term "*Philippine national"* shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding *and entitled to vote* is owned and held by citizens of the Philippines**; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: *Provided*, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a "Philippine national." (Boldfacing, italicization and underscoring supplied)

Thus, the FIA clearly and unequivocally defines a "**Philippine national**" as a Philippine citizen, or a domestic corporation at least "**60% of the capital stock outstanding and *entitled to vote***" is owned by Philippine citizens.

The definition of a "Philippine national" in the FIA reiterated the meaning of such term as provided in its predecessor statute, Executive Order No. 226 or the *Omnibus Investments Code of 1987*,[25] which was issued by then President Corazon C. Aquino. Article 15 of this Code states:

Article 15. "Philippine national" shall mean a citizen of the Philippines or a diplomatic partnership or association wholly-owned by citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty per cent (60%)**

[25] Issued on 17 July 1987.

of the capital stock outstanding *and entitled to vote* is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty per cent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty per cent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine national. (Boldfacing, italicization and underscoring supplied)

Under Article 48(3)[26] of the Omnibus Investments Code of 1987, "no corporation x x x which is not a 'Philippine national' xxx shall do business x x x in the Philippines x x x without first securing from the Board of Investments a written certificate to the effect that such business or economic activity x x x would **not** conflict with the Constitution or laws of the Philippines."[27] Thus, a "non-Philippine national" cannot own and operate a reserved economic activity like a public utility. This means, of course, that only a "Philippine national" can own and operate a public utility.

In turn, the definition of a "Philippine national" under Article 15 of the Omnibus Investments Code of 1987 was a

[26] Articles 44 to 56 of the Omnibus Investments Code of 1987 were later repealed by the Foreign Investments Act of 1991. See infra, p. 26.

[27] Article 48. *Authority to Do Business*. No alien, and no firm association, partnership, corporation or any other form of business organization formed, organized, chartered or existing under any laws other than those of the Philippines, or which is not a Philippine national, or more than forty per cent (40%) of the outstanding capital of which is owned or controlled by aliens shall do business or engage in any economic activity in the Philippines or be registered, licensed, or permitted by the Securities and Exchange Commission or by any other bureau, office, agency, political subdivision or instrumentality of the government, to do business, or engage in any economic activity in the Philippines without first securing a written certificate from the Board of Investments to the effect:

reiteration of the meaning of such term as provided in Article 14 of the *Omnibus Investments Code of 1981*,[28] to wit:

> Article 14. "Philippine national" shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding *and entitled to vote* is owned and held by citizens of the Philippines;** or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty per cent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty per cent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine national. (Boldfacing, italicization and underscoring supplied)

Under Article 69(3) of the Omnibus Investments Code of 1981, "no corporation x x x which is not a 'Philippine national' xxx shall do business x x x in the Philippines x x x without first securing a written certificate from the Board of Investments to the effect that such business or economic activity x x x would **not** conflict with the Constitution or laws of the Philippines."[29] Thus, a "non-Philippine national" cannot own and operate a reserved economic activity like a public utility. Again, this means that only a "Philippine national" can own and operate a public utility.

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(3) That such business or economic activity by the applicant would not conflict with the Constitution or laws of the Philippines;

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[28] Presidential Decree No. 1789.

[29] Article 69. *Authority to Do Business.* No alien, and no firm, association, partnership, corporation or any other form of business organization formed, organized, chartered or existing under any laws other than those of the Philippines, or which is not a Philippine national, or more

Prior to the Omnibus Investments Code of 1981, Republic Act No. 5186[30] or the *Investment Incentives Act*, which took effect on 16 September 1967, contained a similar definition of a "Philippine national," to wit:

(f) "Philippine National" shall mean a citizen of the Philippines; or a partnership or association wholly owned by citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty per cent of the capital stock outstanding *and entitled to vote* is owned and held by citizens of the Philippines**; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine National and at least sixty per cent of the fund will accrue to the benefit of Philippine Nationals: Provided, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty per cent of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine National. (Boldfacing, italicization and underscoring supplied)

Under Section 3 of Republic Act No. 5455 or the *Foreign Business Regulations Act*, which took effect on 30 September 1968, if the investment in a domestic enterprise by non-Philippine

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than thirty (30%) per cent of the outstanding capital of which is owned or controlled by aliens shall do business or engage in any economic activity in the Philippines, or be registered, licensed, or permitted by the Securities and Exchange Commission or by any other bureau, office, agency, political subdivision or instrumentality of the government, to do business, or engage in any economic activity in the Philippines, without first securing a written certificate from the Board of Investments to the effect:

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(3) That such business or economic activity by the applicant would not conflict with the Constitution or laws of the Philippines;

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[30] An Act Prescribing Incentives And Guarantees To Investments In The Philippines, Creating A Board Of Investments, Appropriating The Necessary Funds Therefor And For Other Purposes.

nationals exceeds 30% of its outstanding capital stock, such enterprise must obtain prior approval from the Board of Investments before accepting such investment. Such approval shall not be granted if the investment "would conflict with existing constitutional provisions and laws regulating the degree of required ownership by Philippine nationals in the enterprise."[31] A "non-Philippine national" cannot own and operate a reserved economic activity like a public utility. Again, this means that only a "Philippine national" can own and operate a public utility.

The FIA, ***like all its predecessor statutes***, clearly defines a "**Philippine national**" as a Filipino citizen, or a **domestic corporation "at least sixty percent (60%) of the capital stock outstanding *and entitled to vote*"** is owned by Filipino citizens. A domestic corporation is a "Philippine national" only if at least 60% of its ***voting stock*** is owned by Filipino citizens. This definition of a "Philippine national" is crucial in the present case because the FIA reiterates and clarifies Section 11, Article XII of the 1987 Constitution, which limits the ownership and operation of public utilities to Filipino citizens or to corporations or associations at least 60% Filipino-owned.

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[31] Section 3 of RA No. 5455 states:

> Section 3. *Permissible Investments.* If an investment by a non-Philippine national in an enterprise not registered under the Investment Incentives Act is such that the total participation by non-Philippine nationals in the outstanding capital thereof shall exceed thirty per cent, the enterprise must obtain prior authority from the Board of Investments, which authority shall be granted unless the proposed investment
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> (a) Would conflict with existing constitutional provisions and laws regulating the degree of required ownership by Philippine nationals in the enterprise; or
>
> (b) Would pose a clear and present danger of promoting monopolies or combinations in restraint of trade; or
>
> (c) Would be made in an enterprise engaged in an area adequately being exploited by Philippine nationals; or
>
> (d) Would conflict or be inconsistent with the Investments Priorities Plan in force at the time the investment is sought to be made; or

The FIA is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment. The FIA spells out the procedures by which non-Philippine nationals can invest in the Philippines. Among the key features of this law is the concept of a negative list or the Foreign Investments Negative List.[32] Section 8 of the law states:

SEC. 8. ***List of Investment Areas Reserved to Philippine Nationals*** *[Foreign Investment Negative List]*. - The Foreign Investment Negative List shall have two [2] component lists: *A* and *B*:

a. ***List A*** **shall enumerate the *areas of activities reserved to Philippine nationals by mandate of the Constitution* and specific laws.**

b. *List B* shall contain the areas of activities and enterprises regulated pursuant to law:

1. which are defense-related activities, requiring prior clearance and authorization from the Department of National Defense [DND] to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials; unless such manufacturing or repair activity is specifically authorized, with a substantial export component, to a non-Philippine national by the Secretary of National Defense; or

2. which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beer houses, dance halls, sauna and steam bathhouses and massage clinics. (Boldfacing, underscoring and italicization supplied)

Section 8 of the FIA enumerates the investment areas "reserved to Philippine nationals." **Foreign Investment Negative List A**

(e) Would not contribute to the sound and balanced development of the national economy on a self-sustaining basis.

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[32] Executive Order No. 858, Promulgating the Eighth Regular Foreign Investment Negative List, signed on 5 February 2010, http://www.boi.gov.ph/pdf/laws/eo/EO%20858.pdf (accessed 17 August 2011).

consists of "*areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws,*" where foreign equity participation in any enterprise shall be limited to the maximum percentage expressly prescribed by the Constitution and other specific laws. In short, to own and operate a public utility in the Philippines one must be a "Philippine national" as defined in the FIA. The FIA is abundant notice to foreign investors to what extent they can invest in public utilities in the Philippines.

To repeat, among the areas of investment covered by the Foreign Investment Negative List A is the ownership and operation of public utilities, which the Constitution expressly reserves to Filipino citizens and to corporations at least 60% owned by Filipino citizens. **In other words, Negative List A of the FIA reserves the ownership and operation of public utilities only to "Philippine nationals," defined in Section 3(a) of the FIA as** "(1) a citizen of the Philippines; x x x or (3) **a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding *and entitled to vote* is owned and held by citizens of the Philippines**; or (4) a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals."

Clearly, from the effectivity of the Investment Incentives Act of 1967 to the adoption of the Omnibus Investments Code of 1981, to the enactment of the Omnibus Investments Code of 1987, and to the passage of the present Foreign Investments Act of 1991, or **for more than four decades, the statutory definition of the term "Philippine national" has been uniform and consistent: it means a Filipino citizen, or a domestic corporation at least 60% of the *voting stock* is owned by Filipinos. Likewise, these same statutes have uniformly and**

consistently required that only "Philippine nationals" could own and operate public utilities in the Philippines. The following exchange during the Oral Arguments is revealing:

JUSTICE CARPIO:

> Counsel, I have some questions. You are aware of the Foreign Investments Act of 1991, x x x? And the FIA of 1991 took effect in 1991, correct? That's over twenty (20) years ago, correct?

COMMISSIONER GAITE:

> Correct, Your Honor.

JUSTICE CARPIO:

> And Section 8 of the Foreign Investments Act of 1991 states that []only Philippine nationals can own and operate public Utilities[], correct?

COMMISSIONER GAITE:

> Yes, Your Honor.

JUSTICE CARPIO:

> And the same Foreign Investments Act of 1991 defines a "Philippine national" either as a citizen of the Philippines, or if it is a corporation at least sixty percent (60%) of the voting stock is owned by citizens of the Philippines, correct?

COMMISSIONER GAITE:

> Correct, Your Honor.

JUSTICE CARPIO:

> And, you are also aware that under the predecessor law of the Foreign Investments Act of 1991, the Omnibus Investments Act of 1987, the same provisions apply: x x x only Philippine nationals can own and operate a public utility and the Philippine national, if it is a corporation, x x x sixty percent (60%) of the capital stock of that corporation must be owned by citizens of the Philippines, correct?

COMMISSIONER GAITE:

> Correct, Your Honor.

JUSTICE CARPIO:

> And even prior to the Omnibus Investments Act of 1987, under the Omnibus Investments Act of 1981, the same rules apply: x x x only a Philippine national can own and operate a public utility and a Philippine national, if it is a corporation, sixty percent (60%) of its x x x voting stock, must be owned by citizens of the Philippines, correct?

COMMISSIONER GAITE:

> Correct, Your Honor.

JUSTICE CARPIO:

> And even prior to that, under [the]1967 Investments Incentives Act and the Foreign Company Act of 1968, the same rules applied, correct?

COMMISSIONER GAITE:

> Correct, Your Honor.

JUSTICE CARPIO:

> **So, for the last four (4) decades, x x x, the law has been very consistent – only a Philippine national can own and operate a public utility, and a Philippine national, if it is a corporation, x x x at least sixty percent (60%) of the voting stock must be owned by citizens of the Philippines, correct?**

COMMISSIONER GAITE:

> **Correct, Your Honor.**[33] (Emphasis supplied)

Government agencies like the SEC cannot simply ignore Sections 3(a) and 8 of the FIA which categorically prescribe that certain economic activities, like the ownership and operation of public utilities, are reserved to corporations "at least sixty percent (60%) of the capital stock outstanding ***and entitled to vote*** is owned and held by citizens of the Philippines." Foreign Investment Negative List A refers to "activities reserved to Philippine nationals by mandate of the Constitution and specific

[33] TSN (Oral Arguments), 26 June 2012, pp. 71-74.

laws." **The FIA is the basic statute regulating foreign investments in the Philippines**. Government agencies tasked with regulating or monitoring foreign investments, as well as counsels of foreign investors, should start with the FIA in determining to what extent a particular foreign investment is allowed in the Philippines. Foreign investors and their counsels who ignore the FIA do so at their own peril. Foreign investors and their counsels who rely on opinions of SEC legal officers that obviously contradict the FIA do so also at their own peril.

Occasional opinions of SEC legal officers that obviously contradict the FIA should immediately raise a red flag. There are already numerous opinions of SEC legal officers that cite the definition of a "Philippine national" in Section 3(a) of the FIA in determining whether a particular corporation is qualified to own and operate a nationalized or partially nationalized business in the Philippines. This shows that SEC legal officers are not only aware of, but also rely on and invoke, the provisions of the FIA in ascertaining the eligibility of a corporation to engage in partially nationalized industries. The following are some of such opinions:

1. Opinion of 23 March 1993, addressed to Mr. Francis F. How;
2. Opinion of 14 April 1993, addressed to Director Angeles T. Wong of the Philippine Overseas Employment Administration;
3. Opinion of 23 November 1993, addressed to Messrs. Dominador Almeda and Renato S. Calma;
4. Opinion of 7 December 1993, addressed to Roco Bunag Kapunan Migallos & Jardeleza;
5. SEC Opinion No. 49-04, addressed to Romulo Mabanta Buenaventura Sayoc & De Los Angeles;
6. SEC-OGC Opinion No. 17-07, addressed to Mr. Reynaldo G. David; and
7. SEC-OGC Opinion No. 03-08, addressed to Attys. Ruby Rose J. Yusi and Rudyard S. Arbolado.

The SEC legal officers' occasional but blatant disregard of the definition of the term "Philippine national" in the FIA signifies their lack of integrity and competence in resolving issues on the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution.

The PSE President argues that the term "Philippine national" defined in the FIA should be limited and interpreted to refer to corporations seeking to avail of tax and fiscal incentives under investment incentives laws and cannot be equated with the term "capital" in Section 11, Article XII of the 1987 Constitution. Pangilinan similarly contends that the FIA and its predecessor statutes do not apply to "companies which have not registered and obtained special incentives under the schemes established by those laws."

Both are desperately grasping at straws. The FIA does not grant tax or fiscal incentives to any enterprise. Tax and fiscal incentives to investments are granted separately under the Omnibus Investments Code of 1987, not under the FIA. In fact, the FIA expressly repealed Articles 44 to 56 of Book II of the Omnibus Investments Code of 1987, which articles previously regulated foreign investments in nationalized or partially nationalized industries.

The FIA is the applicable law regulating foreign investments in nationalized or partially nationalized industries. There is nothing in the FIA, or even in the Omnibus Investments Code of 1987 or its predecessor statutes, that states, expressly or impliedly, that the FIA or its predecessor statutes do not apply to enterprises not availing of tax and fiscal incentives under the Code. The FIA and its predecessor statutes apply to investments in all domestic enterprises, whether or not such enterprises enjoy tax and fiscal incentives under the Omnibus Investments Code of 1987 or its predecessor statutes. **The reason is quite obvious – mere non-availment of tax and fiscal incentives by a non-Philippine national cannot exempt it from Section 11, Article XII of the Constitution regulating foreign investments in public utilities**. In fact, the Board of Investments'

Primer on Investment Policies in the Philippines,[34] which is given out to foreign investors, provides:

PART III. FOREIGN INVESTMENTS WITHOUT INCENTIVES

Investors who do not seek incentives and/or whose chosen activities do not qualify for incentives, (*i.e.*, the activity is not listed in the IPP, and they are not exporting at least 70% of their production) may go ahead and make the investments without seeking incentives. **They only have to be guided by the Foreign Investments Negative List (FINL).**

The FINL clearly defines investment areas requiring at least 60% Filipino ownership. All other areas outside of this list are fully open to foreign investors. (Emphasis supplied)

V.
Right to elect directors, coupled with beneficial ownership,translates to effective control.

The 28 June 2011 Decision declares that the 60 percent Filipino ownership required by the Constitution to engage in certain economic activities applies not only to voting control of the corporation, but **also to the beneficial ownership of the corporation**. To repeat, we held:

Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. **Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required**. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]." (Emphasis supplied)

This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by "a trustee of funds for pension or other employee retirement or separation benefits," the trustee is a Philippine national if "at least sixty

[34] Published by the Board of Investments. For on-line copy, see http://www.fdi.net/documents/WorldBank/databases/philippines/primer.htm (accessed 3 September 2012)

percent (60%) of the fund will accrue to the benefit of Philippine nationals." Likewise, Section 1(b) of the Implementing Rules of the FIA provides that "for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential.**"

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation but also to the beneficial ownership of the corporation, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation. Under the Corporation Code, capital stock[35] consists of all classes of shares issued to stockholders, that is, common shares as well as preferred shares, which may have different rights, privileges or restrictions as stated in the articles of incorporation.[36]

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[35] In his book, Fletcher explains:

The term "stock" has been used in the same sense as "capital stock" or "capital," and it has been said that "its primary meaning is capital, in whatever form it may be invested. More commonly, it is now being used to designate shares of the stock in the hands of the individual shareholders, or the certificates issued by the corporation to them. (*Fletcher Cyclopedia of the Law of Private Corporations*, 1995 Revised Volume, Vol. 11, § 5079, p. 13; citations omitted).

[36] SECTION 137. Outstanding capital stock defined. - The term "outstanding capital stock" as used in this Code, means the total shares of stock issued to subscribers or stockholders, whether or not fully or partially paid, except treasury shares.

SEC. 6. *Classification of shares.* - The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code: Provided, further, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may be provided for

The Corporation Code allows denial of the right to vote to preferred and redeemable shares, but disallows denial of the right to vote in specific corporate matters. Thus, common shares have the right to vote in the election of directors, while preferred shares may be denied such right. Nonetheless, preferred shares, even if denied the right to vote in the election of directors, are entitled to vote on the following corporate matters: (1) amendment of articles of incorporation; (2) increase and decrease of capital stock; (3) incurring, creating or increasing bonded indebtedness; (4) sale, lease, mortgage or other disposition of substantially all corporate assets; (5) investment of funds in another business or corporation or for a purpose other than the primary purpose for which the corporation was organized; (6) adoption, amendment

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in the articles of incorporation: Provided, however, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.

Preferred shares of stock issued by any corporation may be given preference in the distribution of the assets of the corporation in case of liquidation and in the distribution of dividends, or such other preferences as may be stated in the articles of incorporation which are not violative of the provisions of this Code: Provided, That preferred shares of stock may be issued only with a stated par value. The board of directors, where authorized in the articles of incorporation, may fix the terms and conditions of preferred shares of stock or any series thereof: Provided, That such terms and conditions shall be effective upon the filing of a certificate thereof with the Securities and Exchange Commission.

Shares of capital stock issued without par value shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: Provided; That shares without par value may not be issued for a consideration less than the value of five (₱5.00) pesos per share: Provided, further, That the entire consideration received by the corporation for its no-par value shares shall be treated as capital and shall not be available for distribution as dividends.

A corporation may, furthermore, classify its shares for the purpose of insuring compliance with constitutional or legal requirements.

Except as otherwise provided in the articles of incorporation and stated in the certificate of stock, each share shall be equal in all respects to every other share.

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and repeal of by-laws; (7) merger and consolidation; and (8) dissolution of corporation.[37]

Since a specific class of shares may have rights and privileges or restrictions different from the rest of the shares in a corporation, the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution must apply not only to shares with voting rights but also to shares without voting rights. Preferred shares, denied the right to vote in the election of directors, are anyway still entitled to vote on the eight specific corporate matters mentioned above. **Thus, if a corporation, engaged in a partially nationalized industry, issues a mixture of common and preferred non-voting shares, at least 60 percent of the common shares and at least 60 percent of the preferred non-voting shares must be owned by Filipinos.** Of course, if a corporation issues only a single class of shares, at least 60 percent of such shares must necessarily be owned by Filipinos. **In short, the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares, whether common, preferred non-voting, preferred voting or any other class of shares.** This uniform application of the 60-40 ownership requirement in favor of Filipino citizens clearly breathes life to the constitutional command that the ownership and operation of public utilities shall be reserved exclusively to corporations at least 60 percent of whose capital is Filipino-owned. Applying uniformly the 60-40 ownership requirement in favor of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.

Moreover, such uniform application to each class of shares insures that the "controlling interest" in public utilities always lies in the hands of Filipino citizens. This addresses and extinguishes Pangilinan's worry that foreigners, owning most of the non-voting shares, will exercise greater control over fundamental corporate matters requiring two-thirds or majority vote of all shareholders.

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[37] Under Section 6 of the Corporation Code.

VI.
Intent of the framers of the Constitution

While Justice Velasco quoted in his Dissenting Opinion[38] a portion of the deliberations of the Constitutional Commission to support his claim that the term "capital" refers to the total outstanding shares of stock, whether voting or non-voting, the following excerpts of the deliberations reveal otherwise. It is clear from the following exchange that the term "capital" refers to **controlling interest** of a corporation, thus:

MR. NOLLEDO. In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9 and 2/3-1/3 in Section 15.

MR. VILLEGAS. That is right.

MR. NOLLEDO. In teaching law, we are always faced with this question: "Where do we base the equity requirement, is it on the authorized capital stock, on the subscribed capital stock, or on the paid-up capital stock of a corporation"? Will the Committee please enlighten me on this?

MR. VILLEGAS. We have just had a long discussion with the members of the team from the UP Law Center who provided us a draft. **The phrase that is contained here which we adopted from the UP draft is "60 percent of voting stock."**

MR. NOLLEDO. That must be based on the subscribed capital stock, because unless declared delinquent, unpaid capital stock shall be entitled to vote.

MR. VILLEGAS. That is right.

MR. NOLLEDO. Thank you.

With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, does the Committee adopt the grandfather rule?

MR. VILLEGAS. Yes, that is the understanding of the Committee.

MR. NOLLEDO. Therefore, we need additional Filipino capital?

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[38] Dissenting Opinion to the 28 June 2011 Decision.

MR. VILLEGAS. Yes.[39]

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MR. AZCUNA. May I be clarified as to that portion that was accepted by the Committee.

MR. VILLEGAS. The portion accepted by the Committee is the deletion of the phrase "voting stock or controlling interest."

MR. AZCUNA. Hence, without the Davide amendment, the committee report would read: "corporations or associations at least sixty percent of whose CAPITAL is owned by such citizens."

MR. VILLEGAS. Yes.

MR. AZCUNA. So if the Davide amendment is lost, we are stuck with 60 percent of the capital to be owned by citizens.

MR. VILLEGAS. That is right.

MR. AZCUNA. But the control can be with the foreigners even if they are the minority. Let us say 40 percent of the capital is owned by them, but it is the voting capital, whereas, the Filipinos own the nonvoting shares. So we can have a situation where the corporation is controlled by foreigners despite being the minority because they have the voting capital. That is the anomaly that would result here.

MR. BENGZON. No, the reason we eliminated the word "stock" as stated in the 1973 and 1935 Constitutions is that according to Commissioner Rodrigo, there are associations that do not have stocks. That is why we say "CAPITAL."

MR. AZCUNA. We should not eliminate the phrase "controlling interest."

MR. BENGZON. In the case of stock corporations, it is <u>assumed</u>.[40] (Boldfacing and underscoring supplied)

Thus, 60 percent of the "capital" **assumes**, or should result in, a "**controlling interest**" in the corporation.

The use of the term "capital" was intended to replace the word "stock" because associations without stocks can operate

[39] Record of the Constitutional Commission, Vol. III, pp. 255-256.

[40] *Id.* at 360.

public utilities as long as they meet the 60-40 ownership requirement in favor of Filipino citizens prescribed in Section 11, Article XII of the Constitution. However, this did not change the intent of the framers of the Constitution to reserve exclusively to Philippine nationals the "**controlling interest**" in public utilities.

During the drafting of the 1935 Constitution, economic protectionism was "the battle-cry of the nationalists in the Convention."[41] The same battle-cry resulted in the nationalization of the public utilities.[42] This is also the same intent of the framers of the 1987 Constitution who adopted the exact formulation embodied in the 1935 and 1973 Constitutions on foreign equity limitations in partially nationalized industries.

The OSG, in its own behalf and as counsel for the State,[43] agrees fully with the Court's interpretation of the term "capital." In its Consolidated Comment, the OSG explains that the deletion of the phrase "controlling interest" and replacement of the word "stock" with the term "capital" were intended specifically to extend the scope of the entities qualified to operate public utilities to include associations without stocks. The framers' omission of the phrase "controlling interest" did not mean the inclusion of all shares of stock, whether voting or non-voting. The OSG reiterated essentially the Court's declaration that the Constitution reserved exclusively to Philippine nationals the ownership and operation of public utilities consistent with the State's policy to "develop a self-reliant and independent national economy ***effectively controlled by Filipinos***."

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[41] Aruego, Jose M., *THE FRAMING OF THE PHILIPPINE CONSTITUTION*, Vol. II, 1936, p. 658.

[42] *Id.*

[43] The OSG stated, "It must be stressed that when the OSG stated its concurrence with the Honorable Court's ruling on the proper definition of capital, it did so, not on behalf of the SEC, its individual client in this case. Rather, the OSG did so in the exercise of its discretion not only in its capacity as statutory counsel of the SEC but as counsel for no less than the State itself."

As we held in our 28 June 2011 Decision, to construe broadly the term "capital" as the total outstanding capital stock, treated as a ***single*** class regardless of the actual classification of shares, grossly contravenes the intent and letter of the Constitution that the "State shall develop a self-reliant and independent national economy ***effectively controlled*** by Filipinos." We illustrated the glaring anomaly which would result in defining the term "capital" as the total outstanding capital stock of a corporation, treated as a ***single*** class of shares regardless of the actual classification of shares, to wit:

> Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term "capital," such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.
>
> In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. x x x

Further, even if foreigners who own more than forty percent of the voting shares elect an all-Filipino board of directors, this situation does not guarantee Filipino control and does not in any way cure the violation of the Constitution. The independence of the Filipino board members so elected by such foreign shareholders is highly doubtful. As the OSG pointed out, quoting Justice George Sutherland's words in *Humphrey's Executor v. US*,[44] "x x x it is quite evident that one who holds

[44] 295 U.S. 602, 55 S.Ct. 869, U.S. 1935 (27 May 1935).

his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will." Allowing foreign shareholders to elect a controlling majority of the board, even if all the directors are Filipinos, grossly circumvents the letter and intent of the Constitution and defeats the very purpose of our nationalization laws.

VII.
Last sentence of Section 11, Article XII of the Constitution

The last sentence of Section 11, Article XII of the 1987 Constitution reads:

> The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

During the Oral Arguments, the OSG emphasized that there was never a question on the intent of the framers of the Constitution to limit foreign ownership, and assure majority Filipino ownership and control of public utilities. The OSG argued, "while the delegates disagreed as to the percentage threshold to adopt, x x x the records show they clearly understood that Filipino control of the public utility corporation can only be and is obtained only through the election of a majority of the members of the board."

Indeed, the only point of contention during the deliberations of the Constitutional Commission on 23 August 1986 was the extent of majority Filipino control of public utilities. This is evident from the following exchange:

> THE PRESIDENT. Commissioner Jamir is recognized.
>
> MR. JAMIR. Madam President, my proposed amendment on lines 20 and 21 is to delete the phrase "two thirds of whose voting stock or controlling interest," and instead substitute the words "SIXTY PERCENT OF WHOSE CAPITAL" so that the sentence will read: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under

the laws of the Philippines at least SIXTY PERCENT OF WHOSE CAPITAL is owned by such citizens."

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THE PRESIDENT: Will Commissioner Jamir first explain?

MR. JAMIR. Yes, in this Article on National Economy and Patrimony, there were two previous sections in which we fixed the Filipino equity to 60 percent as against 40 percent for foreigners. It is only in this Section 15 with respect to public utilities that the committee proposal was increased to two-thirds. I think it would be better to harmonize this provision by providing that even in the case of public utilities, the minimum equity for Filipino citizens should be 60 percent.

MR. ROMULO. Madam President.

THE PRESIDENT. Commissioner Romulo is recognized.

MR. ROMULO. My reason for supporting the amendment is based on the discussions I have had with representatives of the Filipino majority owners of the international record carriers, and the subsequent memoranda they submitted to me. x x x

Their second point is that under the Corporation Code, the management and control of a corporation is vested in the board of directors, not in the officers but in the board of directors. The officers are only agents of the board. And they believe that with 60 percent of the equity, the Filipino majority stockholders undeniably control the board. Only on important corporate acts can the 40-percent foreign equity exercise a veto, x x x.

xxx xxx xxx[45]

MS. ROSARIO BRAID. Madam President.

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. Yes, in the interest of equal time, may I also read from a memorandum by the spokesman of the Philippine Chamber of Communications on why they would like to maintain the present equity, I am referring to the 66 2/3. They would prefer to have a 75-25 ratio but would settle for 66 2/3. x x x

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[45] Record of the Constitutional Commission, Vol. 3, pp. 650-651 (23 August 1986).

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THE PRESIDENT. Just to clarify, would Commissioner Rosario Braid support the proposal of two-thirds rather than the 60 percent?

MS. ROSARIO BRAID. I have added a clause that will put management in the hands of Filipino citizens.

xxx xxx xxx[46]

While they had differing views on the percentage of Filipino ownership of capital, it is clear that the framers of the Constitution intended public utilities to be ***majority*** Filipino-owned and controlled. To ensure that Filipinos control public utilities, the framers of the Constitution approved, as additional safeguard, the inclusion of the last sentence of Section 11, Article XII of the Constitution commanding that "[t]he participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines." In other words, the last sentence of Section 11, Article XII of the Constitution mandates that (1) the participation of foreign investors in the governing body of the corporation or association shall be limited to their proportionate share in the capital of such entity; and (2) all officers of the corporation or association must be Filipino citizens.

Commissioner Rosario Braid proposed the inclusion of the phrase requiring the managing officers of the corporation or association to be Filipino citizens specifically to prevent management contracts, which were designed primarily to circumvent the Filipinization of public utilities, and to assure Filipino control of public utilities, thus:

MS. ROSARIO BRAID. x x x They also like to suggest that we amend this provision by adding a phrase which states: "THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY

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[46] Record of the Constitutional Commission, Vol. 3, pp. 652-653 (23 August 1986).

CITIZENS OF THE PHILIPPINES." I have with me their position paper.

THE PRESIDENT. The Commissioner may proceed.

MS. ROSARIO BRAID. The three major international record carriers in the Philippines, which Commissioner Romulo mentioned – Philippine Global Communications, Eastern Telecommunications, Globe Mackay Cable – are 40-percent owned by foreign multinational companies and 60-percent owned by their respective Filipino partners. All three, however, also have management contracts with these foreign companies – Philcom with RCA, ETPI with Cable and Wireless PLC, and GMCR with ITT. Up to the present time, the general managers of these carriers are foreigners. While the foreigners in these common carriers are only minority owners, the foreign multinationals are the ones managing and controlling their operations by virtue of their management contracts and by virtue of their strength in the governing bodies of these carriers.[47]

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MR. OPLE. I think a number of us have agreed to ask Commissioner Rosario Braid to propose an amendment with respect to the operating management of public utilities, and in this amendment, we are associated with Fr. Bernas, Commissioners Nieva and Rodrigo. Commissioner Rosario Braid will state this amendment now.

Thank you.

MS. ROSARIO BRAID. Madam President.

THE PRESIDENT. This is still on Section 15.

MS. ROSARIO BRAID. Yes.

MR. VILLEGAS. Yes, Madam President.

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MS. ROSARIO BRAID. Madam President, I propose a new section to read: 'THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES."

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[47] Record of the Constitutional Commission, Vol. 3, p. 652 (23 August 1986).

This will prevent management contracts and assure control by Filipino citizens. Will the committee assure us that this amendment will insure that past activities such as management contracts will no longer be possible under this amendment?

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FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Will the committee accept a reformulation of the first part?

MR. BENGZON. Let us hear it.

FR. BERNAS. The reformulation will be essentially the formula of the 1973 Constitution which reads: "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND..."

MR. VILLEGAS. "ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS AND ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES."

MR. BENGZON. Will Commissioner Bernas read the whole thing again?

FR. BERNAS. "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF..." I do not have the rest of the copy.

MR. BENGZON. "AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES." Is that correct?

MR. VILLEGAS. Yes.

MR. BENGZON. Madam President, I think that was said in a more elegant language. We accept the amendment. Is that all right with Commissioner Rosario Braid?

MS. ROSARIO BRAID. Yes.

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MR. DE LOS REYES. The governing body refers to the board of directors and trustees.

MR. VILLEGAS. That is right.

MR. BENGZON. Yes, the governing body refers to the board of directors.

MR. REGALADO. It is accepted.

MR. RAMA. The body is now ready to vote, Madam President.

VOTING

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The results show 29 votes in favor and none against; so the proposed amendment is approved.

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THE PRESIDENT. All right. Can we proceed now to vote on Section 15?

MR. RAMA. Yes, Madam President.

THE PRESIDENT. Will the chairman of the committee please read Section 15?

MR. VILLEGAS. The entire Section 15, as amended, reads: "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least 60 PERCENT OF WHOSE CAPITAL is owned by such citizens." May I request Commissioner Bengzon to please continue reading.

MR. BENGZON. "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES."

MR. VILLEGAS. "NOR SHALL SUCH FRANCHISE, CERTIFICATE OR AUTHORIZATION BE EXCLUSIVE IN

CHARACTER OR FOR A PERIOD LONGER THAN TWENTY-FIVE YEARS RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public."

VOTING

xxx xxx xxx

The results show 29 votes in favor and 4 against; Section 15, as amended, is approved.[48] (Emphasis supplied)

The last sentence of Section 11, Article XII of the 1987 Constitution, particularly the provision on the limited participation of foreign investors in the governing body of public utilities, is a reiteration of the last sentence of Section 5, Article XIV of the 1973 Constitution,[49] signifying its importance in reserving ownership and control of public utilities to Filipino citizens.

VIII.
The undisputed facts

There is no dispute, and respondents do not claim the contrary, that (1) foreigners own 64.27% of the common shares

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[48] Record of the Constitutional Commission, Vol. 3, pp. 665-667 (23 August 1986).

[49] Section 5, Article XIV of the 1973 Constitution provides:

Section 5. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires. The State shall encourage equity participation in public utilities by the general public. **The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof.** (Emphasis supplied)

of PLDT, which class of shares exercises the **sole** right to vote in the election of directors, and thus foreigners control PLDT; (2) Filipinos own only 35.73% of PLDT's common shares, constituting a minority of the voting stock, and thus Filipinos do not control PLDT; (3) preferred shares, 99.44% owned by Filipinos, have no voting rights; (4) preferred shares earn only 1/70 of the dividends that common shares earn;[50] (5) preferred shares have twice the par value of common shares; and (6) preferred shares constitute 77.85% of the authorized capital stock of PLDT and common shares only 22.15%.

Despite the foregoing facts, the Court did not decide, and in fact refrained from ruling on the question of whether PLDT violated the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the 1987 Constitution. Such question indisputably calls for a presentation and determination of evidence through a hearing, which is generally outside the province of the Court's jurisdiction, but well within the SEC's statutory powers. Thus, for obvious reasons, the Court limited its decision on the purely legal and threshold issue on the definition of the term "capital" in Section 11, Article XII of the Constitution and directed the SEC to apply such definition in determining the exact percentage of foreign ownership in PLDT.

IX.
PLDT is not an indispensable party; SEC is impleaded in this case.

In his petition, Gamboa prays, among others:

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5. For the Honorable Court to issue a declaratory relief that ownership of common or voting shares is the sole basis in determining foreign equity in a public utility and that any other government rulings, opinions, and regulations inconsistent with this declaratory relief be declared unconstitutional and a violation of the intent and spirit of the 1987 Constitution;

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[50] For the year 2009.

6. For the Honorable Court to declare null and void all sales of common stocks to foreigners in excess of 40 percent of the total subscribed common shareholdings; and

7. For the Honorable Court **to direct the Securities and Exchange Commission** and Philippine Stock Exchange **to require PLDT to make a public disclosure of all of its foreign shareholdings and their actual and real beneficial owners**.

Other relief(s) just and equitable are likewise prayed for. (Emphasis supplied)

As can be gleaned from his prayer, Gamboa clearly asks this Court to compel the SEC to perform its statutory duty to investigate whether "the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has been complied with [by PLDT] as required by x x x the Constitution."[51] Such plea clearly negates SEC's argument that it was not impleaded.

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[51] SEC. 17. *Grounds when articles of incorporation or amendment may be rejected or disapproved.* – The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, **That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment**. The following are grounds for such rejection or disapproval:

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(4) **That the percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution**. (Emphasis supplied)

Section 5 of R.A. No. 8799 provides:

Section 5. *Powers and Functions of the Commission*.– 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or a permit issued by the Government;

Granting that only the SEC Chairman was impleaded in this case, the Court has ample powers to order the SEC's compliance with its directive contained in the 28 June 2011 Decision in view of the far-reaching implications of this case. In *Domingo v. Scheer*,[52] the Court dispensed with the amendment of the pleadings to implead the Bureau of Customs considering (1) the unique backdrop of the case; (2) the utmost need to avoid further delays; and (3) the issue of public interest involved. The Court held:

> The Court may be curing the defect in this case by adding the BOC as party-petitioner. The petition should not be dismissed because the second action would only be a repetition of the first. In *Salvador, et al., v. Court of Appeals, et al.*, we held that this Court has full powers, apart from that power and authority which is inherent, to amend the processes, pleadings, proceedings and decisions by substituting as party-plaintiff the real party-in-interest. **The Court has the power to avoid delay in the disposition of this case, to order its amendment as to implead the BOC as party-respondent. Indeed, it may no longer be necessary to do so taking into account the unique backdrop in this case, involving as it does an issue of**

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(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

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(f) Impose sanctions for the violation of laws and the rules, regulations and orders, issued pursuant thereto;

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(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

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(m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnership or associations, upon any of the grounds provided by law; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

[52] 466 Phil. 235 (2004).

public interest. After all, the Office of the Solicitor General has represented the petitioner in the instant proceedings, as well as in the appellate court, and maintained the validity of the deportation order and of the BOC's Omnibus Resolution. It cannot, thus, be claimed by the State that the BOC was not afforded its day in court, simply because only the petitioner, the Chairperson of the BOC, was the respondent in the CA, and the petitioner in the instant recourse. In *Alonso v. Villamor*, we had the occasion to state:

> **There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties.** They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.[53] (Emphasis supplied)

In any event, the SEC has expressly manifested[54] that it will abide by the Court's decision and defer to the Court's definition of the term "capital" in Section 11, Article XII of the Constitution. Further, the SEC entered its special appearance in this case and argued during the Oral Arguments, indicating its submission to the Court's jurisdiction. It is clear, therefore, that there exists no legal impediment against the proper and immediate implementation of the Court's directive to the SEC.

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[53] *Id.* at 266-267.

[54] In its Manifestation and Omnibus Motion dated 29 July 2011, the SEC stated: "The Commission respectfully manifests that the position of the Office of the Solicitor General ('OSG') on the meaning of the term "capital" does not reflect the view of the Commission. The Commission's position has been laid down in countless opinions that needs no reiteration. **The Commission, however, would submit to whatever would be the final decision of this Honorable Court on the meaning of the term "capital."** (Emphasis supplied; citations omitted)

PLDT is an indispensable party only insofar as the other issues, particularly the factual questions, are concerned. In other words, PLDT must be impleaded in order to fully resolve the issues on (1) whether the sale of 111,415 PTIC shares to First Pacific violates the constitutional limit on foreign ownership of PLDT; (2) whether the sale of common shares to foreigners exceeded the 40 percent limit on foreign equity in PLDT; and (3) whether the total percentage of the PLDT common shares with voting rights complies with the 60-40 ownership requirement in favor of Filipino citizens under the Constitution for the ownership and operation of PLDT. These issues indisputably call for an examination of the parties' respective evidence, and thus are clearly within the jurisdiction of the SEC. In short, PLDT must be impleaded, and must necessarily be heard, in the proceedings before the SEC where the factual issues will be thoroughly threshed out and resolved.

Notably, the foregoing issues were left untouched by the Court. The Court did not rule on the factual issues raised by Gamboa, except the single and purely legal issue on the definition of the term "capital" in Section 11, Article XII of the Constitution. The Court confined the resolution of the instant case to this threshold legal issue in deference to the fact-finding power of the SEC.

Needless to state, the Court can validly, properly, and fully dispose of the fundamental legal issue in this case even without the participation of PLDT since defining the term "capital" in Section 11, Article XII of the Constitution does not, in any way, depend on whether PLDT was impleaded. Simply put, PLDT is not indispensable for a complete resolution of the purely legal question in this case.[55] In fact, the Court, by treating the

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In its Memorandum, the SEC stated: "In the event that this Honorable Court rules with finality on the meaning of "capital", the SEC will yield to the Court and follow its interpretation."

[55] In *Lucman v. Malawi*, 540 Phil. 289 (2006), the Court defined indispensable parties as parties-in-interest without whom there can be no final determination of an action.

petition as one for *mandamus*,[56] merely directed the SEC to apply the Court's definition of the term "capital" in Section 11, Article XII of the Constitution in determining whether PLDT committed any violation of the said constitutional provision. **The dispositive portion of the Court's ruling is addressed not to PLDT but solely to the SEC, which is the administrative agency tasked to enforce the 60-40 ownership requirement in favor of Filipino citizens in Section 11, Article XII of the Constitution**.

Since the Court limited its resolution on the purely legal issue on the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution, and directed the SEC to investigate any violation by PLDT of the 60-40 ownership requirement in favor of Filipino citizens under the Constitution,[57] there is no deprivation of PLDT's property or denial of PLDT's right to due process, contrary to Pangilinan and Nazareno's misimpression. Due process will be afforded to PLDT when it presents proof to the SEC that it complies, as it claims here, with Section 11, Article XII of the Constitution.

X.
Foreign Investments in the Philippines

Movants fear that the 28 June 2011 Decision would spell disaster to our economy, as it may result in a sudden flight of

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[56] Section 3, Rule 65 of the Rules of Court states:

SEC. 3. *Petition for mandamus*.– When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

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[57] See *Lucman v. Malawi*, *supra*, where the Court referred to the Department of Interior and Local Government (though not impleaded)

existing foreign investors to "friendlier" countries and simultaneously deterring new foreign investors to our country. In particular, the PSE claims that the 28 June 2011 Decision may result in the following: (1) loss of more than ₱630 billion in foreign investments in PSE-listed shares; (2) massive decrease in foreign trading transactions; (3) lower PSE Composite Index; and (4) local investors not investing in PSE-listed shares.[58]

Dr. Bernardo M. Villegas, one of the *amici curiae* in the Oral Arguments, shared movants' apprehension. Without providing specific details, he pointed out the depressing state of the Philippine economy compared to our neighboring countries which boast of growing economies. Further, Dr. Villegas explained that the solution to our economic woes is for the government to "take-over" strategic industries, such as the public utilities sector, thus:

JUSTICE CARPIO:

I would like also to get from you Dr. Villegas if you have additional information on whether this high FDI[59] countries in East Asia have allowed foreigners x x x control [of] their public utilities, so that we can compare apples with apples.

DR. VILLEGAS:

Correct, but let me just make a comment. When these neighbors of ours find an industry strategic, their solution is not to "Filipinize" or "Vietnamize" or "Singaporize." **Their solution is to make sure that those industries are in the hands of state enterprises. So, in these countries, nationalization means the government takes over. And because their governments are competent and honest enough to the public, that is the solution.** x x x[60] (Emphasis supplied)

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for investigation and appropriate action the matter regarding the withdrawals of deposits representing the concerned *barangays*' Internal Revenue Allotments.

[58] *Rollo* (Vol. III), pp. 1444-1445.

[59] Foreign Direct Investments.

[60] TSN (Oral Arguments), 26 June 2012, p. 117.

If government ownership of public utilities is the solution, then foreign investments in our public utilities serve no purpose. Obviously, there can never be foreign investments in public utilities if, as Dr. Villegas claims, the "solution is to make sure that those industries are in the hands of state enterprises." Dr. Villegas's argument that foreign investments in telecommunication companies like PLDT are badly needed to save our ailing economy contradicts his own theory that the solution is for government to take over these companies. Dr. Villegas is barking up the wrong tree since State ownership of public utilities and foreign investments in such industries are diametrically opposed concepts, which cannot possibly be reconciled.

In any event, the experience of our neighboring countries cannot be used as argument to decide the present case differently for two reasons. First, the governments of our neighboring countries have, as claimed by Dr. Villegas, taken over ownership and control of their strategic public utilities like the telecommunications industry. Second, our Constitution has specific provisions limiting foreign ownership in public utilities which the Court is sworn to uphold regardless of the experience of our neighboring countries.

In our jurisdiction, the Constitution expressly reserves the ownership and operation of public utilities to Filipino citizens, or corporations or associations at least 60 percent of whose capital belongs to Filipinos. Following Dr. Villegas's claim, the Philippines appears to be more liberal in allowing foreign investors to own 40 percent of public utilities, unlike in other Asian countries whose governments own and operate such industries.

XI.
Prospective Application of Sanctions

In its Motion for Partial Reconsideration, the SEC sought to clarify the reckoning period of the application and imposition of appropriate sanctions against PLDT if found violating Section 11, Article XII of the Constitution.

As discussed, the Court has directed the SEC to investigate and determine whether PLDT violated Section 11, Article XII of the Constitution. Thus, there is no dispute that it is only after the SEC has determined PLDT's violation, if any exists at the time of the commencement of the administrative case or investigation, that the SEC may impose the statutory sanctions against PLDT. In other words, once the 28 June 2011 Decision becomes final, the SEC shall impose the appropriate sanctions only if it finds after due hearing that, at the start of the administrative case or investigation, there is an existing violation of Section 11, Article XII of the Constitution. Under prevailing jurisprudence, public utilities that fail to comply with the nationality requirement under Section 11, Article XII and the FIA can cure their deficiencies prior to the start of the administrative case or investigation.[61]

XII.
Final Word

The Constitution expressly declares as State policy the development of an economy "***effectively controlled***" by Filipinos. Consistent with such State policy, the Constitution explicitly reserves the ownership and operation of public utilities to Philippine nationals, who are defined in the Foreign Investments Act of 1991 as Filipino citizens, or corporations or associations at least 60 percent of whose capital ***with voting rights*** belongs to Filipinos. The FIA's implementing rules explain that "[f]or stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential**." In effect, the FIA clarifies, reiterates and confirms the interpretation that the term "capital" in Section 11, Article XII of the 1987 Constitution refers to ***shares with voting rights, as well as with full beneficial ownership***. This is precisely because the right to vote in the election of directors, coupled with full beneficial

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[61] See *Halili v. Court of Appeals*, 350 Phil. 906 (1998); *United Church Board for World Ministries v. Sebastian*, 242 Phil. 848 (1988).

ownership of stocks, translates to effective control of a corporation.

Any other construction of the term "capital" in Section 11, Article XII of the Constitution contravenes the letter and intent of the Constitution. Any other meaning of the term "capital" openly invites alien domination of economic activities reserved exclusively to Philippine nationals. Therefore, respondents' interpretation will ultimately result in handing over effective control of our national economy to foreigners in patent violation of the Constitution, making Filipinos second-class citizens in their own country.

Filipinos have only to remind themselves of how this country was exploited under the Parity Amendment, which gave Americans the same rights as Filipinos in the exploitation of natural resources, and in the ownership and control of public utilities, in the Philippines. To do this the 1935 Constitution, which contained the same 60 percent Filipino ownership and control requirement as the present 1987 Constitution, had to be amended to give Americans parity rights with Filipinos. There was bitter opposition to the Parity Amendment[62] and many Filipinos eagerly awaited its expiration. In late 1968, PLDT was one of the American-controlled public utilities that became Filipino-controlled when the controlling American stockholders divested in anticipation of the expiration of the Parity Amendment on 3 July 1974.[63] No economic suicide happened when control of public utilities and mining corporations passed to Filipinos' hands upon expiration of the Parity Amendment.

Movants' interpretation of the term "capital" would bring us back to the same evils spawned by the Parity Amendment, ***effectively giving foreigners parity rights with Filipinos, but this time even without any amendment to the present Constitution***. Worse, movants' interpretation opens up our

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[62] Urbano A. Zafra, *The Laurel-Langley Agreement and the Philippine Economy*, p. 43 (1973). See also *Mabanag v. Lopez Vito*, 78 Phil. 1 (1947).

[63] See Hadi Salehi Esfahani, *The Political Economy of the Philippines' Telecommunications Sector*, World Bank Policy Research Department (1994).

national economy to ***effective control*** not only by Americans but also by **all foreigners, be they Indonesians, Malaysians or Chinese, even in the absence of reciprocal treaty arrangements**. At least the Parity Amendment, as implemented by the Laurel-Langley Agreement, gave the capital-starved Filipinos theoretical parity – the same rights as Americans to exploit natural resources, and to own and control public utilities, *in the United States of America*. Here, movants' interpretation would effectively mean a ***unilateral*** opening up of our national economy to all foreigners, ***without any reciprocal arrangements***. That would mean that Indonesians, Malaysians and Chinese nationals could effectively control our mining companies and public utilities while Filipinos, even if they have the capital, could not control similar corporations in these countries.

The 1935, 1973 and 1987 Constitutions have the same 60 percent Filipino ownership and control requirement for public utilities like PLDT. Any deviation from this requirement necessitates an amendment to the Constitution as exemplified by the Parity Amendment. This Court has no power to amend the Constitution for its power and duty is only to faithfully apply and interpret the Constitution.

WHEREFORE, we **DENY** the motions for reconsideration **WITH FINALITY.** No further pleadings shall be entertained.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr. and *Abad, JJ.,* see dissenting opinions.

Reyes, J., joins the dissenting position of *J.* Velasco, Jr.

Perlas-Bernabe, J., no part due to prior participation in a related case.

DISSENTING OPINION

VELASCO, JR., *J.*:

Before Us are separate motions for reconsideration of the Court's June 28, 2011 Decision,[1] which partially granted the petition for prohibition, injunction and declaratory relief interposed by Wilson P. Gamboa (petitioner or Gamboa). Very simply, the Court held that the term "capital" appearing in Section 11, Article XII of the 1987 Constitution refers only to common shares or shares of stock entitled to vote in the election of the members of the board of directors of a public utility, and not to the total outstanding capital stock.

Respondents Manuel V. Pangilinan (Pangilinan) and Napoleon L. Nazareno (Nazareno) separately moved for reconsideration on procedural and substantive grounds, but reserved their main arguments against the majority's holding on the meaning of "capital." The Office of the Solicitor General (OSG), which initially represented the Securities and Exchange Commission (SEC), also requested reconsideration even as it manifested agreement with the majority's construal of the word "capital." Unable to join the OSG's stand on the determinative issue of capital, the SEC sought leave to join the fray on its own. In its *Motion to Admit Manifestation and Omnibus Motion*, the SEC stated that the OSG's position on said issue does not reflect its own and in fact diverges from what the Commission has consistently adopted prior to this case**.** And because the decision in question has a penalty component which it is tasked to impose, SEC requested clarification as to **when the reckoning period of application of the appropriate sanctions may be imposed on Philippine Long Distance Telephone Company (PLDT) in case the SEC determines that it has violated Sec. 11, Art. XII of the Constitution**.

To the foregoing motions, the main petitioner, now deceased, filed his *Comment and/or Opposition to Motions for Reconsideration*.

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[1] Penned by Justice Antonio T. Carpio.

Acting on the various motions and comment, the Court conducted and heard the parties in oral arguments on April 17 and June 26, 2012.

After considering the parties' positions as articulated during the oral arguments and in their pleadings and respective memoranda, I vote to grant reconsideration. This disposition is consistent with my dissent, on procedural and substantive grounds, to the June 28, 2011 majority Decision.

Conspectus

The core issue is the meaning of the word "capital" in the opening sentence of Sec. 11, Art. XII of the 1987 Constitution which reads:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. **The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines**. (Emphasis supplied.)

For an easier comprehension of the two contrasting positions on the contentious meaning of the word "capital," as found in the first sentence of the aforequoted provision, allow me to present a brief comparative analysis showing the dissimilarities.

The majority, in the June 28, 2011 Decision, as reiterated in the draft resolution, is of the view that the word "capital" in the first sentence of Sec. 11, Art. XII refers to common shares or voting shares **only**; thus limiting foreign ownership of such

shares to 40%. The rationale, as stated in the basic *ponencia*, is that this interpretation ensures that control of the Board of Directors stays in the hands of Filipinos, since foreigners can only own a maximum of 40% of said shares and, accordingly, can only elect the equivalent percentage of directors. As a necessary corollary, Filipino stockholders can always elect 60% of the Board of Directors which, to the majority, translates to control over the corporation.

The opposite view is that the word "capital" in the first sentence refers to the entire capital stock of the corporation or both voting and non-voting shares and NOT solely to common shares. From this standpoint, 60% control over the capital stock or the stockholders owning both voting and non-voting shares is assured to Filipinos and, as a consequence, over corporate matters voted upon and decisions reached during stockholders' meetings. On the other hand, the last sentence of Sec. 11, Art. XII, with the word "capital" embedded in it, is the provision that ensures Filipino control over the Board of Directors and its decisions.

To resolve the conflicting interpretations of the word "capital," the first sentence of Sec. 11, Art. XII must be read and considered in conjunction with the last sentence of said Sec. 11 which prescribes that "the participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital." After all, it is an established principle in constitutional construction that provisions in the Constitution must be harmonized.

It has been made very clear during the oral arguments and even by the parties' written submissions that control by Filipinos over the public utility enterprise exists on three (3) levels, namely:

1. Sixty percent (60%) control of Filipinos over the capital stock which covers both voting and non-voting shares and inevitably over the stockholders. This level of control is embodied in the first sentence of Sec. 11, Art. XII which reads:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or

associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens xxx.

The word "capital" in the above provision refers to capital stock or both voting and non-voting shares. Sixty percent (60%) control over the capital stock translates to control by Filipinos over almost all decisions by the stockholders during stockholders' meetings including ratification of the decisions and acts of the Board of Directors. During said meetings, voting and even non-voting shares are entitled to vote. The exercise by non-voting shares of voting rights over major corporate decisions is expressly provided in Sec. 6 of the Corporation Code which reads:

Sec. 6. x x x x

Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of capital stock;
6. Merger or consolidation of the corporation with another corporation or other corporations;
7. Investment of corporate funds in another corporation or business in accordance with this Code; and
8. Dissolution of the corporation.

Construing the word "capital" in the first sentence of Sec. 11, Art. XII of the Constitution as capital stock would ensure Filipino control over the public utility with respect to major corporate decisions. If we adopt the view espoused by Justice Carpio that the word "capital" means only common shares or voting shares, then foreigners can own even up to 100% of the non-voting shares. In such a situation, foreigners may very well exercise

control over all major corporate decisions as their ownership of the non-voting shares remains unfettered by the 40% cap laid down in the first sentence of Sec. 11, Art. XII. This will spawn an even greater anomaly because it would give the foreigners the opportunity to acquire ownership of the net assets of the corporation upon its dissolution to include what the Constitution enjoins—land ownership possibly through dummy corporations. With the view of Justice Carpio, Filipinos will definitely lose control over major corporate decisions which are decided by stockholders owning the majority of the non-voting shares.

2. Sixty percent (60%) control by Filipinos over the common shares or voting shares and necessarily over the Board of Directors of the public utility. Control on this level is guaranteed by the last sentence of Sec. 11, Art. XII which reads:

The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its "capital" x x x.

In its ordinary signification, "participation" connotes "the action or state of taking part with others in an activity."[2] This participation in its decision-making function can only be the right to elect board directors. Hence, **the last sentence of Sec. 11, Art. XII of the Constitution effectively restricts the right of foreigners to elect directors to the board in proportion to the limit on their total shareholdings.** Since the first part of Sec. 11, Art. XII of the Constitution specifies a 40% limit of foreign ownership in the total capital of the public utility corporation, then the rights of foreigners to be elected to the board of directors, is likewise limited to 40 *percent*. If the foreign ownership of common shares is lower than 40%, the participation of foreigners is limited to their proportionate share in the capital stock.

In the highly hypothetical public utility corporation with 100 common shares and 1,000,000 preferred non-voting shares, or

[2] *Webster's Third New International Dictionary of the English Language: Unabridged* (1981), Springfield, MA, p. 1646.

a total of 1,000,100 shares cited in the June 28, 2011 Decision, foreigners can thus only own up to 400,040 shares of the corporation, consisting of the **maximum** 40 (out of the 100) voting shares and 400,000 non-voting shares. And, assuming a 10-member board, the foreigners can elect only 4 members of the board **using the 40 voting shares they are allowed to own**.

Following, in fine, the dictates of Sec. 11, Art. XII, as couched, the foreign shareholders' right to elect members of the governing board of a given public utility corporation is proportional only to their right to hold a part of the total shareholdings of that entity. Since foreigners can only own, in the maximum, up to 40% of the total shareholdings of the company, then **their voting entitlement as to the numerical composition of the board would depend on the level of their shareholding in relation to the capital stock, but in no case shall it exceed the 40% threshold.**

Contrary to the view of Justice Carpio that the objective behind the first sentence of Sec. 11, Art. XII is to ensure control of Filipinos over the Board of Directors by limiting foreign ownership of the common shares or voting shares up to 40%, **it is actually the first part of the aforequoted last sentence of Sec. 11, Art. XII that limits the rights of foreigners to elect not more than 40% of the board seats** thus ensuring a clear majority in the Board of Directors to Filipinos. If we follow the line of reasoning of Justice Carpio on the meaning of the word "capital" in the first sentence, then there is no need for the framers of the Constitution to incorporate the last sentence in Sec. 11, Art. XII on the 40% maximum participation of the foreigners in the Board of Directors. The last sentence would be a useless redundancy, a situation doubtless unintended by the framers of the Constitution. A construction that renders a part of the law or Constitution being construed superfluous is an aberration,[3] for it is at all times presumed that each word used in the law is intentional

[3] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 124290, January 16, 1998, 284 SCRA 327, 367 and *Inding v. Sandiganbayan*, G.R. No. 143047, July 14, 2004, 434 SCRA 388, 403.

and has a particular and special role in the approximation of the policy sought to be attained, *ut magis valeat quam pereat*.

3. The third level of control proceeds from the requirement tucked in the second part of the ultimate sentence that "**all the executive and managing officers of the corporation must be citizens of the Philippines**." This assures full Filipino control, at all times, over the management of the public utility.

To summarize, the Constitution, as enacted, establishes not just one but a three-tiered control-enhancing-and-locking mechanism in Sec. 11, Article XII to ensure that Filipinos will always have full beneficial ownership and control of public utility corporations:

1. 40% ceiling on foreign ownership in the capital stock that ensures sixty percent (60%) Filipino control over the capital stock which covers both voting and non-voting shares. As a consequence, Filipino control over the stockholders is assured. (First sentence of Sec. 11, Art. XII). Thus, foreigners can own only up to 40% of the capital stock.

2. 40% ceiling on the right of foreigners to elect board directors that guarantees sixty percent (60%) Filipino control over the Board of Directors. (First part of last sentence of Sec. 11, Art. XII).

3. Reservation to Filipino citizens of the executive and managing officers, regardless of the level of alien equity ownership to secure total Filipino control over the management of the public utility enterprise (Second part of last sentence of Sec. 11, Art. XII). Thus, all executive and managing officers must be Filipinos.

Discussion

Undoubtedly there is a clash of conflicting opinions as to what "capital" in the first sentence of Sec. 11, Art. XII means. The majority says it refers only to common or voting shares. The minority says it includes both voting and non-voting shares. A resort to constitutional construction is unavoidable.

It is settled though that the "primary source from which to ascertain constitutional intent or purpose is the language of the constitution itself."[4] To this end, **the words used by the Constitution should as much as possible be understood in their ordinary meaning** as the Constitution is not a lawyer's document.[5] This approach, otherwise known as **the *verba legis* rule, should be applied save where technical terms are employed**.[6]

The plain meaning of "capital" in the first sentence of Sec. 11, Art. XII of the Constitution includes both voting and non-voting shares

J.M. Tuason & Co., Inc. v. Land Tenure Administration illustrates the *verba legis* rule. There, the Court cautions against departing from the commonly understood meaning of ordinary words used in the Constitution, *viz.*:

> We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the **words in which constitutional provisions are couched express the objective sought to be attained**. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails**.** As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, **its language as much as possible should be understood in the sense they have in common use**. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus, there are cases where the need for construction is reduced to a minimum.[7] (Emphasis supplied.)

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[4] Agpalo, Ruben E. *Statutory Construction*, 6th ed. (2009), p. 585.

[5] *Id.*; citations omitted.

[6] See also *Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010, 635 SCRA 783; *La Bugal-B'Laan Tribal Assn., Inc. v. Ramos*, G.R. No. 127882, December 1, 2002; *Francisco v. House of Representatives*, November 10, 2010; *Victoria v. COMELEC*, G.R. No. 109005, January 10, 1994.

[7] No. L-21064, February 18, 1970, 31 SCRA 413, 422-423.

The primary reason for the *verba legis* approach, as pointed out by Fr. Joaquin Bernas during the June 26, 2012 arguments, is that the people who ratified the Constitution voted on their understanding of the word capital in its everyday meaning. Fr. Bernas elucidated thus:

> x x x [O]ver the years, from the 1935 to the 1973 and finally even under the 1987 Constitution, the prevailing practice has been to base the 60-40 proportion on total outstanding capital stock, that is, the combined total of common and non-voting preferred shares. This is what occasioned the case under consideration.
>
> What is the constitutional relevance of this continuing practice? I suggest that it is relevant for determining what the people in the street voted for when they ratified the Constitution. **When the draft of a Constitution is presented to the people for ratification, what the people vote on is not the debates in the constituent body but the text of the draft. Concretely, what the electorate voted on was their understanding of the word capital in its everyday meaning they encounter in daily life.** We cannot attribute to the voters a jurist's sophisticated meaning of capital and its breakdown into common and preferred. What they vote on is what they see. Nor do they vote on what the drafters saw as assumed meaning, to use Bengzon's explanation. In the language of the sophisticates, what **voters in a plebiscite vote on is *verba legis* and not *anima legis* about which trained jurists debate.**
>
> What then does it make of the contemporary understanding by SEC *etc*. Is the contemporary understanding unconstitutional or constitutional? I hesitate to characterize it as constitutional or unconstitutional. I would merely characterize it as popular. What I mean is it reflects the common understanding of the ordinary *populi*, common but incomplete.[8] (Emphasis supplied.)

"Capital" in the first sentence of Sec. 11, Art. XII must then be accorded a meaning accepted, understood, and used by an ordinary person not versed in the technicalities of law. As defined in a non-legal dictionary, capital stock or capital is ordinarily taken to mean "the **outstanding shares** of a joint

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[8] Memorandum, *The Meaning of "Capital,"* p. 10, read by Fr. Bernas as *amicus curiae* in the June 26, 2012 Oral Argument.

stock company considered as an aggregate"[9] or "the **ownership element** of a corporation divided into shares and represented by certificates."[10]

The term "capital" includes all the outstanding shares of a company that represent "the proprietary claim in a business."[11] **It does not distinguish based on the voting feature of the stocks but refers to all shares, be they voting or non-voting**. Neither is the term limited to the management aspect of the corporation but clearly refers to the separate aspect of **ownership** of the corporate shares thereby encompassing all shares representing the equity of the corporation.

This plain meaning, as understood, accepted, and used in ordinary parlance, hews with the definition given by Black who equates capital to capital stock[12] and defines it as "the total number of shares of stock that a corporation may issue under its charter or articles of incorporation, **including both common stock and preferred stock**."[13] This meaning is also reflected in legal commentaries on the Corporation Code. The respected commentator Ruben E. Agpalo defines "capital" as the "money, property or means contributed by stockholders for the business or enterprise for which the corporation was formed and generally implies that such money or property or means have been contributed in payment for stock issued to the contributors."[14] Meanwhile, "capital stock" is "**the aggregate of the shares actually subscribed** [or] the amount subscribed and paid-in and upon which the corporation is to conduct its operations, or

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[9] *Webster's Third New International Dictionary Unabridged*, Merriam-Websters Inc., Springfield, MA. 1981, p. 322.

[10] *Id.*; emphasis supplied.

[11] *Id.*

[12] Black's Law Dictionary, 9th Ed., for the iPhone/iPad/iPod touch, Version 2.0.0 (B10239), p. 236.

[13] *Id.*; emphasis supplied.

[14] Agpalo, Ruben E. *Agpalo's Legal Words and Phrases*, 1987 Ed., p. 96 citing Ruben E. Agpalo *Comments on the Corporation Code*, 1993 ed., p. 45.

the amount paid-in by its stockholders in money, property or services with which it is to conduct its business."[15]

This definition has been echoed by numerous other experts in the field of corporation law. Dean Villanueva wrote, thus:

> In defining the relationship between the corporation and its stockholders, the capital stock represents the proportional standing of the stockholders with respect to the corporation and corporate matters, such as their rights to vote and to receive dividends.
>
> In financial terms, **the capital stock of the corporation as reflected in the financial statement of the corporation represents the financial or proprietary claims of the stockholders to the net assets of the corporation upon dissolution.** In addition, the capital stock represents the totality of the portion of the corporation's assets and receivables which are covered by the trust fund doctrine and provide for the amount of assets and receivables of the corporation which are deemed protected for the benefit of the corporate creditors and from which the corporation cannot declare any dividends.[16] (Emphasis supplied.)

Similarly, renowned author Hector S. de Leon defines "capital" and "capital stock" in the following manner:

> *Capital* is used broadly to indicate the entire property or assets of the corporation. It includes the amount invested by the stockholders plus the undistributed earnings less losses and expenses. In the strict sense, the term refers to that portion of the net assets paid by the stockholders as consideration for the shares issued to them, which is utilized for the prosecution of the business of the corporation. It includes all balances or instalments due the corporation for shares of stock sold by it and all unpaid subscription for shares.
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> xxx xxx xxx
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> The term is also used synonymously with the words "capital stock," as meaning the amount subscribed and paid-in and upon

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[15] *Id*.

[16] Villanueva, Cesar Lapuz. *Philippine Corporate Law*. 2003 Ed., p. 537. Emphasis and underscoring supplied.

which the corporation is to conduct its operation (11 Fletcher Cyc. Corp., p. 15 [1986 ed.]) and **it is immaterial how the stock is classified, whether as common or preferred**.[17] (Emphasis and underscoring supplied.)

Hence, following the *verba legis* approach, I see no reason to stray away from what appears to be a common and settled acceptation of the word "capital," given that, as used in the constitutional provision in question, **it stands unqualified** by any restrictive or expansive word as to reasonably justify a distinction or a delimitation of the meaning of the word. *Ubi lex non distinguit nos distinguere debemus*, when the law does not distinguish, we must not distinguish.[18] Using this plain meaning of "capital" within the context of Sec. 11, Art. XII, foreigners are entitled to own **not more than 40% of the outstanding capital stock**, which would include both voting and non-voting shares.

Extraneous aids to ferret out constitutional intent

When the seeming ambiguity on the meaning of "capital" cannot be threshed out by looking at the language of the Constitution, then resort to extraneous aids has become imperative. The Court can utilize the following extraneous aids, to wit: (1) proceedings of the convention; (2) changes in phraseology; (3) history or realities existing at the time of the adoption of the Constitution; (4) prior laws and judicial decisions; (5) contemporaneous construction; and (6) consequences of alternative interpretations.[19] I submit that all these aids of

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[17] De Leon, Hector S. *The Corporation Code of the Philippines Annotated*, 2002 Ed. Manila, Phil. P. 71-72 citing (SEC Opinion, Feb. 15, 1988 which states: The term "capital" denotes the sum total of the shares subscribed and paid by the stockholders or agreed to be paid irrespective of their nomenclature. It would, therefore, be legal for foreigners to own more than 40% of the common shares but not more than the 40% constitutional limit of the outstanding capital stock which would include both common and non-voting preferred shares." (Emphasis and underscoring supplied.)

[18] *Tongson v. Arellano*, G.R. No. 77104, November 6, 1992, 215 SCRA 426.

[19] Agpalo, Ruben E. *Statutory Construction*, 6th ed. (2009), p. 588.

constitutional construction affirm that the only acceptable construction of "capital" in the first sentence of Sec. 11, Art. XII of the 1987 Constitution is that it refers to **all** shares of a corporation, both voting and non-voting.

Deliberations of the Constitutional Commission of 1986 demonstrate that capital means both voting and non-voting shares (1st extrinsic aid)

The proceedings of the 1986 Constitutional Commission that drafted the 1987 Constitution were accurately recorded in the Records of the Constitutional Commission.

To bring to light the true meaning of the word "capital" in the first line of Sec. 11, Art. XII, one must peruse, dissect and analyze the entire deliberations of the Constitutional Commission pertinent to the article on national economy and patrimony, as quoted below:

August 13, 1986, Wednesday

PROPOSED RESOLUTION NO. 496

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON NATIONAL ECONOMY AND PATRIMONY

Be it resolved as it is hereby resolved by the Constitutional Commission in session assembled, To incorporate the National Economy and Patrimony of the new Constitution, the following provisions:

ARTICLE____
NATIONAL ECONOMY AND PATRIMONY

SECTION 1. The State shall develop a self-reliant and independent national economy. x x x

xxx xxx xxx

SEC. 3. x x x The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. Such activities may be directly undertaken by the State, or it may enter into co-production, joint venture, production-sharing agreements with Filipino citizens or **corporations or associations**

at least sixty percent of whose voting stock or controlling interest is owned by such citizens. x x x

xxx xxx xxx

SEC. 9. The Congress shall reserve to citizens of the Philippines or to corporations or associations **at least sixty per cent of whose voting stock or controlling interest** is owned by such citizens or such higher percentage as Congress may prescribe, certain areas of investments when the national interest so dictates.

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SEC. 15. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines **at least two-thirds of whose voting stock or controlling interest is owned by such citizens.** Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. (Origin of Sec. 11, Article XII)

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MR. NOLLEDO. In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9, and 2/3-1/3 in Section 15.

MR. VILLEGAS. That is right.

MR. NOLLEDO. In teaching law, we are always faced with this question: "Where do we base the equity requirement, is it on the authorized capital stock, on the subscribed capital stock, or on the paid-up capital stock of a corporation?" Will the Committee please enlighten me on this?

MR. VILLEGAS. We have just had a long discussion with the members of the team from the UP Law Center who provided us a draft. The phrase that is contained here which we adopted from the UP draft is "60 percent of voting stock."

MR. NOLLEDO. That must be based on the subscribed capital stock, because unless declared delinquent, unpaid capital stock shall be entitled to vote.

MR. VILLEGAS. That is right.

MR. NOLLEDO. Thank you.

With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, does the Committee adopt the grandfather rule?

MR. VILLEGAS. Yes, that is the understanding of the Committee.

MR. NOLLEDO. Therefore, we need additional Filipino capital?

MR. VILLEGAS. Yes.[20]

August 14, 1986, Thursday

MR. FOZ. Mr. Vice-President, in Sections 3 and 9, the provision on equity is both 60 percent, but I notice that this is now different from the provision in the 1973 Constitution in that the basis for the equity provision is voting stock or controlling interest instead of the usual capital percentage as provided for in the 1973 Constitution. We would like to know what the difference would be between the previous and the proposed provisions regarding equity interest.

MR. VILLEGAS. Commissioner Suarez will answer that.

MR. SUAREZ. Thank you.

As a matter of fact, this particular portion is still being reviewed by this Committee. In Section 1, Article XIII of the 1935 Constitution, the wording is that the percentage should be based on the capital which is owned by such citizens. In the proposed draft, this phrase was proposed: "voting stock or controlling interest." This was a plan submitted by the UP Law Center.

Three days ago, we had an early morning breakfast conference with the members of the UP Law Center and precisely, we were seeking clarification regarding the difference. We would have three criteria to go by: One would be based on capital, which is capital stock of the corporation, authorized, subscribed or paid up, as employed under the 1935 and the 1973 Constitution. The idea behind the introduction of the phrase "voting stock or controlling interest" was precisely to avoid the perpetration of dummies, Filipino dummies

[20] Record of the (1986) Constitutional Commission, Vol. III, pp. 250-256.

of multinationals. It is theoretically possible that a situation may develop where these multinational interests would not really be only 40 percent but will extend beyond that in the matter of voting because they could enter into what is known as a voting trust or voting agreement with the rest of the stockholders and, therefore, notwithstanding the fact that on record their capital extent is only up to 40-percent interest in the corporation, actually, they would be managing and controlling the entire company. That is why the UP Law Center members suggested that we utilize the words "voting interest" which would preclude multinational control in the matter of voting, independent of the capital structure of the corporation. And then they also added the phrase "controlling interest" which up to now they have not been able to successfully define the exact meaning of. But they mentioned the situation where theoretically the board would be controlled by these multinationals, such that instead of, say, three Filipino directors out of five, there would be three foreign directors and, therefore, they would be controlling the management of the company with foreign interest. That is why they volunteered to flesh out this particular portion which was submitted by them, but up to now, they have not come up with a constructive rephrasing of this portion. And as far as I am concerned, I am not speaking in behalf of the Committee, **I would feel more comfortable if we go back to the wording of the 1935 and the 1973 Constitution, that is to say, the 60-40 percentage could be based on the capital stock of the corporation.**

MR. FOZ. I understand that that was the same view of Dean Carale who does not agree with the others on this panel at the UP Law Center regarding the percentage of the ratio.

MR. SUAREZ. That is right. Dean Carale shares my sentiment about this matter.

MR. BENGZON. I also share the sentiment of Commissioner Suarez in that respect. So there are already two in the Committee who want to go back to the wording of the 1935 and the 1973 Constitution.[21]

August 15, 1986, Friday

MR. MAAMBONG. I ask that Commissioner Treñas be recognized for an amendment on line 14.

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[21] *Id.* at 326-327.

THE PRESIDENT. Commissioner Treñas is recognized.

MR. TREÑAS. Madam President, may I propose an amendment on line 14 of Section 3 by deleting therefrom "whose voting stock and controlling interest." **And in lieu thereof, insert the CAPITAL so the line should read: "associations at least sixty percent of the CAPITAL is owned by such citizens.**

MR. VILLEGAS. We accept the amendment.

MR. TREÑAS. Thank you.

THE PRESIDENT. The amendment of Commissioner Treñas on line 14 has been accepted by the Committee.

Is there any objection? (*Silence*) The Chair hears none; the amendment is approved.

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THE PRESIDENT. Commissioner Suarez is recognized.

MR. SUAREZ. Thank you, Madam President.

Two points actually are being raised by Commissioner Davide's proposed amendment. One has reference to the percentage of holdings and the other one is the basis for that percentage. Would the body have any objection if we split it into two portions because there may be several Commissioners who would be willing to accept the Commissioner's proposal on capital stock in contradistinction to a voting stock for controlling interest?

MR. VILLEGAS. The proposal has been accepted already.

MR. DAVIDE. Yes, but it was 60 percent.

MR. VILLEGAS. That is right.

MR. SUAREZ. So, it is now 60 percent as against wholly owned?

MR. DAVIDE. Yes.

MR. SUAREZ. Is the Commissioner not insisting on the voting capital stock because that was already accepted by the Committee?

MR. DAVIDE. Would it mean that it would be 100-percent voting capital stock?

MR. SUAREZ. No, under the Commissioner's proposal it is just "CAPITAL" not "stock."

MR. DAVIDE. No, I want it to be very clear. What is the alternative proposal of the Committee? How shall it read?

MR. SUAREZ. It will only read something like: "the CAPITAL OF WHICH IS FULLY owned."

MR. VILLEGAS. Let me read lines 12 to 14 which state:

… enter into co-production, joint venture, production sharing agreements with Filipino citizens or corporations or associations at least 60 percent of whose CAPITAL is owned by such citizens.

We are going back to the 1935 and 1973 formulations.

MR. DAVIDE. I cannot accept the proposal because the word CAPITAL should not really be the guiding principle. It is the ownership of the corporation. It may be voting or not voting, but that is not the guiding principle.

MR. SUAREZ. So, the Commissioner is insisting on the use of the term "CAPITAL STOCK"?

MR. DAVIDE. Yes, to be followed by the phrase "WHOLLY owned."

MR. SUAREZ. Yes, but we are only concentrating on the first point – "CAPITAL STOCK" or merely "CAPITAL."

MR. DAVIDE. CAPITAL STOCK?

MR. SUAREZ. Yes, it is "CAPITAL STOCK."

SUSPENSION OF SESSION

At 4:42 p.m., the session was resumed.

THE PRESIDENT. The session is resumed.

Commissioner Davide is to clarify his point.

MR. VILLEGAS. Yes, Commissioner Davide has accepted the word "CAPITAL" in place of "voting stock or controlling interest." This is an amendment already accepted by the Committee.

We would like to call for a vote on 100-percent Filipino versus 60-percent Filipino.

MR. ALONTO. Is it 60 percent?

MR. VILLEGAS. Sixty percent, yes.

MR. GASCON. Madam President, shall we vote on the proposed amendment of Commissioner Davide of "ONE HUNDRED PERCENT?"

MR. VILLEGAS. Yes.

MR. GASCON. Assuming that it is lost, that does not prejudice any other Commissioner to make any recommendations on other percentages?

MR. VILLEGAS. I would suggest that we vote on "sixty," which is indicated in the committee report.

MR. GASCON. It is the amendment of Commissioner Davide that we should vote on, not the committee report.

MR. VILLEGAS. Yes, it is all right.

MR. AZCUNA. Madam President.

THE PRESIDENT. Commissioner Azcuna is recognized.

MR. AZCUNA. May I be clarified as to that portion that was accepted by the Committee?

MR. VILLEGAS. The portion accepted by the Committee is the deletion of the phrase "voting stock or controlling interest."

MR. AZCUNA. Hence, without the Davide amendment, the committee report would read: "corporations or associations at least sixty percent of whose CAPITAL is owned by such citizens."

MR. VILLEGAS. Yes.

MR. AZCUNA. So if the Davide amendment is lost, we are stuck with 60 percent of the capital to be owned by citizens?

MR. VILLEGAS. That is right.

MR. AZCUNA. But the control can be with the foreigners even if they are the minority. Let us say 40 percent of the capital is owned by them, but it is the voting capital, whereas, the Filipinos own the nonvoting shares. So we can have a situation where the corporation is controlled by foreigners despite being the minority because they have the voting capital. That is the anomaly that would result there.

MR. BENGZON. No, the reason we eliminated the word "stock" as stated in the 1973 and 1935 Constitutions is that according to Commissioner Rodrigo, there are associations that do not have stocks. That is why we say "CAPITAL."

MR. AZCUNA. We should not eliminate the phrase "controlling interest."

MR. BENGZON. In the case of stock corporations, it is assumed.

MR. AZCUNA. Yes, but what I mean is that the control should be with the Filipinos.

MR. BENGZON. Yes, that is understood.

MR. AZCUNA. Yes, because if we just say "sixty percent of whose capital is owned by the Filipinos," the capital may be voting or nonvoting.

MR. BENGZON. That is correct.

MR. AZCUNA. My concern is the situation where there is a voting stock. It is a stock corporation. What the Committee requires is that 60 percent of the capital should be owned by Filipinos. But that would not assure control because that 60 percent may be non-voting.

MS. AQUINO. Madam President.

MR. ROMULO. May we vote on the percentage first?

THE PRESIDENT. Before we vote on this, we want to be clarified first.

MS. AQUINO. Madam President.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. I would suggest that we vote on the Davide amendment which is 100-percent capital, and if it is voted down, then we refer to the original draft which is "capital stock" not just "capital."

MR. AZCUNA. The phrase "controlling interest" is an important consideration.

THE PRESIDENT. Let us proceed to vote then.

MR. PADILLA. Madam President.

THE PRESIDENT. The Vice-President, Commissioner Padilla, is recognized.

MR. PADILLA. The Treñas amendment has already been approved. The only one left is the Davide amendment which is substituting the "sixty percent" to "WHOLLY owned by Filipinos." (The Treñas amendment deleted the phrase "whose voting stocks and controlling interest" and inserted the word "capital." It approved the phrase "associations at least sixty percent of the CAPITAL is owned by such citizens.)(see page 16)

Madam President, I am against the proposed amendment of Commissioner Davide because that is an ideal situation where domestic capital is available for the exploration, development and utilization of these natural resources, especially minerals, petroleum and other mineral oils. These are not only risky business but they also involve substantial capital. Obviously, it is an ideal situation but it is not practical. And if we adopt the 100-percent capital of Filipino citizens, I am afraid that these natural resources, particularly these minerals and oil, *et cetera*, may remain hidden in our lands, or in other offshore places without anyone being able to explore, develop or utilize them. If it were possible to have a 100-percent Filipino capital, I would prefer that rather than the 60 percent, but if we adopt the 100 percent, my fear is that we will never be able to explore, develop and utilize our natural resources because we do not have the domestic resources for that.

MR. DAVIDE. Madam President, may I be allowed to react?

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. I am very glad that Commissioner Padilla emphasized minerals, petroleum and mineral oils. The Commission has just approved the possible foreign entry into the development, exploration and utilization of these minerals, petroleum and other mineral oils by virtue of the Jamir amendment. I voted in favour of the Jamir amendment because it will eventually give way to vesting in exclusively Filipino citizens and corporations wholly owned by Filipino citizens the right to utilize the other natural resources. This means that as a matter of policy, natural resources should be utilized and exploited only by Filipino citizens or corporations wholly owned by such citizens. But by virtue of the Jamir amendment,

since we feel that Filipino capital may not be enough for the development and utilization of minerals, petroleum and other mineral oils, the President can enter into service contracts with foreign corporations precisely for the development and utilization of such resources. And so, there is nothing to fear that we will stagnate in the development of minerals, petroleum, and mineral oils because we now allow service contracts. It is, therefore, with more reason that at this time we must provide for a 100-percent Filipinization generally to all natural resources.

MR. VILLEGAS. I think we are ready to vote, Madam President.

THE PRESIDENT. The Acting Floor Leader is recognized.

MR. MAAMBONG. Madam President, we ask that the matter be put to a vote.

THE PRESIDENT. Will Commissioner Davide please read lines 14 and 15 with his amendment.

MR. DAVIDE. Lines 14 and 15, Section 3, as amended, will read: "associations whose CAPITAL stock is WHOLLY owned by such citizens."

VOTING

THE PRESIDENT. As many as are in favour of this proposed amendment of Commissioner Davide on lines 14 and 15 of Section 3, please raise their hand. (*Few Members raised their hand.*)

As many as are against the amendment, please raise their hand. (*Several Members raised their hand.*)

The results show 16 votes in favour and 22 against; the amendment is lost.

MR. MAAMBONG. Madam President, I ask that Commissioner Davide be recognized once more for further amendments.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Thank you, Madam President.

This is just an insertion of a new paragraph between lines 24 and 25 of Section 3 of the same page. It will read as follows: THE GOVERNING AND MANAGING BOARDS OF SUCH CORPORATIONS SHALL BE VESTED EXCLUSIVELY IN CITIZENS OF THE PHILIPPINES.

MR. VILLEGAS. Which corporations is the Commissioner referring to?

MR. DAVIDE. This refers to corporations 60 percent of whose capital is owned by such citizens.

MR. VILLEGAS. Again the amendment will read…

MR. DAVIDE. "THE GOVERNING AND MANAGING BODIES OF SUCH CORPORATIONS SHALL BE VESTED EXCLUSIVELY IN CITIZENS OF THE PHILIPPINES."

REV. RIGOS. Madam President.

THE PRESIDENT. Commissioner Rigos is recognized.

REV. RIGOS. I wonder if Commissioner Davide would agree to put that sentence immediately after "citizens" on line 15.

MR. ROMULO. May I ask a question. Presumably, it is 60-40?

MR. DAVIDE. Yes.

MR. ROMULO. What about the 40 percent? Would they not be entitled to a proportionate seat in the board?

MR. DAVIDE. Under my proposal, they should not be allowed to sit in the board.

MR. ROMULO. Then the Commissioner is really proposing 100 percent which is the opposite way?

MR. DAVIDE. Not necessarily, because if 40 percent of the capital stock will be owned by aliens who may sit in the board, they can still exercise their right as ordinary stockholders and can submit the necessary proposal for, say, a policy to be undertaken by the board.

MR. ROMULO. But that is part of the stockholder's right – to sit in the board of directors.

MR. DAVIDE. That may be allowed but this is a very unusual and abnormal situation so the Constitution itself can prohibit them to sit in the board.

MR. ROMULO. But it would be pointless to allow them 40 percent when they cannot sit in the board nor have a say in the management of the company. Likewise, that would be extraordinary because

both the 1935 and the 1973 Constitutions allowed not only the 40 percent but commensurately they were represented in the board and management only to the extent of their equity interest, which is 40 percent. The management of a company is lodged in the board; so if the 60 percent, which is composed of Filipinos, controls the board, then the Filipino part has control of the company.

I think it is rather unfair to say: "You may have 40 percent of the company, but that is all. You cannot manage, you cannot sit in the board." That would discourage investments. Then it is like having a one hundred-percent ownership; I mean, either we allow a 60-40 with full rights to the 40 percent, limited as it is as to a minority, or we do not allow them at all. This means if it is allowed; we cannot have it both ways.

MR. DAVIDE. The aliens cannot also have everything. While they may be given entry into subscriptions of the capital stock of the corporation, it does not necessarily follow that they cannot be deprived of the right of membership in the managing or in the governing board of a particular corporation. But it will not totally deprive them of a say because they can still exercise the ordinary rights of stockholders. They can submit their proposal and they can be heard.

MR. ROMULO. Yes, but they have no vote. That is like being represented in the Congress but not being allowed to vote like our old resident Commissioners in the United States. They can be heard; they can be seen but they cannot vote.

MR. DAVIDE. If that was allowed under that situation, why can we not do it now in respect to our natural resources? This is a very critical and delicate issue.

MR. ROMULO. Precisely, we used to complain how unfair that was. One can be seen and heard but he cannot vote.

MR. DAVIDE. We know that under the corporation law, we have the rights of the minority stockholders. They can be heard. As a matter of fact, they can probably allow a proxy to vote for them and, therefore, they still retain that specific prerogative to participate just like what we did in the Article on Social Justice.

MR. ROMULO. That would encourage dummies if we give them proxies.

MR. DAVIDE. As a matter of fact, when it comes to encouraging dummies, by allowing 40-percent ownership to come in we will expect the proliferation of corporations actually owned by aliens using dummies.

MR. ROMULO. No, because 40 percent is a substantial and fair share and, therefore, the bona fide foreign investor is satisfied with that proportion. He does not have to look for dummies. In fact, that is what assures a genuine investment if we give a foreign investor the 40 percent and all the rights that go with it. Otherwise, we are either discouraging the investment altogether or we are encouraging circumvention. Let us be fair. If it is 60-40, then we give him the right, limited as to his minority position.

MR. MAAMBONG. Madam President, the body would like to know the position of the Committee so that we can put the matter to a vote.

MR. VILLEGAS. The Committee does not accept the amendment.

THE PRESIDENT. The Committee does not accept.

Will Commissioner Davide insist on his amendment?

MR. DAVIDE. We request a vote.

THE PRESIDENT. Will Commissioner Davide state his proposed amendment again?

MR. DAVIDE. The proposed amendment would be the insertion of a new paragraph to Section 3, between lines 24 and 25, page 2, which reads: "THE GOVERNING AND MANAGING BODIES OF SUCH CORPORATIONS SHALL BE VESTED EXCLUSIVELY IN CITIZENS OF THE PHILIPPINES."

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. Madam President, may I just say that this Section 3 speaks of "co-production, joint venture, production sharing agreements with Filipino citizens." If the foreign share of, say, 40 percent will not be represented in the board or in management, I wonder if there would be any foreign investor who will accept putting capital but without any voice in management. I think that might make the provision on "coproduction, joint venture and production sharing" illusory.

VOTING

THE PRESIDENT. If the Chair is not mistaken, that was the same point expressed by Commissioner Romulo, a member of the Committee.

As many as are in favour of the Davide amendment, please raise their hand. (*Few Members raised their hand.*)

As many as are against, please raise their hand. (*Several Members raised their hand.*)

As many as are abstaining, please raise their hand. (*One Member raised his hand.*)

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THE PRESIDENT. Commissioner Garcia is recognized.

MR. GARCIA. My amendment is on Section 3, the same item which Commissioner Davide tried to amend. It is basically on the share of 60 percent. I would like to propose that we raise the 60 percent to SEVENTY-FIVE PERCENT so the line would read: "SEVENTY-FIVE PERCENT of whose CAPITAL is owned by such citizens."

THE PRESIDENT. What does the Committee say?

SUSPENSION OF SESSION

MR. VILLEGAS. The Committee insists on staying with the 60 percent – 60-40.

Madam President, may we ask for a suspension of the session.

THE PRESIDENT. The session is suspended.

It was 5:07 p.m.

RESUMPTION OF SESSION

At 5:31 p.m., the session was resumed.

THE PRESIDENT. The session is resumed.

MR. SARMIENTO. Madam President.

THE PRESIDENT. The Acting Floor Leader, Commissioner Sarmiento, is recognized.

MR. SARMIENTO: Commissioner Garcia still has the floor. May I ask that he be recognized.

THE PRESIDENT. Commissioner Garcia is recognized.

MR. GARCIA. Thank you very much, Madam President.

I would like to propose the following amendment on Section 3, line 14 on page 2. I propose to change the word "sixty" to SEVENTY-FIVE. So, this will read: "or it may enter into co-production, joint venture, production sharing agreements with Filipino citizens or corporations or associations at least SEVENTY-FIVE percent of whose CAPITAL stock or controlling interest is owned by such citizens."

MR. VILLEGAS. This is just a correction. I think Commissioner Azcuna is not insisting on the retention of the phrase "controlling interest," so we will retain "CAPITAL" to go back really to the 1935 and 1973 formulations.

MR. BENNAGEN. May I suggest that we retain the phrase "controlling interest"?

MR. VILLEGAS. Yes, we will retain it. (The statement of Commissioner Villegas is possibly erroneous considering his consistent statement, especially during the oral arguments, that the Constitutional Commission rejected the UP Proposal to use the phrase "controlling interest.")

THE PRESIDENT. Are we now ready to vote?

MR. SARMIENTO. Yes, Madam President.

VOTING

THE PRESIDENT. As many as are in favour of the proposed amendment of Commissioner Garcia for "SEVENTY-FIVE" percent, please raise their hand. (*Few Members raised their hand.*)

As many as are against the amendment, please raise their hand. (*Several Members raised their hand.*)

As many as are abstaining, please raise their hand. (*One Member raised his hand.*)

The results show 16 votes in favour, 18 against and 1 abstention; the Garcia amendment is lost.

MR. SARMIENTO. Madam President, may I ask that Commissioner Foz be recognized.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. After losing by only two votes, I suppose that this next proposal will finally get the vote of the majority. The amendment is to provide for at least TWO-THIRDS.

MR. SUAREZ. It is equivalent to 66 2/3.

THE PRESIDENT. Will the Commissioner repeat?

MR. FOZ. I propose "TWO-THIRDS of whose CAPITAL is owned by such citizens." Madam President, we are referring to the same provision to which the previous amendments have been suggested. First, we called for a 100-percent ownership; and then, second, we called for a 75-percent ownership by Filipino citizens.

So my proposal is to provide for at least TWO-THIRDS of the capital to be owned by Filipino citizens. I would like to call the attention of the body that the same ratio or equity requirement is provided in the case of public utilities. And if we are willing to provide such equity requirements in the case of public utilities, we should at least likewise provide the same equity ratio in the case of natural resources.

MR. VILLEGAS. Commissioner Romulo will respond.

MR. ROMULO. I just want to point out that there is an amendment here filed to also reduce the ratio in Section 15 to 60-40.

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. The 60 percent which appears in the committee report has been repeatedly upheld in various votings. One proposal was whole – 100 percent; another one was 75 percent and now it is 66 2/3 percent. Is not the decision of this Commission in voting to uphold the percentage in the committee report already a decision on this issue?

MR. FOZ. Our amendment has been previously brought to the attention of the body.

MR. VILLEGAS. The Committee does not accept the Commissioner's amendment. This has been discussed fully and, with only one-third of the vote, it is like having nothing at all in decision-making. It can be completely vetoed.

MR. RODRIGO. Madam President.

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. This is an extraordinary suggestion. But considering the circumstances that the proposals from the 100 percent to 75 percent lost, and now it went down to 66 2/3 percent, we might go down to 65 percent next time. So I suggest that we vote between 66 2/3 and 60 percent. Which does the body want? Then that should be the end of it; otherwise, this is ridiculous. After this, if the 66 2/3 percent will lose, then somebody can say: "Well, how about 65 percent?"

THE PRESIDENT. The Chair was made to understand that Commissioner Foz' proposal is the last proposal on this particular line. Will Commissioner Foz restate his proposal?

MR. FOZ. My proposal is "TWO-THIRDS of whose CAPITAL or controlling interest is owned by such citizens."

VOTING

THE PRESIDENT. We now put Commissioner Foz' amendment to a vote.

As many as are in favour of the amendment of Commissioner Foz, please raise their hand. (*Few Members raised their hand.*)

As many as are against, please raise their hand. (*Several Members raised their hand.*)

The results show 17 votes in favour, 20 against, and not abstention; the amendment is lost.[22]

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August 22, 1986, Friday

THE PRESIDENT. Commissioner Nolledo is recognized.

MR. NOLLEDO. Thank you, Madam President.

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[22] *Id.* at 357-365.

I would like to propound some questions to the chairman and members of the committee. I have here a copy of the approved provisions on Article on the National Economy and Patrimony. On page 2, the first two lines are with respect to the Filipino and foreign equity and I said: "At least sixty percent of whose capital or controlling interest is owned by such citizens."

I notice that this provision was amended by Commissioner Davide by changing "voting stocks" to "CAPITAL," but I still notice that there appears the term "controlling interest" which seems to refer to assocaitions (sic) other than corporations and it is merely 50 percent plus one percent which is less than 60 percent. Besides, the wordings may indicate that the 60 percent may be based not only on capital but also on controlling interest; it could mean 60 percent or 51 percent.

Before I propound the final question, I would like to make a comment in relation to Section 15 since they are related to each other. I notice that in Section 15, there still appears the phrase "voting stock or controlling interest." The term "voting stocks" as the basis of the Filipino equity means that if 60 percent of the voting stocks belong to Filipinos, foreigners may now own more than 40 percent of the capital as long as the 40 percent or the excess thereof will cover nonvoting stock. This is aside from the fact that under the Corporation Code, even nonvoting shares can vote on certain instances. Control over investments may cover aspects of management and participation in the fruits of production or exploitation.

So, I hope the committee will consider favorably my recommendation that instead of using "controlling interests," we just use "CAPITAL" uniformly in cases where foreign equity is permitted by law, because the purpose is really to help the Filipinos in the exploitation of natural resources and in the operation of public utilities. I know the committee, at its own instance, can make the amendment.

What does the committee say?

MR. VILLEGAS. We completely agree with the Commissioner's views. Actually, it was really an oversight. We did decide on the word "CAPITAL." I think it was the opinion of the majority that the phrase "controlling interest" is ambiguous.

So, we do accept the Commissioner's proposal to eliminate the phrase "or controlling interest" in all the provisions that talk about foreign participation.

MR. NOLLEDO. Not only in Section 3, but also with respect to Section 15.

Thank you very much.

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. In view of the manifestation of the committee, I would like to be clarified on the use of the word "CAPITAL."

MR. VILLEGAS. Yes, that was the word used in the 1973 and 1935 Constitutions.

MR. MAAMBONG. Let us delimit ourselves to that word "CAPITAL". In the Corporation Law, if I remember correctly, we have three types of capital: the authorized capital stock, the subscribed capital stock and the paid-up capital stock.

The authorized capital stock could be interpreted as the capital of the corporation itself because that is the totality of the investment of the corporation as stated in the articles of incorporation. When we refer to 60 percent, are we referring to the authorized capital stock or the paid-up capital stock since the determinant as to who owns the corporation, as far as equity is concerned, is the subscription of the person?

I think we should delimit ourselves also to what we mean by 60 percent. Are we referring to the authorized capital stock or to the subscribed capital stock, because the determination, as I said, on the controlling interest of a corporation is based on the subscribed capital stock? I would like a reply on that.

MR. VILLEGAS. Commissioner Suarez, a member of the committee, would like to answer that.

THE PRESIDENT. Commissioner Suarez is recognized.

MR. SUAREZ. Thank you, Madam President.

We stated this because there might be a misunderstanding regarding the interpretation of the term "CAPITAL" as now used as the basis

for the percentage of foreign investments in appropriate instances and the interpretation attributed to the word is that it should be based on the paid-up capital. We eliminated the use the phrase "voting stock or controlling interest" because that is only used in connection with the matter of voting. As a matter of fact, in the declaration of dividends for private corporations, it is usually based on the paid-up capitalization.

So, what is really the dominant factor to be considered in matters of determining the 60-40 percentage should really be the paid-up capital of the corporation.

MR. MAAMBONG. I would like to get clarification on this. If I remember my corporation law correctly, we usually use a determinant in order to find out what the ratio of ownership is, not really on the paid-up capital stock but on the subscribed capital stock.

For example, if the whole authorized capital stock of the corporation is ₱1 million, if the subscription is 60 percent of ₱1 million which is ₱600,000, then that is supposed to be the determinant whether there is a sharing of 60 percent of Filipinos or not. It is not really on the paid-up capital because once a person subscribes to a capital stock then whether that capital stock is paid up or not, does not really matter, as far as the books of the corporation are concerned. The subscribed capital stock is supposed to be owned by the person who makes the subscription. There are so many laws on how to collect the delinquency and so on.

I view of the Commissioner's answer, I would like to know whether he is determined to put on the record that in order to determine the 60-40 percent sharing, we have to determine whether we will use a determinant which is the subscribed capital stock or the paid-up capital stock.

MR SUAREZ. We are principally concerned about the interpretation which would be attached to it; that is, it should be limited to authorized capital stock, not to subscribed capital stock.

I will give the Commissioner an illustration of what he is explaining to the Commission.

MR. MAAMBONG. Yes, thank you.

MR. SUAREZ. Let us say the authorized capital stock is ₱1 million. Under the present rules in the Securities and Exchange

Commission, at least 25 percent of that amount must be subscribed and at least 25 percent of this subscribed capital must be paid up.

Now, let us discuss the basis of 60-40. To illustrate the matter further, let us say that 60 percent of the subscriptions would be allocated to Filipinos and 40 percent of the subscribed capital would be held by foreigners. Then we come to the paid-up capitalization. Under the present rules in the Securities and Exchange Commission, a foreign corporation is supposed to subscribe to a 40-percent share which must be fully paid up.

On the other hand, the 60 percent allocated to Filipinos need not be paid up. However, at least 25 percent of the subscription must be paid up for purposes of complying with the Corporation Law. We can illustrate the matter further by saying that the compliance of 25 percent paid-up of the subscribed capital would be fulfilled by the full payment of the 40 percent by the foreigners.

So, we have a situation where the Filipino percentage of 60 may not even comply with the 25-percent requirement because of the totality due to the fully payment of the 40-percent of the foreign investors, the payment of 25 percent paid-up on the subscription would have been considered fulfilled. That is exactly what we are trying to avoid.

MR. MAAMBONG. I appreciate very much the explanation but I wonder if the committee would subscribe to that view because I will stick to my thinking that in the computation of the 60-40 ratio, the basis should be on the subscription. If the subscription is being done by 60 percent Filipinos, whether it is paid-up or not and the subscription is accepted by the corporation, I think that is the proper determinant. If we base the 60-40 on the paid-up capital stock, we have a problem here where the 40 percent is fully paid up and the 60 percent is not fully paid up – this may be contrary to the provisions of the Constitution. So I would like to ask for the proper advisement from the Committee as to what should be the proper interpretation because this will cause havoc on the interpretation of our Corporation Law.

MR. ROMULO. Madam President.

THE PRESIDENT. Commissioner Romulo is recognized.

MR. ROMULO. We go by the established rule which I believe is uniformly held. It is based on the subscribed capital. I know

only of one possible exception and that is where the bylaws prohibit the subscriber from voting. But that is a very rare provision in bylaws. Otherwise, my information and belief is that it is based on the subscribed capital.

MR. MAAMBONG. It is, therefore, the understanding of this Member that the Commissioner is somewhat revising the answer of Commissioner Suarez to that extent?

MR. ROMULO. No, I do not think we contradict each other. He is talking really of the instance where the subscriber is a non-resident and, therefore, must fully pay. That is how I understand his position.

MR. MAAMBONG. My understanding is that in the computation of the 60-40 sharing under the present formulation, the determinant is the paid-up capital stock to which I disagree.

MR. ROMULO. At least, from my point of view, it is the subscribed capital stock.

MR. MAAMBONG. Then that is clarified.[23]

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August 23, 1986, Saturday

MS. ROSARIO BRAID. Madam President, I propose a new section to read: "THE MANAGEMENT BODY OF EVERY CORPORATION OR ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES."

This will prevent management contracts and assure control by Filipino citizens. Will the committee assure us that this amendment will insure that past activities such as management contracts will no longer be possible under this amendment?

MR. ROMULO. Madam President, if I may reply.

THE PRESIDENT. Commissioner Romulo is recognized.

MR. ROMULO. May I ask the proponent to read the amendment again.

MS. ROSARIO BRAID. The amendment reads: "THE MANAGEMENT BODY OF EVERY CORPORATION OR

[23] *Id.* at 582-584.

ASSOCIATION SHALL IN ALL CASES BE CONTROLLED BY CITIZENS OF THE PHILIPPINES."

MR. DE LOS REYES. Madam President, will Commissioner Rosario Braid agree to a reformulation of her amendment for it to be more comprehensive and all-embracing?

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. This is an amendment I submitted to the committee which reads: "MAJORITY OF THE DIRECTORS OR TRUSTEES AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATION OR ASSOCIATION MUST BE CITIZENS OF THE PHILIPPINES."

This amendment is more direct because it refers to particular officers to be all-Filipino citizens.

MR. BENGZON. Madam President.

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. The committee sitting out here accepts the amendment of Commissioner de los Reyes which subsumes the amendment of Commissioner Rosario Braid.

THE PRESIDENT. So this will be a joint amendment now of Commissioners Rosario Braid, de los Reyes and others.

MR. REGALADO. Madam President, I join in that amendment with the request that it will be the last sentence of Section 15 because we intend to put an anterior amendment. However, that particular sentence which subsumes also the proposal of Commissioner Rosario Braid can just be placed as the last sentence of the article.

THE PRESIDENT. Is that acceptable to the committee?

MR. VILLEGAS. Yes, Madam President.

MS. ROSARIO BRAID. Thank you.

MR. RAMA. The body is now ready to vote on the amendment.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Will the committee accept a reformulation of the first part?

MR. BENGZON. Let us hear it.

FR. BERNAS. The reformulation will be essentially the formula of the 1973 Constitution which reads: "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF AND …"

MR. VILLEGAS. "ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS AND ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES."

MR. BENGZON. Will Commissioner Bernas read the whole thing again?

FR. BERNAS. "THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ANY PUBLIC UTILITY ENTERPRISE SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF…" I do not have the rest of the copy.

MR. BENGZON. "AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH CORPORATIONS OR ASSOCIATIONS MUST BE CITIZENS OF THE PHILIPPINES." Is that correct?

MR. VILLEGAS. Yes.

MR. BENGZON. Madam President, I think that was said in a more elegant language. We accept the amendment. Is that all right with Commissioner Rosario Braid?

MS. ROSARIO BRAID. Yes.

THE PRESIDENT. The original authors of this amendment are Commissioners Rosario Braid, de los Reyes, Regalado, Natividad, Guingona and Fr. Bernas.

MR. DE LOS REYES. The governing body refers to the board of directors and trustees.

MR. VILLEGAS. That is right.

MR. BENGZON. Yes, the governing body refers to the board of directors.

MR. REGALADO. It is accepted.

MR. RAMA. The body is now ready to vote, Madam President.

VOTING

THE PRESIDENT. As many as are in favour of this proposed amendment which should be the last sentence of Section 15 and has been accepted by the committee, pleas raise their hand. (*All Members raised their hand.*)

As many as are against, please raise their hand. (*No Member raised his hand.*)

The results show 29 votes in favour and none against; so the proposed amendment is approved.[24]

It can be concluded that the view advanced by Justice Carpio is incorrect as the deliberations easily reveal that **the intent of the framers was not to limit the definition of the word "capital" as meaning voting shares/stocks**.

The majority in the original decision reproduced the CONCOM deliberations held on August 13 and August 15, 1986, but neglected to quote the other pertinent portions of the deliberations that would have shed light on the true intent of the framers of the Constitution.

It is conceded that Proposed Resolution No. 496 on the language of what would be Art. XII of the Constitution contained the phrase "voting stock or controlling interest," *viz*:

PROPOSED RESOLUTION NO. 496

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON NATIONAL ECONOMY AND PATRIMONY

Be it resolved as it is hereby resolved by the Constitutional Commission in session assembled, To incorporate the National Economy and Patrimony of the new Constitution, the following provisions:

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[24] *Id.* at 665-666.

ARTICLE____
NATIONAL ECONOMY AND PATRIMONY

xxx xxx xxx

SEC. 15. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines **at least two-thirds of whose voting stock or controlling interest is owned by such citizens.** Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public.[25] (This became Sec. 11, Art. XII)(Emphasis supplied.)

The aforequoted deliberations disclose that **the Commission eventually and unequivocally decided to use "capital," which refers to the capital stock of the corporation, "as was employed in the 1935 and 1973 Constitution," instead of the proposed "voting stock or controlling interest" as the basis for the percentage of ownership allowed to foreigners**. The following exchanges among Commissioners Foz, Suarez and Bengzon reflect this decision, but the majority opinion in the June 28, 2011 Decision left their statements out:

MR. FOZ. Mr. Vice-President, in Sections 3 and 9,[26] **the provision on equity is both 60 percent, but** I notice that **this is now different from** the provision in **the 1973 Constitution in that the basis for the equity provision is voting stock or controlling interest instead of the usual capital** percentage as provided for in the 1973 Constitution. **We would like to know what the difference would be between the previous and the proposed provisions regarding equity interest.**

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MR. SUAREZ. x x x As a matter of fact, this particular portion is still being reviewed x x x. In Section 1, Article XIII of the **1935**

[25] Record of the (1986) Constitutional Commission, Vol. III, pp. 250-251.

[26] Referring to Sections 2 and 10, Article XII of the 1987 Constitution.

Constitution, the wording is that **the percentage should be based on the capital which is owned by such citizens. In the proposed draft, this phrase was proposed: "voting stock or controlling interest."** This was a plan **submitted by the UP Law Center.**

x x x We would **have three criteria** to go by: **One would be based on capital, which is capital stock of the corporation, authorized, subscribed or paid up, as employed under the 1935 and the 1973 Constitution**. The idea behind the introduction of the phrase "voting stock or controlling interest" was precisely to avoid the perpetration of dummies, Filipino dummies of multinationals. It is theoretically possible that a situation may develop where these multinational interests would not really be only 40 percent but will extend beyond that in the matter of voting because they could enter into what is known as a voting trust or voting agreement with the rest of the stockholders and, therefore, notwithstanding the fact that on record their capital extent is only up to 40-percent interest in the corporation, actually, they would be managing and controlling the entire company. That is why the UP Law Center members suggested that we utilize the words "voting interest" which would preclude multinational control in the matter of voting, independent of the capital structure of the corporation. And then **they also added the phrase "controlling interest**" which up to now they have not been able to successfully define the exact meaning of. x x x And as far as I am concerned, I am not speaking in behalf of the Committee, I would feel more **comfortable if we go back to** the wording of **the 1935 and the 1973 Constitution, that is to say, the 60-40 percentage could be based on the capital stock of the corporation**.

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MR. BENGZON. I also share the sentiment of Commissioner Suarez in that respect. So there are already two in the Committee who want to go back to the wording of the 1935 and the 1973 Constitution.[27]

In fact, in another portion of the CONCOM deliberations conveniently glossed over by the June 28, 2011 Decision, then Commissioner Davide strongly resisted the retention of the term "capital" as used in the 1935 and 1973 Constitution on the ground

[27] Records of the Constitutional Commission, Volume III, pp. 326-327.

that the term refers to both voting and non-voting. Eventually, however, he came around to accept the use of "CAPITAL" along with the majority of the members of the Committee on Natural Economy and Patrimony in the afternoon session held on August 15, 1986:

MR. TREÑAS. x x x **may I propose an amendment** on line 14 of Section 3 **by deleting therefrom "whose voting stock and controlling interest."** And **in lieu thereof, insert the CAPITAL so the line should read: "associations at least sixty percent of the CAPITAL is owned by such citizens.**

MR. VILLEGAS. We accept the amendment.

MR. TREÑAS. Thank you.

THE PRESIDENT. The amendment of Commissioner Treñas on line 14 has been accepted by the Committee.

Is there any objection? (*Silence*) The Chair hears none; the amendment is approved.[28]

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MR. SUAREZ. x x x Two points are being raised by Commissioner Davide's proposed amendment. One has reference to the percentage of holdings and the other one is the basis for the percentage x x x **Is the Commissioner not insisting on the voting capital stock because that was already accepted by the Committee?**

MR. DAVIDE. Would it mean that it would be 100-percent voting capital stock?

MR. SUAREZ. No, under the Commissioner's proposal it is just "CAPITAL" not "stock."

MR. DAVIDE. No, I want it to be very clear. What is the alternative proposal of the Committee? How shall it read?

MR. SUAREZ. It will only read something like: "the CAPITAL OF WHICH IS FULLY owned."

MR. VILLEGAS. Let me read lines 12 to 14 which state:

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[28] *Id.* at 357.

… enter into co-production, joint venture, production sharing agreements with Filipino citizens or corporations or associations at least 60 percent of whose CAPITAL is owned by such citizens.

We are going back to the 1935 and 1973 formulations.

MR. DAVIDE. I cannot accept the proposal because the word CAPITAL should not really be the guiding principle. It is the ownership of the corporation. It may be voting or not voting, but that is not the guiding principle.

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THE PRESIDENT…. Commissioner Davide is to clarify his point.

MR. VILLEGAS. Yes, Commissioner Davide has accepted the word "CAPITAL" in place of "voting stock or controlling interest." This is an amendment already accepted by the Committee.[29]

The above exchange precedes the clarifications made by then Commissioner Azcuna, which were cited in the June 28, 2011 Decision. Moreover, the statements made subsequent to the portion quoted in the June 28, 2011 Decision emphasize the CONCOM's awareness of the plain meaning of the term "capital" without the qualification espoused in the majority's decision:

MR. AZCUNA. May I be clarified as to [what] was accepted x x x.

MR. VILLEGAS. The portion accepted by the Committee is the **deletion of the phrase "voting stock or controlling interest."**

MR. AZCUNA. Hence, without the Davide amendment, the committee report would read: "corporations or associations at least sixty percent of whose CAPITAL is owned by such citizens."

MR. VILLEGAS. Yes.

MR. AZCUNA. **So if the Davide amendment is lost, we are stuck with 60 percent of the capital to be owned by citizens?**

MR. VILLEGAS. That is right.

MR. AZCUNA. But the control can be with the foreigners even if they are the minority. Let us say 40 percent of the capital is owned

[29] Records of the Constitutional Commission, Volume III, pp. 357-360.

by them, but it is the voting capital, whereas, the Filipinos own the nonvoting shares. So we can have a situation where the corporation is controlled by foreigners despite being the minority because they have the voting capital. That is the anomaly that would result here.

MR. BENGZON. No, the reason we eliminated the word "stock" as stated in the 1973 and 1935 Constitutions is that xxx there are associations that do not have stocks. That is why we say "CAPITAL."

MR. AZCUNA. We should not eliminate the phrase "controlling interest."

MR. BENGZON. In the case of stock corporation, it is assumed.

MR. AZCUNA. Yes, but what I mean is that the control should be with the Filipinos.

MR. BENGZON. Yes, that is understood.

MR. AZCUNA. Yes, because if we just say "sixty percent of whose capital is owned by the Filipinos," the capital may be voting or non-voting.

MR. BENGZON. That is correct.[30]

More importantly, on the very same August 15, 1986 session, Commissioner Azcuna no longer insisted on retaining the delimiting phrase "controlling interest":

MR. GARCIA. Thank you very much, Madam President.

I would like to propose the following amendment on Section 3, line 14 on page 2. I propose to change the word "sixty" to SEVENTY-FIVE. So, this will read: "or it may enter into co-production, joint venture, production sharing agreements with Filipino citizens or corporations or associations at least SEVENTY-FIVE percent of whose CAPITAL stock or controlling interest is owned by such citizens."

MR. VILLEGAS. This is just a correction**. I think Commissioner Azcuna is not insisting on the retention of the phrase "controlling interest," so we will retain "CAPITAL" to go back really to the 1935 and 1973 formulations**.[31] (Emphasis supplied.)

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[30] Records of the Constitutional Commission, Volume III, p. 360.

[31] *Id.* at 364.

The later deliberations held on August 22, 1986 further underscore the framers' true intent to include both voting and non-voting shares as coming within the pale of the word "capital." The UP Law Center attempted to limit the scope of the word along the line then and now adopted by the majority, but, as can be gleaned from the following discussion, **the framers opted not to adopt the proposal of the UP Law Center to add the more protectionist phrase "voting stock or controlling interest"**:

MR. NOLLEDO. x x x I would like to propound some questions xxx. I have here a copy of the approved provisions on Article on the National Economy and Patrimony. x x x

I notice that this provision was amended by Commissioner Davide by changing "voting stocks" to "CAPITAL," but I still notice that there appears the term "controlling interest" x x x. Besides, the wordings may indicate that the 60 percent may be based not only on capital but also on controlling interest; it could mean 60 percent or 51 percent.

Before I propound the final question, I would like to make a comment in relation to Section 15 since they are related to each other. I notice that in Section 15, there still appears the phrase "voting stock or controlling interest." The term "voting stocks" as the basis of the Filipino equity means that if 60 percent of the voting stocks belong to Filipinos, foreigners may now own more than 40 percent of the capital as long as the 40 percent or the excess thereof will cover nonvoting stock. This is aside from the fact that under the Corporation Code, even nonvoting shares can vote on certain instances. **Control over investments may cover aspects of management and participation in the fruits of production or exploitation.**

So, **I hope the committee will consider favorably my recommendation that instead of using "controlling interests," we just use "CAPITAL" uniformly in cases where foreign equity is permitted by law, because the purpose is really to help the Filipinos in the exploitation of natural resources and in the operation of public utilities**. x x x

What does the committee say?

MR. VILLEGAS. We completely agree with the Commissioner's views**.** Actually, it was really an oversight**. We did decide on the word "CAPITAL." I think <u>it was the opinion of the majority that the phrase "controlling interest" is ambiguous.</u>**

So, we do accept the Commissioner's proposal to eliminate the phrase "or controlling interest" in all the provisions that talk about foreign participation.

MR. NOLLEDO. Not only in Section 3, but also with respect to Section 15.[32] (Emphasis supplied.)

In fact, on the very same day of deliberations, the Commissioners clarified that the proper and more specific "interpretation" that should be attached to the word "capital" is that it refers to the "subscribed capital," a corporate concept defined as "that portion of the authorized capital stock that is covered by subscription agreements whether fully paid or not"[33] and refers to both voting and non-voting shares:

MR. MAAMBONG. x x x **I would like to be clarified on the use of the word "CAPITAL."**

MR. VILLEGAS. Yes, that was the word used in the 1973 and the 1935 Constitutions.

MR. MAAMBONG. Let us delimit ourselves to that word "CAPITAL." In the Corporation Law, if I remember correctly, we have three types of capital: the authorized capital stock, the subscribed capital stock and the paid-up capital stock.

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I would like to get clarification on this. **If I remember my corporation law correctly, we usually use a determinant in order to find out what the ratio of <u>ownership</u> is, not really on the paid-up capital stock but on the subscribe capital stock.**

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x x x I would like to know whether (Commissioner Suarez) is determined to put on the record that in order to determine the 60-

[32] *Id.* at 582.

[33] Sundiang Jose, R. and Aquino, Timoteo B., *Reviewer on Commercial Law*, 2006 Ed., p. 257.

40 percent sharing, we have to determine whether we will use a determinant which is the subscribed capital stock or the paid-up capital stock.

MR. SUAREZ. We are principally concerned about the interpretation which would be attached to it, that is, it should be limited to authorized capital stock, not to subscribed capital stock.

I will give the Commissioner an illustration of what he is explaining to the Commission.

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Let us say authorized capital stock is P1 million. Under the present rules in the [SEC], at least 25 percent of that amount must be subscribed and at least 25 percent of this subscribed capital must be paid up.

Now, let us discuss the basis of 60-40. To illustrate the matter further, let us say that 60 percent of the subscriptions would be allocated to Filipinos and 40 percent of the subscribed capital stock would be held by foreigners. Then we come to the paid-up capitalization. Under the present rules in the [SEC], a foreign corporation is supposed to subscribe to 40-percent share which must be fully paid up.

On the other hand, the 60 percent allocated to Filipinos need not be paid up. However, at least 25 percent of the subscription must be paid up for purposes of complying with the Corporation Law. We can illustrate the matter further by saying that the compliance of 25 percent paid-up of the subscribed capital would be fulfilled by the full payment of the 40 percent by the foreigners.

So, we have a situation where the Filipino percentage of 60 may not even comply with the 25-percent requirement because of the totality due to the full payment of the 40-percent of the foreign investors, the payment of 25 percent paid-up on the subscription would have been considered fulfilled. That is exactly what we are trying to avoid.

MR. MAAMBONG. I appreciate very much the explanation but I wonder if the committee would subscribe to that view because I will stick to my thinking that in the computation of the 60-40 ratio, the basis should be on the subscription. x x x

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MR. ROMULO**. We go by the established rule which I believe is uniformly held. It is based on the subscribed capital.** x x x

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I do not think that we contradict each other. (Commisioner Suarez) is talking really of the instance where the subscriber is a non-resident and, therefore, must fully pay. That is how I understand his position.

MR. MAAMBONG. My understanding is that in the computation of the 60-40 sharing under the present formulation, the determinant is the paid-up capital stock to which I disagree.

MR . ROMULO. At least, from my point of view, **it is the subscribed capital stock.**"[34]

Clearly, while the concept of voting capital as the norm to determine the 60-40 Filipino-alien ratio was initially debated upon as a result of the **proposal** to use "*at least two-thirds of whose voting stock or controlling interest is owned by such citizens,*"[35] in what would eventually be Sec. 11, Art. XII of the Constitution, that proposal was eventually **discarded**. And nowhere in the records of the CONCOM can it be deduced that the idea of full ownership of voting stocks presently parlayed by the majority was earnestly, if at all, considered. In fact, the framers decided that the term "capital," as used in the 1935 and 1973 Constitutions, should be properly interpreted as the "subscribed capital," which, again, does not distinguish stocks based on their board-membership voting features.

Indeed, the phrase "*voting stock or controlling interest*" was suggested for and in fact deliberated, but was similarly dropped in the approved draft provisions on National Economy and Patrimony, particularly in what would become Sections 2[36] and

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[34] Records of the Constitutional Commission, Volume III, pp. 583-584.

[35] See Bernas, S.J., *The Intent of the 1986 Constitution Writers*, 1995 ed., p. 849.

[36] Section 2, Article XII, 1987 Constitution:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries,

10,[37] Article XII of the 1987 Constitution. However, the framers expressed preference to the formulation of the provision in question in the 1935 and 1973 Constitutions, both of which employed the word "capital" alone. This was very apparent in the aforementioned deliberations and affirmed by *amicus curiae* Dr. Bernardo Villegas, Chair of the Committee on the National Economy and Patrimony in charge of drafting Section 11 and the rest of Article XII of the Constitution. During the June 26, 2012 oral arguments, Dr. Villegas manifested that:

> x x x Justice Abad was right. [If i]t was not in the minds of the Commissioners to define capital broadly, these additional provisions would be meaningless. And it would have been really more or less expressing some kind of a contradiction in terms. So, that is why I was pleasantly surprised that one of the most pro-Filipino members of the Commission, Atty. Jose Suarez, who actually voted "NO" to the entire Constitution has only said, was one of the first to insist, during one of the plenary sessions that we should reject the UP Law Center recommendation. **In his words, I quote "I would feel more comfortable if we go back to the wording of the 1935 and 1970 Constitutions that is to say the 60-40 percentage could be based on the capital stock of the corporation."** The final motion was made by Commissioner Efren Treñas, in the same plenary session

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forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. x x x (Emphasis supplied.)

[37] Section 10, Article XII, 1987 Constitution:

> Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos. (Emphasis supplied.)

when he moved, "Madam President, may I propose an amendment on line 14 of Section 3 by deleting therefrom 'whose voting stock and controlling interest' and in lieu thereof, insert capital, so the line should read: "associations of at least sixty percent (60%) of the capital is owned by such citizens." **After I accepted the amendment since I was the chairman of the National Economy Committee, in the name of the Committee, the President of the Commission asked for any objection. When no one objected, the President solemnly announced that the amendment had been approved by the Plenary. It is clear, therefore, that in the minds of the Commissioners the word "capital" in Section 11 of Article XII refers, not to voting stock, but to total subscribed capital, both common and preferred.**[38] (Emphasis supplied.)

There was no change in phraseology from the 1935 and 1973 Constitutions, or a transitory provision that signals such change, with respect to foreign ownership in public utility corporations (2nd extrinsic aid)

If the framers wanted the word "capital" to mean voting capital stock, their terminology would have certainly been unmistakably limiting as to leave no doubt about their intention. But **the framers consciously and purposely excluded restrictive phrases**, such as "voting stocks" or "controlling interest," in the approved final draft, the proposal of the UP Law Center, Commissioner Davide and Commissioner Azcuna notwithstanding. Instead, they retained "capital" as "used in the 1935 and 1973 Constitutions."[39] There was, therefore, a conscious design to avoid stringent words that would limit the meaning of "capital" in a sense insisted upon by the majority. *Cassus omissus pro omisso habendus est*—a person, object, or thing omitted must have been omitted intentionally. More importantly, by using the word "capital," the intent of the framers of the Constitution was to include **all** types of shares, whether voting or non-voting, within the ambit of the word.

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[38] June 26, 2012 Oral Arguments TSN, pp. 115-116.

[39] Records of the Constitutional Commission, Volume III, pp. 326, 583.

History or realities or circumstances prevailing during the drafting of the Constitution validate the adoption of the plain meaning of "Capital" (3rd extrinsic aid)

This plain, non-exclusive interpretation of "capital" also comes to light considering the economic backdrop of the 1986 CONCOM when the country was still starting to rebuild the financial markets and regain the foreign investors' confidence following the changes caused by the toppling of the Martial Law regime. As previously pointed out, the Court, in construing the Constitution, must take into consideration the aims of its framers and the evils they wished to avoid and address. In ***Civil Liberties Union v. Executive Secretary***,[40] We held:

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that **the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied**. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. **The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose**. (Emphasis supplied.)

It is, thus, proper to revisit the circumstances prevailing during the drafting period. In an astute observation of the economic realities in 1986, quoted by respondent Pangilinan, University of the Philippines School of Economics Professor Dr. Emmanuel S. de Dios examined the nation's dire need for foreign investments and foreign exchange during the time when the framers deliberated on what would eventually be the National Economy and Patrimony provisions of the Constitution:

> **The period immediately after the 1986 EDSA Revolution is well known to have witnessed the country's deepest economic crisis since the Second World War.** Official data readily show

[40] G.R. No. 83896, February 22, 1991, 194 SCRA 317.

this period was characterised by the highest unemployment, highest interest rates, and largest contractions in output the Philippine economy experienced in the postwar period. At the start of the Aquino administration in 1986, total output had already contracted by more than seven percent annually for two consecutive years (1984 and 1985), inflation was running at an average of 35 percent, unemployment more than 11 percent, and the currency devalued by 35 percent.

The proximate reason for this was the moratorium on foreign-debt payments the country had called in late 1983, effectively cutting off the country's access to international credit markets (for a deeper contemporary analysis of what led to the debt crisis, see de Dios [1984]). **The country therefore had to subsist only on its current earnings from exports, which meant there was a critical shortage of foreign exchange. Imports especially of capital goods and intermediate goods therefore had to be drastically curtailed** x x x.

For the same reasons, obviously, new foreign investments were unlikely to be forthcoming. This is recorded by Bautista [2003:158], who writes:

> Long-term capital inflows have been rising at double-digit rates since 1980, **except during 1986-1990, a time of great political and economic uncertainty following the period of martial law under President Marcos.**

The foreign-exchange controls then effectively in place will have made importing inputs difficult for new enterprises, particularly foreign investors (especially Japanese) interested in relocating some of their-export-oriented but import-dependent operations to the Philippines. x x x The same foreign-exchange restrictions would have made the freedom to remit profits a dicey affairs. Finally, however, the period was also characterised by extreme political uncertainty, which did not cease even after the Marcos regime was toppled.[41] x x x

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[41] Respondent Pangilinan's Motion for Reconsideration dated July 14, 2011, pp. 36-37 citing Philippine Institute of Development Studies, "Key Indicators of the Philippines, 1970-2011", at http://econdb.pids.gov.ph/tablelists/table/326 and de Dios, E. (ed.) [1984] An Analysis of the Philippine Economic Crisis. *A workshop report.* Quezon City: University of the

Surely, it was far from the minds of the framers to alienate and disenfranchise foreign investors by imposing an indirect restriction that only exacerbates the dichotomy between management and ownership without the actual guarantee of giving control and protection to the Filipino investors. Instead, it can be fairly assumed that the framers intended to avoid further economic meltdown and so chose to attract foreign investors by allowing them to 40% equity ownership of the entirety of the corporate shareholdings but, wisely, imposing limits on their participation in the governing body to ensure that the effective control and ultimate economic benefits still remained with the Filipino shareholders.

Judicial decisions and prior laws use and/or treat "capital" as "capital stock" (4th extrinsic aid)

That the term "capital" in Sec. 11, Art. XII is equivalent to "capital stock," which encompasses all classes of shares regardless of their nomenclature or voting capacity, is easily determined by a review of various laws passed prior to the ratification of the 1987 Constitution. In 1936, for instance, the Public Service Act[42] established the nationality requirement for corporations that may be granted the authority to operate a "public service,"[43]

Philippines; also de Dios, E. [2009] "Governance, institutions, and political economy" in: D. Canlas, M.E. Khan and J. Zhuang, eds. *Diagnosing the Philippine economy: toward inclusive growth*. London: Anthem Press and Asian Development Bank. 295-336 and Bautista, R. [2003] "International dimensions", in: A. Balisacan and H. Hill Eds. *The Philippine economy: development, policies, and challenges.* Oxford University Press. 136-171.

[42] Commonwealth Act No. (CA) 146, as amended and modified by Presidential Decree No. 1, Integrated Reorganization Plan and EO 546; Approved on November 7, 1936.

[43] Sec. 13(b), CA 146: The term "public service" includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whether may be its classification, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries,

which include most of the present-day public utilities, by referring to the paid-up "capital stock" of a corporation, *viz*:

Sec. 16. Proceedings of the Commission, upon notice and hearing. - The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:

> (a) To issue certificates which shall be known as certificates of public convenience, authorizing the operation of public service within the Philippines whenever the Commission finds that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner. Provided, That thereafter, **certificates of public convenience and certificates of public convenience and necessity will be granted only to** citizens of the Philippines or of the United States or to **corporations, co-partnerships, associations or joint-stock companies constituted and organized under the laws of the Philippines; Provided, That sixty per centum of the stock or paid-up capital of any such corporations, co-partnership, association or joint-stock company must belong entirely to citizens of the Philippines** or of the United States: Provided, further, That no such certificates shall be issued for a period of more than fifty years. (Emphasis supplied.)

The heading of Sec. 2 of Commonwealth Act No. (CA) 108, or the Anti-Dummy Law, which was approved on October 30, 1936, similarly conveys the idea that the term "capital" is equivalent to "capital stock"[44]:

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and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railways, marine repair shop, [warehouse] wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services x x x.

[44] "Headnotes, heading or epigraphs of sections of a statute are convenient index to the contents of its provisions." (Agpalo, Ruben, *Statutory Construction*, Sixth Edition [2009], p. 166 citing *In re* Estate of Johnson, 39 Phil. 156 [1918]; *Kare v. Platon*, 56 Phil. 248 [1931]).

Section 2. ***Simulation of minimum capital stock*** — **In all cases in which a constitutional or legal provision requires that, in order that a corporation or association may exercise or enjoy a right, franchise or privilege, not less than a certain per centum of its capital must be owned by citizens of the Philippines** or of any other specific country, it shall be unlawful to falsely simulate the existence of such **minimum stock or capital** as owned by such citizens, for the purpose of evading said provision. The president or managers and directors or trustees of corporations or associations convicted of a violation of this section shall be punished by imprisonment of not less than five nor more than fifteen years, and by a fine not less than the value of the right, franchise or privilege, enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos.[45] (Emphasis and underscoring supplied.)

Pursuant to these legislative acts and under the aegis of the Constitutional nationality requirement of public utilities then in force, Congress granted various franchises upon the understanding that the "capital stock" of the grantee is at least 60% Filipino. In 1964, Congress, via Republic Act No. (RA) 4147,[46] granted Filipinas Orient Airway, Inc. a legislative franchise to operate an air carrier upon the understanding that its "capital stock" was 60% percent Filipino-owned. Section 14 of RA 4147, provided:

Sec. 14. This franchise is granted with the understanding that **the grantee is a corporation sixty per cent of the capital stock of which is the bona fide property of citizens of the Philippines** and that the interest of such citizens in its capital stock or in the capital of the Company with which it may merge shall at no time be allowed to fall below such percentage, under the penalty of the cancellation of this franchise. (Emphasis and underscoring supplied.)

The grant of a public utility franchise to Air Manila, Inc. to establish and maintain air transport in the country a year later

[45] As amended by Republic Act No. 134, which was approved on June 14, 1947.

[46] Entitled "An Act Granting A Franchise To Filipinas Orient Airways, Incorporated, To Establish And Maintain Air Transport Service In The Philippines And Between The Philippines And Other Countries." Approved on June 20, 1964.

pursuant to RA 4501[47] contained exactly the same Filipino capitalization requirement imposed in RA 4147:

> Sec. 14. This franchise is granted with the understanding that the grantee is a corporation, **sixty per cent of the capital stock of which is owned or the bona fide property of citizens of the Philippines** and that the interest of such citizens in its capital stock or in the capital of the company with which it may merge shall at no time be allowed to fall below such percentage, under the penalty of the cancellation of this franchise. (Emphasis and underscoring supplied.)

In like manner, RA 5514,[48] which granted a franchise to the Philippine Communications Satellite Corporation in 1969, required of the grantee to execute management contracts only with corporations whose "capital or capital stock" are at least 60% Filipino:

> Sec. 9. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise to any person or entity, except any branch or instrumentality of the Government, without the previous approval of the Congress of the Philippines: Provided, That the grantee may enter into management contract with any person or entity, with the approval of the President of the Philippines: Provided, further, That such person or entity with whom the grantee may enter into management contract shall be a citizen of the Philippines and in case of an entity or **a corporation, at least sixty per centum of the capital or capital stock of which is owned by citizens of the Philippines**. (Emphasis supplied.)

In 1968, RA 5207,[49] otherwise known as the "Atomic Energy Regulatory Act of 1968," considered a corporation sixty percent

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[47] Entitled "An Act Granting A Franchise To Air Manila, Incorporated, To Establish And Maintain Air Transport Service In The Philippines And Between The Philippines And Other Countries." Approved on June 19, 1965.

[48] Entitled "An Act Granting The Philippine Communications Satellite Corporation A Franchise To Establish And Operate Ground Satellite Terminal Station Or Stations For Telecommunication With Satellite Facilities And Delivery To Common Carriers." Approved on June 21, 1969.

[49] Entitled "An Act Providing For The Licensing And Regulation Of Atomic Energy Facilities And Materials, Establishing The Rules On Liability

of whose capital stock as domestic:

> Sec. 9. **Citizenship Requirement**. No license to acquire, own, or operate any atomic energy facility shall be issued to an alien, or any corporation or other entity which is owned or controlled by an alien, a foreign corporation, or a foreign government.
>
> For purposes of this Act, a corporation or entity is **not owned or controlled by an alien,** a foreign corporation of a foreign government **if at least sixty percent (60%) of its capital stock is owned by Filipino citizens**. (Emphasis supplied.)

Anent pertinent judicial decisions, this Court has used the very same definition of capital as equivalent to the entire capital stockholdings in a corporation in resolving various other issues. In ***National Telecommunications Commission v. Court of Appeals***,[50] this Court, thus, held:

> **The term "capital" and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence**. Briefly, **capital refers to the value of the property or assets of a corporation. The capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for, which need not necessarily be, and can be more than, the par value of the shares. In fine, it is the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares.** In the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account. It is the same amount that can loosely be termed as the "trust fund" of the corporation. The "Trust Fund" doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle. Thus, dividends must never

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For Nuclear Damage, And For Other Purposes," as amended by PD 1484. Approved on June 15, 1968 and published in the Official Gazette on May 5, 1969.

[50] G.R. No. 127937, July 28, 1999, 311 SCRA 508.

impair the subscribed capital; subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the consideration therefor.[51]

This is similar to the holding in ***Banco Filipino v. Monetary Board***[52] where the Court treated the term "capital" as including both common and preferred stock, which are usually deprived of voting rights:

> [I]t is clear from the law that a solvent bank is one in which its assets exceed its liabilities. It is a basic accounting principle that assets are composed of liabilities and capital. The term "assets" includes capital and surplus (*Exley v. Harris*, 267 p. 970, 973, 126 Kan., 302). On the other hand, **the term "capital" includes common and preferred stock, surplus reserves, surplus and undivided profits**. (Manual of Examination Procedures, Report of Examination on Department of Commercial and Savings Banks, p. 3-C). If valuation reserves would be deducted from these items, the result would merely be the networth or the unimpaired capital and surplus of the bank applying Sec. 5 of RA 337 but not the total financial condition of the bank.

In ***Commissioner of Internal Revenue v. Court of Appeals***,[53] the Court alluded to the doctrine of equality of shares in resolving the issue therein and held that *all shares* comprise the capital stock of a corporation:

> A common stock represents the residual ownership interest in the corporation. It is a basic class of stock ordinarily and usually issued without extraordinary rights or privileges and entitles the shareholder to a *pro rata* division of profits. Preferred stocks are those which entitle the shareholder to some priority on dividends and asset distribution. **Both shares are part of the corporation's capital stock. Both stockholders are no different from ordinary investors who take on the same investment risks. Preferred and common shareholders participate in the same venture, willing**

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[51] Emphasis supplied.

[52] G.R. No. 70054, December 11, 1991, 204 SCRA 767. Emphasis and underscoring supplied.

[53] G.R. No. 108576, January 20, 1999, 301 SCRA 152.

to share in the profit and losses of the enterprise. Moreover, under the doctrine of equality of shares — all stocks issued by the corporation are presumed equal with the same privileges and liabilities, provided that the Articles of Incorporation is silent on such differences.[54] (Emphasis supplied.)

The SEC has reflected the popular contemporaneous construction of capital in computing the nationality requirement based on the total capital stock, not only the voting stock, of a corporation (5th extrinsic aid)

The SEC has confirmed that, as an institution, it has always interpreted and applied the 40% maximum foreign **ownership** limit for public utilities to the total capital stock, and not just its total voting stock.

In its July 29, 2011 Manifestation and Omnibus Motion, the SEC reaffirmed its longstanding practice and history of enforcement of the 40% maximum foreign ownership limit for public utilities, *viz*:

> 5. The Commission respectfully submits that it has always performed its duty under Section 17(4) of the Corporation Code to enforce the foreign equity restrictions under Section 11, Article XII of the Constitution on the ownership of public utilities.
>
> xxx xxx xxx
>
> 8. Thus, in **determining compliance with the Constitutional restrictions on foreign equity, the Commission consistently construed and applied the term "capital" in its commonly accepted usage, that is – the sum total of the shares subscribed irrespective of their nomenclature and whether or not they are voting or non-voting** (Emphasis supplied).
>
> 9. This commonly accepted usage of the term 'capital' is based on persuasive authorities such as the widely esteemed *Fletcher Cyclopedia of the Law of Private Corporations*, and doctrines from

[54] See also *Republic Planters Bank v. Agana*, G.R. No. 51765, March 3, 1997, 269 SCRA 1, where this Court stated that "Shareholders, both common and preferred, are considered risk takers who invest capital in the business and who can look only to what is left after corporate debts and liabilities are fully paid."

American Jurisprudence. To illustrate, in its *Opinion* dated February 15, 1988 addresses to Gozon, Fernandez, Defensor and Associates, the Commission discussed how the term 'capital' is commonly used:

> "Anent thereto, please be informed that the term 'capital' as applied to corporations, refers to the money, property or means contributed by stockholders as the form or basis for the business or enterprise for which the corporation was formed and generally implies that such money or property or means have been contributed in payment for stock issued to the contributors. (*United Grocers, Ltd. v. United States* F. Supp. 834, cited in 11 Fletcher, Cyc. Corp., 1986, rev. Vol., Sec. 5080 at 18). As further ruled by the court, 'capital of a corporation is **the fund or other property, actually or potentially in its possession, derived or to be derived from the sale by it of shares of its stock or his exchange by it for property other than money**. This fund includes not only money or other property received by the corporation for shares of stock but all balances of purchase money, or instalments, due the corporation for shares of stock sold by it, and all unpaid subscriptions for shares.'" (*Williams v. Brownstein*, 1F. 2d 470, cited in 11 Fletcher, Cyc. Corp., 1058 rev. Vol., Sec. 5080, p. 21).
>
> The term 'capital' is also used synonymously with the words 'capital stock', as meaning the amount subscribed and paid-in and upon which the corporation is to conduct its operation. (11 Fletcher, Cyc. Corp. 1986, rev. Vol., Sec. 5080 at 15). And, as held by the court in *Haggard v. Lexington Utilities Co.*, (260 Ky 251, 84 SW 2d 84, cited in 11 Fletcher, Cyc. Corp., 1958 rev. Vol., Sec. 5079 at 17), 'The capital stock of a corporation is the amount paid-in by its stockholders in money, property or services with which it is to conduct its business, and ***it is immaterial how the stock is classified, whether as common or preferred***.'
>
> The Commission, in a previous opinion, ruled that the term 'capital' denotes the sum total of the shares subscribed and paid by the shareholders or served to be paid, irrespective of their nomenclature. (Letter to Supreme Technotronics Corporation, dated April 14, 1987)." (Emphasis ours)

10. Further, in adopting this common usage of the term 'capital,' the Commission believed in good faith and with sound reasons that it was consistent with the intent and purpose of the Constitution. In an *Opinion* dated 27 December 1995 addressed to Joaquin Cunanan & Co. the Commission observed that:

> "To construe the 60-40% equity requirement as merely based on the voting shares, disregarding the preferred non-voting share, not on the total outstanding subscribed capital stock, would give rise to a situation where the actual foreign interest would not really be only 40% but may extend beyond that because they could also own even the entire preferred non-voting shares. In this situation, Filipinos may have the control in the operation of the corporation by way of voting rights, but have no effective ownership of the corporate assets which includes lands, because the actual Filipino equity constitutes only a minority of the entire outstanding capital stock. **Therefore, in essence, the company, although controlled by Filipinos, is beneficially owned by foreigners since the actual ownership of at least 60% of the entire outstanding capital stocks would be in the hands of foreigners. Allowing this situation would open the floodgates to circumvention of the intent of the law to make the Filipinos the principal beneficiaries in the ownership of alienable lands.**" (Emphasis ours)

11. The foregoing settled principles and esteemed authorities relied upon by the Commission show that its interpretation of the term 'capital' is reasonable.

12. And, it is well settled that courts must give due deference to an administrative agency's reasonable interpretation of the statute it enforces.[55]

It should be borne in mind that the SEC is the government agency invested with the jurisdiction to determine at the first instance the observance by a public utility of the constitutional nationality requirement prescribed *vis-à-vis* the ownership of public utilities[56] and to interpret legislative acts, like the FIA. The rationale behind the doctrine of primary jurisdiction lies

[55] Citations omitted.

[56] *Ponencia*, pp. 30-31.

on the postulate that such administrative agency has the "special knowledge, experience and tools to determine technical and intricate matters of fact…"[57] Thus, the determination of the SEC is afforded great respect by other executive agencies, like the Department of Justice (DOJ),[58] and by the courts.

Verily, when asked as early as 1988– "Would it be legal for foreigners to own in a public utility entity more than 40% of the common shares but not more than 40% of the total outstanding capital stock which would include both common and non-voting preferred shares?" –the SEC, citing Fletcher, invariably answered in the affirmative, whether the poser was made in light of the present or previous Constitutions:

The pertinent provision of the Philippine Constitution under Article XII, Section 7, reads in part thus:

"No franchise, certificate, or any form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines, or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens. . ." x x x

The issue raised on your letter zeroes in on the meaning of the word "capital" as used in the above constitutional provision. Anent thereto, please be informed that the term "capital" as applied to corporations, refers to the money, property or means contributed by stockholders as the form or basis for the business or enterprise for

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[57] *Office of the Ombudsman v. Heirs of Margarita Vda. De Ventura*, G.R. No. 151800, November 5, 2009, 605 SCRA 1.

[58] In numerous Opinions, **the DOJ refused to construe the Constitutional provisions on the nationality requirement imposed by various legislative acts like the FIA, in relation to the 1987 Constitution, on the ground that the interpretation and application of the said law properly fall within the jurisdiction of the National Economic Development Authority (NEDA), in consultation with the Bureau of Investments (BOI) and the Securities and Exchange Commission**. (Opinion No. 16, Series 1999, February 2, 1999 citing Sec. of Justice Opn. No. 3, current series; Nos. 16, 44 and 45, s. 1998; Opinion No. 13, Series of 2008, March 12, 2008 citing Sec. of Justice Op. NO. 53, current series No. 75, s. 2006.

which the corporation was formed and generally implies that such money or property or means have been contributed in payment for stock issued to the contributors. (*United Grocers, Ltd. v. United States* F. Supp. 834, cited in 11 Fletcher, Cyc. Corp., 1986, rev. Vol., Sec. 5080 at 18). As further ruled by the court, "capital of a corporation is the fund or other property, actually or potentially in its possession, derived or to be derived from the sale by it of shares of its stock or his exchange by it for property other than money. This fund includes not only money or other property received by the corporation for shares of stock but all balances of purchase money, or installments, due the corporation for shares of stock sold by it, and all unpaid subscriptions for shares." (*Williams v. Brownstein*, 1F. 2d 470, cited in 11 Fletcher, Cyc. Corp., 1058 rev. Vol., Sec. 5080, p. 21).

The term "capital" is also used synonymously with the words "capital stock", as meaning the amount subscribed and paid-in and upon which the corporation is to conduct its operation. (11 Fletcher, Cyc. Corp. 1986, rev. Vol., Sec. 5080 at 15). And, as held by the court in *Haggard v. Lexington Utilities Co*., (260 Ky 251, 84 SW 2d 84, cited in 11 Fletcher, Cyc. Corp., 1958 rev. Vol., Sec. 5079 at 17), **"The capital stock of a corporation is the amount paid-in by its stockholders in money, property or services with which it is to conduct its business, and it is immaterial how the stock is classified, whether as common or preferred."**

The Commission, in a previous opinion, ruled that the term 'capital' denotes the sum total of the shares subscribed and paid by the shareholders or served to be paid, irrespective of their nomenclature. (Letter to Supreme Technotronics Corporation, dated April 14, 1987). Hence, your query is answered in the affirmative.[59] (Emphasis supplied.)

As it were, the SEC has held on the same positive response long before the 1987 Constitution came into effect, a matter of fact which has received due acknowledgment from this Court. In ***People v. Quasha***,[60] a case decided under the 1935 Constitution, this Court narrated that in 1946 the SEC approved the incorporation of a common carrier, a public utility, where

[59] SEC Opinion dated February 15, 1988.

[60] 93 Phil. 333 (1953).

Filipinos, while not holding the controlling vote, owned the majority of the capital, *viz*:

> The essential facts are not in dispute. On November 4, 1946, the Pacific Airways Corporation registered its articles of incorporation with the [SEC]. The articles were prepared and the registration was effected by the accused, who was in fact the organizer of the corporation. The articles stated that the primary purpose of the corporation was to carry on the business of a common carrier by air, land, or water, that its **capital stock was ₱1,000,000, represented by 9,000 preferred and 100,000 common shares, each preferred share being of the par value of ₱100 and entitled to 1/3 vote and each common share, of the par value of ₱1 and entitled to one vote**; that the amount of capital stock actually subscribed was ₱200,000, and the names of the subscriber were Arsenio Baylon, Eruin E. Shannahan, Albert W. Onstott, James O'bannon, Denzel J. Cavin, and William H. Quasha, **the first being a Filipino and the other five all Americans;** that Baylon's subscription was for 1,145 preferred shares, of the total value of ₱114,500 and 6,500 common shares, of the total par value of P6,500, while the aggregate subscriptions of the American subscribers were for 200 preferred shares, of the total par value of ₱20,000 and 59,000 common shares, of the total par value of ₱59,000; and that Baylon and the American subscribers had already paid 25 percent of their respective subscriptions. **Ostensibly the owner of, or subscriber to, 60.005 per cent of the subscribed capital stock of the corporation, Baylon, did not have the controlling vote because of the difference in voting power between the preferred shares and the common shares. Still, with the capital structure as it was, the articles of incorporation were accepted for registration and a certificate of incorporation was issued by the [SEC]**. (Emphasis supplied.)

The SEC has, through the years, stood by this interpretation. In an Opinion dated November 21, 1989, the SEC held that the basis of the computation for the nationality requirement is the total outstanding capital stock, to wit:

> As to the basis of computation of the 60-40 percentage nationality requirement under existing laws (whether it should be based on the number of shares or the aggregate amount in pesos of the par value of the shares), the following definitions of corporate terms are worth mentioning.

"The term capital stock signifies the aggregate of the shares actually subscribed". (11 Fletcher, Cyc. Corps. (1971 Rev. Vol.) sec. 5082, citing Goodnow v. American Writing Paper Co., 73 NJ Eq. 692, 69 A 1014 aff'g 72 NJ Eq. 645, 66 A, 607).

"Capital stock means the capital subscribed (the share capital)". (*Ibid*., emphasis supplied).

"In its primary sense a share of stock is simply one of the proportionate integers or units, the sum of which constitutes the capital stock of corporation. (Fletcher, sec. 5083).

The equitable interest of the shareholder in the property of the corporation is represented by the term stock, and the extent of his interest is described by the term shares. The expression shares of stock when qualified by words indicating number and ownership expresses the extent of the owner's interest in the corporate property (*Ibid*, Sec. 5083, emphasis supplied).

Likewise, in all provisions of the Corporation Code the stockholders' right to vote and receive dividends is always determined and based on the "outstanding capital stock", defined as follows:

"SECTION 137. Outstanding capital stock defined. — The term "outstanding capital stock" as used in this Code, means the total shares of stock issued to subscribers or stockholders, whether or not fully or partially paid (as long as there is a binding subscription agreement, except treasury shares."

The computation, therefore, should be based on the total outstanding capital stock, irrespective of the amount of the par value of the shares.

Then came SEC-OGC Opinion No. 08-14 dated June 02, 2008:

The instant query now centers on whether both voting and non-voting shares are included in the computation of the required percentage of Filipino equity, As a rule, the 1987 Constitution does not distinguish between voting and non-voting shares with regard to the computation of the percentage interest by Filipinos and non-Filipinos in a company. **In other words, non-voting shares should be included in the computation of the foreign ownership limit for domestic corporation.** This was the rule applied [in SEC Opinion

No. 04-30] x x x It was opined therein that the ownership of the shares of stock of a corporation is based on the total outstanding or subscribed/issued capital stock regardless of whether they are classified as common voting shares or preferred shares without voting rights. This is in line with the policy of the State to develop an independent national economy effectively controlled by Filipinos. x x x (Emphasis added.)

The SEC again echoed the same interpretation in an Opinion issued last April 19, 2011 wherein it stated, thus:

This is, thus, the general rule, such that when the provision merely uses the term "capital" without qualification (as in Section 11, Article XII of the 1987 Constitution, which deals with equity structure in a public utility company), the same should be interpreted to refer to the sum total of the outstanding capital stock, irrespective of the nomenclature or classification as common, preferred, voting or non-voting.[61]

The above construal is in harmony with the letter and spirit of Sec. 11, Art. XII of the Constitution and its counterpart provisions in the 1935 and 1973 Constitution and, thus, is entitled to respectful consideration. As the Court declared in ***Philippine Global Communications, Inc. v. Relova***:[62]

x x x As far back as In re Allen, (2 Phil. 630) a 1903 decision, Justice McDonough, as *ponente*, cited this excerpt from the leading American case of *Pennoyer v. McConnaughy*, decided in 1891: "**The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts,** is so firmly embedded in our jurisprudence that no authorities need be cited to support it.' x x x There was a paraphrase by Justice Malcolm of such a pronouncement in *Molina v. Rafferty*, (37 Phil. 545) a 1918 decision:"

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[61] SEC-OGC Opinion No. 26-11.

[62] *Philippine Global Communications, Inc. v. Relova,* G.R. No. 60548, November 10, 1986, 145 SCRA 385; citing *Philippine Association of Free Labor Unions [PAFLU] v. Bureau of Labor Relations*, August 21, 1976, 72 SCRA 396, 402.

Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby. (*Ibid*, 555) Since then, such a doctrine has been reiterated in numerous decisions.[63] (Emphasis supplied.)

Laxamana v. Baltazar[64] restates this long-standing dictum: "[w]here a statute has received a contemporaneous and practical interpretation and the statute as interpreted is re-enacted, the practical interpretation is accorded greater weight than it ordinarily receives, and is regarded as presumptively the correct interpretation of the law. The rule here is based upon the theory that the legislature is acquainted with the contemporaneous interpretation of a statute, especially when made by an administrative body or executive officers charged with the duty of administering or enforcing the law, and therefore impliedly adopts the interpretation upon re-enactment."[65] Hence, it can be safely assumed that the framers, in the course of deliberating the 1987 Constitution, knew of the adverted SEC interpretation.

Parenthetically, it is immaterial whether the SEC opinion was rendered by the *banc* or by the SEC-Office of the General Counsel (OGC) considering that the latter has been given the authority to issue opinions on the laws that the SEC implements under SEC-EXS. Res. No. 106, Series of 2002.[66] The conferment

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[63] *Id*.

[64] No. L-5955, September 19, 1952.

[65] *Id*.

[66] Annex "B" of the SEC Memorandum dated July 25, 2012 wherein the Commission Secretary certified that: "During the Commission *En Banc* meeting held on July 2, 2002 at the Commission Room, 8th Floor, SEC Building, EDSA, Greenhills, Mandaluyong City, the Commission *En Banc* approved the following:

> ***RESOLVED**, That all opinions to be issues by the SEC pursuant to a formal request, prepared and acted upon by the appropriate operating departments shall be reviewed by the OGC and be issued under the signature of the SEC General Counsel. Henceforth, all opinions to be issues by the SEC shall be numbered accordingly*
>
> *(SEC-EXS. RES. NO. 106 s, of 2002)*

does not violate Sec. 4.6[67] of the Securities and Regulation Code (SRC) that proscribes the non-delegation of the legislative rule making power of the SEC, which is in the nature of subordinate legislation. As may be noted, the same Sec. 4.6 does not mention the SEC's power to issue interpretative "opinions and provide guidance on and supervise compliance with such rules,"[68] which is incidental to the SEC's enforcement functions. A legislative rule and an interpretative rule are two different concepts and the distinction between the two is established in administrative law.[69] Hence, the various opinions issued by the SEC-OGC deserve as much respect as the opinions issued by the SEC *en banc*.

Nonetheless, the esteemed *ponente* posits that the SEC, contrary to its claim, has been less than consistent in its construal of "capital." During the oral arguments, he drew attention to various SEC Opinions, nine (9) to be precise, that purportedly consider "capital" as referring only to voting stocks.

Refuting this position, the SEC in its Memorandum dated July 25, 2012 explained in some detail that **the Commission has been consistent in applying the term "capital" to the total outstanding capital stock, whether voting or non-voting**. The SEC Opinions referred to by Justice Carpio, which cited the provisions of the FIA, is not, however, pertinent or decisive

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[67] SEC. 4.6, SRC: The Commission may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation.

The Commission may review upon its own initiative or upon the petition of any interested party any action of any department or office, individual Commissioner, or staff member of the Commission.

[68] Sec. 5.1 (g), SRC.

[69] *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, G.R. No. 108524, November 10, 1994, 238 SCRA 63; citing *Victorias Milling Co. v. Social Security Commission*, 114 Phil. 555 (1962) and *Philippine Blooming Mills v. Social Security System*, 124 Phil. 499 (1966).

of the issue on the meaning of "capital." The said SEC Memorandum states:

During the oral arguments held on 26 June 2012, the SEC was directed to explain nine (9) of its Opinions in relation to the definition of "capital" as used in Section 11, Article XII of the Constitution, namely: (1) Opinion dated 3 March 1993 for Mr. Francis F. How; (2) Opinion dated 14 April 1993 for Director Angeles T. Wong; (3) Opinion dated 23 November 1993 for Mssrs. Dominador Almeda and Renato S. Calma; (4) Opinion dated 7 December 1993 for Roco Buñag Kapunan Migallos & Jardeleza Law Offices; (5) Opinion dated 22 December 2004 for Romulo Mabanta Buenaventura Sayoc & De Los Angeles; (6) Opinion dated 27 September 2007 for Reynaldo G. David; (7) Opinion dated 28 November 2007 for Santiago & Santiago law Offices; (8) Opinion dated 15 January 2008 for Attys. Ruby Rose J. Yusi and Rudyard S. Arbolado; and (9) Opinion dated 18 August 2010 for Castillo Laman Tan Pantaleon & San Jose.

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With due respect, the issue of whether "capital" refers to outstanding capital stock or only voting stocks was never raised in the requests for these opinions. In fact, the definition of "capital" could not have been a relevant and/or a material issue in some of these opinions because the common and preferred shares involved have the same voting rights. Also, some Opinions mentioned the FIA to emphasize that the said law mandates the application of the Control Test. Moreover, these Opinions state they are based solely on the facts disclosed and relevant only to the issues raised therein.

For one, the Opinion dated 3 March 1993 for Mr. Francis F. How **does not discuss whether "capital" refers to total outstanding capital stock or only voting stocks**. Instead, it talks about the application of the Control test in a mining corporation by looking into the nationality of its investors. **The FIA is not mentioned to provide a definition of "capital," but to explain the nationality requirement pertinent to investors of a mining corporation**.

The Opinion dated 14 April 1993 for Dir. Angeles T. Wong also **does not define "capital" as referring to total outstanding capital or only to voting shares, but talks about the application of the Control Test** x x x. The FIA is again mentioned only to explain the nationality required of investors of a corporation engaged in overseas recruitment.

The Opinion dated 23 November 1993 for Mssrs. Dominador Almeda and Renato S. Calma **distinguishes between the nationality of a corporation as an investing entity and the nationality of a corporation as an investee corporation. The FIA is mentioned only in the discussion of the nationality of the investors of a corporation owning land in the Philippines**, composed of a trustee for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals, and another domestic corporation which is 100% foreign owned.

Unlike the *Decision* rendered by this Honorable Court on 28 June 2011, the Opinion dated 07 December 1993 for Roco Buñag Kapunan Migallos & Jardeleza **does not parley on the issue of the proper interpretation of "capital" because it is not a relevant and/or a material issue in this opinion** xxx. **The FIA is mentioned only to explain the application of the control test.** Note, however, that manufacturing fertilizer is neither a nationalized or partly nationalized activity, which is another reason why this Opinion has no relevance in this case.

The Opinion dated 22 December 2004 for Romulo Mabanta Buenaventura Sayoc & De Los Angeles focuses on the nationality of the investors of a corporation that will acquire land wherein one of the investors is a foundation. **It confirms the view that the test for compliance with the nationality requirement is based on the total outstanding capital stock irrespective of the amount of the par value of shares.** The FIA is used merely to justify the application of the Control Test as adopted in the Department of Justice Opinion, No. 18, Series of 1989, dated 19 January 1989m *viz* —

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The Opinion dated 27 September 2007 for Mr. Reynaldo G. David, likewise, **does not discuss whether "capital" refers to total outstanding capital stock or only to voting stocks, but rather whether the Control Test is applicable in determining the nationality of the proposed corporate bidder or buyer of PNOC-EDC shares**. x x x The FIA was cited only to emphasize that the said law mandates the application of the Control Test.

The Opinion dated 28 November 2007 for Santiago & Santiago Law Offices **maintains and supports the position of the Commission that Section 11, Article XII of the Constitution makes no distinction**

between common and preferred shares, thus, both shares should be included in the computation of the foreign equity cap for domestic corporations. Simply put, the total outstanding capital stock, without regard to how the shares are classified, should be used as the basis in determining the compliance by public utilities with the nationality requirement as provided for in Section 11, Article XII of the Constitution. Notably, all shares of the subject corporation, Pilipinas First, have voting rights, whether common or preferred. Hence, the issue on whether "capital" refers to total outstanding capital stock or only to voting stocks has no relevance in this Opinion.

In the same way, the Opinion dated 15 January 2008 for Attys. Ruby Rose J. Yusi and Rudyard S. Arbolada **never discussed whether "capital" refers to outstanding capital stock or only to voting stocks, but rather whether the Control Test is applicable or not.** The FIA was used merely to justify the application of the Control Test. More importantly, the term "capital" could not have been relevant and/or material issue in this Opinion because the common and preferred shares involved have the same voting rights.

The Opinion dated 18 August 2010 for Castillo Laman Tan Pantaleon & San Jose **reiterates that the test for compliance with the nationality requirement is based on the total outstanding capital stock, irrespective of the amount of the par value of the shares. The FIA is mentioned only to explain the application of the Control Test and the Grandfather Rule** in a corporation owning land in the Philippines by looking into the nationality of its investors. (Emphasis supplied).[70]

In view of the foregoing, it is submitted that the long-established interpretation and mode of computing by the SEC of the total capital stock strongly recognize the intent of the framers of the Constitution to allow access to much-needed foreign investments confined to 40% of the capital stock of public utilities.

Consequences of alternative interpretation: mischievous effects of the construction proposed in the petition and sustained in the June 28, 2011 Decision. (6th extrinsic aid)

[70] SEC Memorandum dated July 25, 2012, pp. 33-36.

Filipino shareholders will not control the fundamental corporate matters nor own the majority economic benefits of the public utility corporation.

Indeed, if the Court persists in adhering to the rationale underlying the majority's original interpretation of "capital" found in the first sentence of Section 11, Article XII, We may perhaps be allowing Filipinos to direct and control the daily business of our public utilities, but would **irrevocably and injudiciously deprive them of effective "control" over the major and equally important corporate decisions and the eventual beneficial ownership of the corporate assets that could include, among others, claim over our soil—our land**. This undermines the clear textual commitment under the Constitution that reserves ownership of disposable lands to Filipino citizens. The interplay of the ensuing provisions of Article XII is unmistakable:

SECTION 2. All lands of the public domain x x x forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** x x x

xxx xxx xxx

SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead or grant.

xxx xxx xxx

SECTION 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.** (Emphasis supplied.)

Consider the hypothetical case presented in the original *ponencia*:

> Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term "capital," such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.

Albeit trying not to appear to, the majority actually finds fault in the wisdom of, or motive behind, the provision in question through "highly unlikely scenarios of clinical extremes," to borrow from *Veterans Federation Party v. COMELEC*.[71] It is submitted that the flip side of the *ponencia*'s hypothetical illustration, which will be exhaustively elucidated in this opinion, is more anomalous and prejudicial to Filipino interests.

For instance, let us suppose that the authorized capital stock of a public utility corporation is divided into 100 common shares and 1,000,000 non-voting preferred shares. Since, according to the Court's June 28, 2011 Decision, the word "capital" in Sec. 11, Art. XII refers only to the voting shares, then the 40% cap on foreign ownership applies only to the 100 common shares. Foreigners can, therefore, own 100% of the 1,000,000 non-voting preferred shares. But then again, the *ponencia* continues, at least, the "control" rests with the Filipinos because the 60% Filipino-owned common shares will necessarily ordain the majority in the governing body of the public utility corporation, the board of directors/trustees. Hence, Filipinos are assured of control over the day-to-day activities of the public utility corporation.

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[71] G.R. Nos. 136781, 136786, 136795, October 6, 2000, 342 SCRA 244, 270.

Let us, however, take this corporate scenario a little bit farther and consider the irresistible implications of changes and circumstances that are inevitable and common in the business world. Consider the simple matter of a possible investment of corporate funds in another corporation or business, or a merger of the public utility corporation, or a possible dissolution of the public utility corporation. **Who has the "control" over these vital and important corporate matters?** The last paragraph of Sec. 6 of the Corporation Code provides:

> Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, **the holders of such (non-voting) shares shall nevertheless be entitled to vote on the following matters**:
>
> 1. Amendment of the articles of incorporation;
> 2. Adoption and amendment of by-laws;
> 3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
> 4. Incurring, creating or increasing bonded indebtedness;
> 5. Increase or decrease of capital stock;
> 6. Merger or consolidation of the corporation with another corporation or other corporations;
> 7. Investment of corporate funds in another corporation or business in accordance with this Code; and
> 8. Dissolution of the corporation. (Emphasis and underscoring supplied.)

In our hypothetical case, all 1,000,100 (voting and non-voting) shares are entitled to vote in cases involving fundamental and major changes in the corporate structure, such as those listed in Sec. 6 of the Corporation Code. Hence, with only 60 out of the 1,000,100 shares in the hands of the Filipino shareholders, control is definitely in the hands of the foreigners. The foreigners can opt to invest in other businesses and corporations, increase its bonded indebtedness, and even dissolve the public utility

corporation against the interest of the Filipino holders of the majority voting shares. This cannot plausibly be the constitutional intent.

Consider further a situation where the majority holders of the total outstanding capital stock, both voting and non-voting, decide to dissolve our hypothetical public utility corporation. **Who will eventually acquire the beneficial ownership of the corporate assets upon dissolution and liquidation?** Note that Sec. 122 of the Corporation Code states:

> Section 122. Corporate liquidation.–Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years… **to dispose of and convey its property and to distribute its assets**, but not for the purpose of continuing the business for which it was established.
>
> At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees **for the benefit of stockholders, members,** creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, **all interest which the corporation had in the property terminates,** the legal interest vests in the trustees, and **the beneficial interest in the stockholders, members , creditors or other persons in interest.** (Emphasis and underscoring supplied.)

Clearly then, the bulk of the assets of our imaginary public utility corporation, which may include private lands, will go to the beneficial ownership of the foreigners who can hold up to 40 out of the 100 common shares and the entire 1,000,000 preferred non-voting shares of the corporation. These foreign shareholders will enjoy the bulk of the proceeds of the sale of the corporate lands, or worse, exercise control over these lands behind the façade of corporations nominally owned by Filipino shareholders. Bluntly, while the Constitution expressly prohibits the transfer of land to aliens, foreign stockholders may resort to schemes or arrangements where such land will be conveyed

to their dummies or nominees. Is this not circumvention, if not an outright violation, of the fundamental Constitutional tenet that only Filipinos can own Philippine land?

A construction of "capital" as referring to the total shareholdings of the company is an acknowledgment of the existence of numerous corporate control-enhancing mechanisms, besides ownership of voting rights, that limits the proportion between the separate and distinct concepts of **economic right** to the cash flow of the corporation **and** the right to corporate **control** (hence, they are also referred to as proportionality-limiting measures). This corporate reality is reflected in SRC Rule 3(E) of the Amended Implementing Rules and Regulations (IRR) of the SRC and Sec. 3(g) of The Real Estate Investment Trust Act (REIT) of 2009,[72] which both provide that control can exist **regardless of ownership of voting shares**. The SRC IRR states:

> **Control is the power to govern** the **financial** and **operating policies** of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries, more than one half of the voting power of an enterprise unless, in exceptional circumstances, it can be clearly demonstrated that such ownership does not constitute control. **Control also exists even when the parent owns one half or less of the voting power of an enterprise when there is**:
>
> **i. Power over more than one half of the voting rights** by virtue of an **agreement** with other investors;
>
> **ii. Power to govern the financial and operating policies** of the enterprise under a statute or an **agreemen**t;
>
> **iii. Power to appoint or remove the majority of the members of the board** of directors or equivalent governing body;
>
> **iv. Power to cast the majority of votes** at meetings of the board of directors or equivalent governing body. (Emphasis and underscoring supplied.)

[72] Republic Act 9856, Lapsed into law on December 17, 2009.

As shown above, **ownership of voting shares or power alone without economic control of the company does not necessarily equate to corporate control**. A *shareholder's agreement* can effectively clip the voting power of a shareholder holding voting shares. In the same way, a *voting right ceiling*, which is "a restriction prohibiting shareholders to vote above a certain threshold irrespective of the number of voting shares they hold,"[73] can limit the control that may be exerted by a person who owns voting stocks but who does not have a substantial economic interest over the company. So also does the use of *financial derivatives* with attached conditions to ensure the acquisition of corporate control separately from the ownership of voting shares, or the use of *supermajority provisions* in the by-laws and articles of incorporation or association. Indeed, there are innumerable ways and means, both explicit and implicit, by which the *control of a corporation can be attained and retained even with very limited voting shares*, *i.e.*., there are a number of ways by which control can be disproportionately increased compared to ownership[74] so long as economic rights over the majority of the assets and equity of the corporation are maintained.

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[73] Report on the Proportionality Principle in the European Union: External Study Commissioned by the European Commission, p. 7.

[74] This fact is recognized even by the Organisation for Economic Cooperation and Development (OECD), *viz.*:

"Economic literature traditionally identifies two main channels through which corporate investors may decouple the cash flows and voting rights of shares, including the leveraging of voting power and mechanisms to "lock in" control. The most commonly used such mechanisms are listed below. Not covered by the present section are a number of company-internal arrangements that can in some circumstances also be employed to leverage the control of certain shareholders. For instance, the ongoing discussions in the United States about corporate proxies and the voting arrangements at general meetings (e.g. majority versus plurality vote) may have important ramifications for the allocation of control rights in US companies. In addition, a number of marketed financial instruments are increasingly available that can be used by investors, including incumbent management, to hedge their financial interest in a company while retaining voting rights.

Leveraging of voting power. The two main types PLMs used to bolster the voting powers of individuals, hence creating controlling shareholders,

Hence, if We follow the construction of "capital" in Sec. 11, Art. XII stated in the *ponencia* of June 28, 2011 and turn a

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are differentiated voting rights on company shares and multi-firm structures. Mechanisms include:

Differentiated voting rights. The most straightforward – and, as the case may be, transparent – way of leveraging voting power is to stipulate differential voting rights in the corporate charter or bylaws. Companies have gone about this in a number of ways, including dual-class share structures and, in addition to common stock, issuing non-voting shares or preference shares without or with limited voting rights. The latter is a borderline case: preference shares have common characteristics with debt as well as equity, and in most jurisdictions they assume voting rights if the issuers fail to honour their preference commitments.

Multi-firm structures. Voting rights can be separated from cash-flow rights even with a single class of shares by creating a set of cascading shareholdings or a pyramidal hierarchy in which higher-tier companies own shares in lower-tier companies. Pyramids are complementary to dual-class share structures insofar as almost any pyramidal control structure can be reproduced through dual (or, rather, multiple) share classes. However, for complex control structures, the controlling shareholders may prefer pyramids since the underlying shares tend to be more liquid than stocks split into several classes. (In the remainder of this paper the word "pyramid" is used jointly to denote truly pyramidal structures and cascading shareholdings.)

Lock-in mechanisms. The other main category of PLMs consists of instruments that lock in control – that is cut off, or in some cases bolster, the voting rights of common stock. A clear-cut lock-in mechanism is voting right ceilings prohibiting shareholders from voting about a certain threshold irrespective of the Corporate Affairs Division, Directorate for Financial and Enterprise Affairs Organisation for Economic Co-operation and Development 2 rue André-Pascal, Paris 75116, France www.oecd.org/daf/corporate-affairs/ number of voting shares they hold. Secondly, a type of lock-in mechanism that confers greater voting right on selected shareholders is priority shares, which grant their holders extraordinary power over specific types of corporate decisions. This type of lock-in mechanism, when held by the state, is commonly referred to as a "golden share". Finally, company bylaws or national legislation may contain supermajority provisions according to which a simple majority is insufficient to approve certain major corporate changes.

Related or complementary instruments. Other instruments, while not themselves sources of disproportionality, may either compound the effect of PLMs or produce some of the same corporate governance consequences as PLMs. One example is cross-shareholdings, which can be used to leverage

blind eye to these realities of the business world, **this Court may have veritably put a limit on the foreign ownership of common shares but have indirectly allowed foreigners to acquire greater economic right to the cash flow of public utility corporations**, which is a leverage to bargain for far greater control through the various enhancing mechanisms or proportionality-limiting measures available in the business world.

In our extremely hypothetical public utility corporation with the equity structure as thus described, since the majority recognized only the 100 common shares as the "capital" referred to in the Constitution, the entire economic right to the cash flow arising from the 1,000,000 non-voting preferred shares can be acquired by foreigners. With this economic power, the foreign holders of the minority common shares will, as they easily can, bargain with the holders of the majority common shares for more corporate control in order to protect their economic interest and reduce their economic risk in the public utility corporation. For instance, they can easily demand the right to cast the majority of votes during the meeting of the board of directors. After all, money commands control.

The court cannot, and ought not, accept as correct a holding that routinely disregards legal and practical considerations as significant as above indicated. Committing an error is bad enough, persisting in it is worse.

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the effectiveness of PLMs and, in consequence, are often an integral part of pyramidal structures. A second such instrument is shareholder agreements that, while their effects can be replicated by shareholders acting in concert of their own accord, nevertheless add an element of certainty to voting coalitions…" (Lack of Proportionality between Ownership and Control: Overview and Issues for Discussion. Issued by the Organisation for Economic Co-Operation and Development (OECD) Steering Group on Corporate Governance, December 2007, pp. 12-13. Available from http://www.oecd.org/dataoecd/21/32/40038351.pdf, last accessed February 7, 2012. See also Clarke, Thomas and Chanlat, Jean Francois. European Corporate Governance: Readings and Perspectives. (2009) Routledge, New York, p. 33; Report on the Proportionality Principle in the European Union: External Study Commissioned by the European Commission. See also Hu and Black, *supra*.

Foreigners can be owners of fully nationalized industries

Lest it be overlooked, "capital" is an oft-used term in the Constitution and various legislative acts that regulate corporate entities. Hence, the meaning assigned to it within the context of a constitutional provision limiting foreign ownership in corporations can affect corporations whose ownership is reserved to Filipinos, or whose foreign equity is limited by law pursuant to Sec. 10, Art. XII of the Constitution which states:

> SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, **reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.** (Emphasis supplied).

For instance, Republic Act No. 7042, also known as the *Foreign Investments Act of 1991*[75] (FIA), provides for the formation of a Regular Foreign Investment Negative List (RFINL) covering investment areas/activities that are partially or entirely reserved to Filipinos. The 8th RFINL[76] provides that "No Foreign Equity" is allowed in the following areas of investments/activities:

1. Mass Media except recording (Article XVI, Section 1 of the Constitution and Presidential Memorandum dated May 4, 1994);
2. Practice of all professions (Article XII, Section 14 of the Constitution and Section 1, RA 5181);[77]

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[75] Approved on June 13, 1991, and amended by Republic Act No. 8179.

[76] Executive Order No. 858, February 5, 2010.

[77] See also PD 1570 (Aeronautical engineering); RA 8559 (Agricultural Engineering); RA 9297 (Chemical engineering); RA 1582 (Civil engineering) RA 7920 (Electrical Engineering); RA 9292 (Electronics and Communication Engineering); RA 8560 (Geodetic Engineering); RA 8495 (Mechanical

3. Retail trade enterprises with paid-up capital of less than $2,500,000 (Section 5, RA 8762);
4. Cooperatives (Chapter III, Article 26, RA 6938);
5. Private Security Agencies (Section 4, RA 5487);
6. Small-scale Mining (Section 3, RA 7076)
7. Utilization of Marine Resources in archipelagic waters, territorial sea, and exclusive economic zone as well as small scale utilization of natural resources in rivers, lakes, bays, and lagoons (Article XII, Section 2 of the Constitution);
8. Ownership, operation and management of cockpits (Section 5, PD 449);
9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Article II, Section 8 of the Constitution);
10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines (Various treaties to which the Philippines is a signatory and conventions supported by the Philippines);
11. Manufacture of fire crackers and other pyrotechnic devices (Section 5, RA 7183).

Engineering); PD 1536 (Metallurgical Engineering); RA 4274 (Mining Engineering); RA 4565 (Naval Architecture and Marine Engineering); RA 1364 (Sanitary Engineering; RA 2382 as amended by RA 4224 (Medicine); RA 5527 as amended by RA 6318, PD 6138, PD 498 and PD 1534 (Medical Technology); RA 9484 (Dentistry); RA 7392 (Midwifery); RA 9173 (Nursing); PD 1286 (Nutrition and Dietetics); RA 8050 (Optometry); RA 5921 (Pharmacy); RA 5680 (Physical and Occupational Therapy); RA 7431 (Radiologic and X-ray Technology); RA 9268 (Veterinary Medicine); RA 9298 (Accountancy); RA 9266 (Architecture); RA 6506 (Criminology); RA 754 (Chemistry); RA 9280 (Customs Brokerage); PD 1308 (Environmental Planning); RA 6239 (Forestry); RA 4209 (Geology); RA 8534 (Interior Design); RA 9053 (Landscape Architecture); Article VIII, Section 5 of the Constitution, Rule 138, Section 2 of the Rules of Court of the Philippines (Law); RA 9246 (Librarianship); RA 8544 (Marine Deck Officers and Marine Engine Officers); RA 1378 (Master Plumbing): RA 5197 (Sugar Technology); RA 4373 (Social Work); RA 7836 (Teaching); RA 8435 (Agriculture); RA 8550 (Fisheries); and RA 9258 (Guidance Counselling).

If the construction of "capital," as espoused by the June 28, 2011 Decision, were to be sustained, the reservation of the full ownership of corporations in the foregoing industries to Filipinos could easily be negated by the simple expedience of issuing and making available non-voting shares to foreigners. After all, these non-voting shares do not, following the June 28, 2011 Decision, form part of the "capital" of these supposedly fully nationalized industries. Consequently, while Filipinos can occupy all of the seats in the board of directors of corporations in fully nationalized industries, it is possible for foreigners to own the majority of the equity of the corporations through "non-voting" shares, which are nonetheless allowed to determine fundamental corporate matters recognized in Sec. 6 of the Corporation Code. Filipinos may therefore be unwittingly deprived of the "effective" ownership of corporations supposedly reserved to them by the Constitution and various laws.

The Foreign Investments Act of 1991 does not qualify or restrict the meaning of "capital" in Sec. 11, Art. XII of the Constitution.

Nonetheless, Justice Carpio parlays the thesis that the FIA, and its predecessors, the Investments Incentives Act of 1967 ("1967 IIA"),[78] Omnibus Investments Code of 1981 ("1981 OIC"),[79] and the Omnibus Incentives Code of 1987 ("1987 OIC"),[80] (collectively, "Investment Incentives Laws") more particularly their definition of the term "Philippine National," constitutes a good guide for ascertaining the intent behind the use of the term "capital" in Sec. 11, Art. XII—that it refers only to voting shares of public utility corporations.

I cannot share this posture. **The Constitution may only be amended through the procedure outlined in the basic document**

[78] Republic Act No. 5186, approved on September 16, 1967.

[79] Presidential Decree 1789, Published in the Daily Express dated April 1, 1981 and Amended by Batas Pambansa Blg. 391 otherwise known as "Investment Incentive Policy Act of 1983," approved April 28, 1983.

[80] Executive Order (s1987) No. 226, known as the "Omnibus Investments Code of 1987," approved on July 16, 1987.

itself.[81] **An amendment cannot, therefore, be made through the expedience of a legislative action that diagonally opposes the clear provisions of the Constitution.**

Indeed, the **constitutional intent** on the equity prescribed by Sec. 11, Art. XII **cannot plausibly be fleshed out by a look through the prism of economic statutes passed after the adoption of the Constitution**, such as the cited FIA, the *Magna Carta* for Micro, Small and Medium Industries (Republic Act No. 6977) and other kindred laws envisaged to Filipinize certain areas of investment. It should be the other way around. Surely, the definition of a "Philippine National" in the FIA, or for that matter, the 1987 OIC[82] could not have influenced the minds of the 1986 CONCOM or the people when they ratified the Constitution. As heretofore discussed, the primary source whence to ascertain constitutional intent or purpose is the constitutional text, or, to be more precise, the language of the provision itself,[83] as inquiry on any controversy arising out of a constitutional provision ought to start and end as much as possible with the provision itself.[84] **Legislative enactments on commerce, trade and national economy must be so construed, when appropriate, to determine whether the purpose**

[81] Section 1, Article XVII. Any amendment to, or revision of, this Constitution may be proposed by:

(1) The Congress, upon a vote of three-fourths of all its Members; or

(2) A constitutional convention.

Section 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative….

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Section 4. Any amendment to, or revisions of, this Constitution under Section 1 hereof shall be valid when ratified by a majority vote of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

[82] The 1987 OIC was enacted as EO 226 on July 16, 1987, or after the ratification of the 1987 Constitution.

[83] *Ang Bagong Bayani v. COMELEC*, 412 Phil. 308 (2001).

[84] See Dissenting Opinion of Justice Padilla in *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 369.

underlying them is in accord with the policies and objectives laid out in the Constitution. Surely, a law cannot validly broaden or restrict the thrust of a constitutional provision unless expressly sanctioned by the Constitution itself. And the Court may not read into the Constitution an intent or purpose that is not there. Any attempt to enlarge the breadth of constitutional limitations beyond what its provision dictates should be stricken down.

In fact, it is obvious from the FIA itself that its framers deemed it necessary to qualify the term "capital" with the phrase "stock outstanding and entitled to vote" in defining a "Philippine National" in Sec. 3(a). This only supports the construal that the term "capital," standing alone as in Sec. 11, Art. XII of the Constitution, applies to all shares, whether classified as voting or non-voting, and **this is the interpretation in harmony with the Constitution**.

In passing the FIA, the legislature could not have plausibly intended to restrict the 40% foreign ownership limit imposed by the Constitution on all capital stock to only voting stock. Precisely, Congress enacted the FIA to liberalize the laws on foreign investments. Such intent is at once apparent in the very title of the statute, *i.e.*, "An Act to Promote Foreign Investments," and the policy: "attract, promote and welcome productive investments from foreign individuals, partnerships, corporations, and government,"[85] expresses the same.

The Senate, through then Senator Vicente Paterno, categorically stated that the FIA is aimed at "liberalizing foreign investments"[86] because "Filipino investment is not going to be enough [and] we need the support and the assistance of foreign investors x x x."[87] The senator made clear that "the term 'Philippine national'" means either Filipino citizens or enterprises of which the "*total* Filipino **ownership**" is 60 *percent* or greater, thus:

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[85] Republic Act No. 7042, Section 2.

[86] Record of the Senate, Vol. II, No. 57, p. 1965.

[87] *Id.* at 1964.

Senator Paterno. May I first say that **the term "Philippine national" means either Filipino citizens or enterprises of which the total Filipino ownership is 60 percent or greater.** In other words, we are not excluding foreign participation in domestic market enterprises with total assets of less than ₱25 million. We are merely limiting foreign participation to not more than 40 percent in this definition.[88]

Even granting, *arguendo*, that the definition of a "Philippine National" in the FIA was lifted from the Investment Incentives Laws issued in 1967, 1981, and 1987 that defined "Philippine National" as a corporation 60% of whose voting stocks is owned by Filipino citizens, such definition does not limit or qualify the nationality requirement prescribed for public utility corporations by Sec. 11, Art. XII of the 1987 Constitution. The latter does not refer to the definition of a "Philippine National." Instead, Sec. 11, Art. XII reiterates the use of the **unqualified term "capital"** in the 1935 and 1973 Constitutions. In fact, neither the 1973 Constitutional Convention nor the 1986 CONCOM alluded to the Investment Incentives Laws in their deliberations on the nationality requirement of public utility corporations. With the unequivocal rejection of the UP Law Center proposal to use the qualifying "voting stock or controlling interest," the non-consideration of the Investment Incentives Laws means that these laws are not pertinent to the issue of the Filipino-foreign capital ratio in public utility corporations.

Besides, none of the Investment Incentives Laws defining a "Philippine National" has sought to expand or modify the definition of "capital," as used in the Constitutions then existing. The definition of a "Philippine National" in these laws was, to stress, only intended to identify the corporations qualified for registration to avail of the incentives prescribed therein. The definition was not meant to find context outside the scope of the various Investment Incentives Laws, much less to modify a nationality requirement set by the then existing Constitution. This much is obvious in the very heading of the first of these Investment Incentives Laws, 1967 IIA :

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[88] *Id.* Vol. 3, No. 76, p. 205.

SECTION 3. Definition of Terms. — <u>For purposes of this Act</u>:

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(f) "Philippine National" shall mean a citizen of the Philippines; or a partnership or association wholly owned by citizens of the Philippines; or a corporation organized and existing under the laws of the Philippines of which at least sixty per cent of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines xxx (Emphasis and underscoring supplied.)

Indeed, the definition of a "Philippine National" in the FIA cannot apply to the ownership structure of enterprises applying for, and those granted, a franchise to operate as a public utility under Sec. 11, Art. XII of the Constitution. As aptly observed by the SEC, the definition of a "Philippine National" provided in the FIA refers only to a corporation that is permitted to invest in an enterprise as a Philippine citizen (*investor-corporation*). **The FIA does not prescribe the equity ownership structure of the enterprise granted the franchise or the power to operate in a fully or partially nationalized industry** (*investee-corporation*)**.** This is apparent from the FIA itself, which also defines the act of an "investment" and "foreign investment":

Section 3. Definitions. – As used in this Act:

a) The term "Philippine national" shall mean a citizen of the Philippines, or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent [60%] of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines x x x

b) The term "**investment**" shall mean **<u>equity participation</u>** in any enterprise organized or existing the laws of the Philippines;

c) The term **"foreign investment"** shall mean as **<u>equity investment</u>** made by a non-Philippine national in the form of foreign exchange and/or other assets actually transferred to the Philippines and duly registered with the Central Bank

> which shall assess and appraise the value of such assets other than foreign exchange.

In fact, Sec. 7 of the FIA, as amended, allows aliens or non-Philippine nationals to **own** an enterprise up to the extent provided by the Constitution, existing laws or the FINL:

> Sec. 7. Foreign investments in domestic market enterprises. – Non-Philippine nationals may **own** up to one hundred percent [100%] of domestic market enterprises unless foreign ownership therein is prohibited or limited by the Constitution and existing laws or the Foreign Investment Negative List under Section 8 hereof. (Emphasis supplied.)

Hence, pursuant to the Eight Regular FINL, List A, the foreign "***equity***" is up to 40% in enterprises engaged in the operation and management of public utilities while the remaining 60% of the "***equity***" is reserved to Filipino citizens and "Philippine Nationals" as defined in Sec. 3(a) of the FIA. Notably, the term "equity" refers to the "**ownership** interest in… a business"[89] or a "share in a publicly traded company,"[90] and not to the "controlling" or "management" interest in a company. It necessarily includes all and every share in a corporation, whether voting or non-voting.

Again, We must recognize the distinction of the separate concepts of "ownership" and "control" in modern corporate governance in order to realize the intent of the framers of our Constitution to reserve for Filipinos the ultimate and all-encompassing control of public utility entities from their daily administration to the acts of ownership enumerated in Sec. 6 of the Corporation Code.[91] As elucidated, by equating the word

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[89] *Black's Law Dictionary*, 9th Ed., for the iPhone/iPad/iPod touch. Version: 2.1.0 (B12136), p. 619.

[90] *Id.*

[91] As early as 1932, Adolf A. Berle and Gardine C. Means in their book "*The Modern Corporation and Private Property*" explained that the large business corporation is characterized by "separation of ownership and control." See also Hu, Henry T.C. and Black, Bernard S., *Empty Voting*

"capital" in Sec. 11, Art. XII to the limited aspect of the right to control the composition of the board of directors, the Court could very well be depriving Filipinos of the majority economic interest in the public utility corporation and, thus, the effective control and ownership of such corporation.

The Court has no jurisdiction over PLDT and foreign stockholders who are indispensable parties in interest

More importantly, this Court cannot apply a new doctrine adopted in a precedent-setting decision to parties that have never been given the chance to present their own views on the substantive and factual issues involved in the precedent-setting case.

To recall, the instant controversy arose out of an original petition filed in February 2007 for, among others, **declaratory relief** on Sec. 11, Art. XII of the 1987 Constitution "to clarify the intent of the Constitutional Commission that crafted the 1987 Constitution to determine the very nature of such limitation on foreign ownership."[92]

The petition impleaded the following personalities as the respondents: (1) Margarito B. Teves, then Secretary of Finance and Chair of the Privatization Council; (2) John P. Sevilla, then undersecretary for privatization of the Department of Finance; (3) Ricardo Abcede, commissioner of the Presidential Commission on Good Government; (4) Anthoni Salim, chair of First Pacific Co. Ltd. and director of Metro Pacific Asset Holdings, Inc. (MPAH); (5) Manuel V. Pangilinan, chairman of the board of PLDT; (6) Napoleon L. Nazareno, the president

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and Hidden (Morphable) Ownership: Taxonomy, Implications, and Reforms. As published in Business Lawyer, Vol. 61, pp. 1011-1070, 2006; European Corporate Governance Institute - Law Research Paper No. 64/2006; University of Texas Law, Law and Economics Research Paper No. 70. Available at SSRN: http://ssrn.com/abstract=887183; Ringe, Wolf-Georg, *Deviations from Ownership-Control Proportionality - Economic Protectionism Revisited (2010). COMPANY LAW AND ECONOMIC PROTECTIONISM - NEW CHALLENGES TO EUROPEAN INTEGRATION*, U. Bernitz and W.G. Ringe, eds., OUP, 2010; Oxford Legal Studies Research Paper No. 23/2011. Available at SSRN: http://ssrn.com/abstract=1789089.

[92] *Rollo*, p. 11.

of PLDT; (7) Fe Barin (Barin), then chair of the SEC; and (8) Francis Lim (Lim), then president of the PSE.

Notably, neither PLDT itself nor any of its stockholders were named as respondents in the petition, albeit it sought from the Court the following main reliefs:

> 5. x x x to issue a declaratory relief that ownership of common or voting shares is the sole basis in determining foreign equity in a public utility and that any other government rulings, opinions, and regulations inconsistent with this declaratory relief be declared as unconstitutional and a violation of the intent and spirit of the 1987 Constitution;
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> 6. x x x to declare null and void all sales of common stocks to foreigners in excess of 40 percent of the total subscribed common shareholdings; and
>
> 7. x x x to direct the [SEC] and [PSE] to require PLDT to make a public disclosure of all of its foreign shareholdings and their actual and real beneficial owners."

Clearly, the petition seeks a judgment that can adversely affect PLDT and its foreign shareholders. If this Court were to accommodate the petition's prayer, as the majority did in the June 28, 2011 Decision and proposes to do presently, PLDT stands to lose its franchise, while the foreign stockholders will be compelled to divest their voting shares in excess of 40% of PLDT's voting stock, if any, even at a loss. It cannot, therefore, be gainsaid that PLDT and its foreign shareholders are indispensable parties to the instant case under the terms of Secs. 2 and 7, Rule 3 of the Rules of Civil Procedure, which read:

> Section 2. Parties in interest.–Every action must be prosecuted and defended in the name of the real party in interest. All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. All persons who claim an interest in the controversy or the subject thereof adverse to the plaintiff, or who are necessary to a complete determination or settlement of the questions involved therein, shall be joined as defendants.

xxx xxx xxx

Section 7. Compulsory joinder of indispensable parties.– Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Yet, again, PLDT and its foreign shareholders have not been given notice of this petition to appear before, much less heard by, this Court. Nonetheless, the majority has allowed such irregularity in contravention of the settled jurisprudence that an action cannot proceed unless indispensable parties are joined[93] since the non-joinder of these indispensable parties deprives the court the jurisdiction to issue a decision binding on the indispensable parties that have not been joined or impleaded. In other words, if an indispensable party is not impleaded, any personal judgment would have no effectiveness[94] as to them for the tribunal's want of jurisdiction.

In ***Arcelona v. Court of Appeals***,[95] We explained that the basic notions of due process require the observance of this rule that refuses the effectivity of a decision that was rendered despite the non-joinder of indispensable parties:

> [B]asic considerations of due process, however, impel a similar holding in cases involving jurisdiction over the persons of indispensable parties which a court must acquire before it can validly pronounce judgments personal to said defendants. Courts acquire jurisdiction over a party plaintiff upon the filing of the complaint. On the other hand, jurisdiction over the person of a party defendant is assured upon the service of summons in the manner required by law or otherwise by his voluntary appearance. As a rule, if a defendant has not been summoned, the court acquires no jurisdiction over his person, and a personal judgment rendered against such defendant is null and void. **A decision that is null and void for want of jurisdiction on the part of the trial court is not a decision in the contemplation of law and, hence, it can never become final and**

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[93] *Cortez v. Avila*, 101 Phil. 705 (1957); *Borlasa v. Polistico*, 47 Phil. 345 (1925).

[94] Regalado, *Remedial Law Compendium*, p. 91.

[95] G.R. No. 102900, October 2, 1997, 280 SCRA 20.

executory.

Rule 3, Section 7 of the Rules of Court, defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. **The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power. It is precisely "when an indispensable party is not before the court (that) the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.**[96]

Hence, the June 28, 2011 Decision having been rendered in a case where the indispensable parties have not been impleaded, much less summoned or heard, cannot be given any effect and is, thus, null and void. *Ergo*, the assailed June 28, 2011 Decision is virtually a useless judgment, at least insofar as it tends to penalize PLDT and its foreign stockholders. It cannot bind and affect PLDT and the foreign stockholders or be enforced and executed against them. It is settled that **courts of law "should not render judgments which cannot be enforced by any process known to the law,"**[97] hence, this Court should have refused to give cognizance to the petition.

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[96] *Id.*; citing *Echevarria v. Parsons Hardware Co.*, 51 Phil. 980, 987 (1927); *Borlasa v. Polistico*, 47 Phil. 345, 347 (1925); *People, et al. v. Hon. Rodriguez, et al.*, 106 Phil. 325, 327 (1959), among others. Emphasis and underscoring supplied.

[97] *Board of Ed. of City of San Diego v. Common Council of City of San Diego*, 1 Cal.App. 311, 82 P. 89, Cal.App. 2 Dist. 1905, July 13, 1905 citing *Johnson v. Malloy*, 74 Cal. 432. See also *Kilberg v. Louisiana Highway Commission*, 8 La.App. 441 cited in *Perry v. Louisiana Highway Commission* 164 So. 335 La.App. 2 Cir. 1935. December 13, 1935 and *Oregon v. Louisiana Power & Light Co.*, 19 La.App. 628, 140 So. 282; Succession of Carbajal, 154 La. 1060, 98 So. 666 (1924) cited in *In re Gulf Oxygen Welder's Supply Profit Sharing Plan and Trust Agreement* 297 So.2d 663 LA 1974. July 1, 1974 .

The ineffectivity caused by the non-joinder of the indispensable parties, the deprivation of their day in court, and the denial of their right to due process, cannot be cured by the sophistic expedience of naming PLDT in the *fallo* of the decision as a respondent. The dispositive portion of the June 28, 2011 Decision all the more only highlights the unenforceability of the majority's disposition and serves as an implied admission of this Court's lack of jurisdiction over the persons of PLDT and its foreign stockholders when it did not directly order the latter to dispose the common shares in excess of the 40% limit. Instead, it took the circuitous route of ordering the SEC, in the *fallo* of the assailed decision, "to apply this definition of the term 'capital' in determining the extent of allowable ownership in respondent PLDT and, if there is a violation of Sec. 11, Art. XII of the Constitution, to impose the appropriate sanctions under the law."[98]

Clearly, since PLDT and the foreign stockholders were not impleaded as indispensable parties to the case, the majority would want to indirectly execute its decision which it could not execute directly. The Court may be criticized for violating the very rules it promulgated and for trenching the provisions of Sec. 5, Art. VIII of the Constitution, which defines the powers and jurisdiction of this Court.

It is apropos to stress, as a reminder, that the Rules of Court is not a mere body of technical rules that can be disregarded at will whenever convenient. It forms an integral part of the basic notion of fair play as expressed in this Constitutional caveat: "No person shall be deprived of life, liberty or property without due process of law,"[99] and obliges this Court, as well as other courts and tribunals, to hear a person first before rendering a judgment for or against him. As Daniel Webster explained, "due process of law is more clearly intended the general law, a law which hears before it condemns; which proceeds upon enquiry,

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[98] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 744.

[99] Section 1, Article III, 1987 Constitution.

and renders judgment only after trial."[100] The principle of due process of law "contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property."[101] Thus, this Court has stressed the strict observance of the following requisites of procedural due process in judicial proceedings in order to comply with this honored principle:

(1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it;

(2) Jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings;

(3) The defendant must be given an opportunity to be heard; and

(4) Judgment must be rendered upon lawful hearing.[102]

Apparently, not one of these requisites has been complied with before the June 28, 2011 Decision was rendered. Instead, PLDT and its foreign stockholders were not given their day in court, even when they stand to lose their properties, their shares, and even the franchise to operate as a public utility. This stands counter to our discussion in ***Agabon v. NLRC***,[103] where We emphasized that the principle of due process comports with the simplest notions of what is fair and just:

To be sure, the Due Process Clause in Article III, Section 1 of the Constitution embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our entire history. **Due process is that which comports with the deepest notions of what is fair and right and just**. **It is a constitutional**

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[100] *Oscar Palma Pagasian v. Cesar Azura*, A.M. No. RTJ-89-425, April 17, 1990, 184 SCRA 391.

[101] *Lopez v. Director of Lands*, 47 Phil. 23, 32 (1924); emphasis supplied.

[102] *Banco Español Filipino v. Palanca*, 37 Phil. 921, 934 (1918).

[103] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

restraint on the legislative as well as on the executive and **judicial powers of the government provided by the Bill of Rights**.[104]

Parenthetically, the present petition partakes of a collateral attack on PLDT's franchise as a public utility. Giving due course to the recourse is contrary to the Court's ruling in ***PLDT v. National Telecommunications Commission***,[105] where We declared a franchise to be a property right that can only be questioned in a direct proceeding.[106] Worse, the June 28, 2011 Decision **facilitates and guarantees the success of that unlawful attack** by allowing it to be undertaken in the absence of PLDT.

The Philippine Government is barred by estoppel from ordering foreign investors to divest voting shares in public utilities in excess of the 40 percent cap

The Philippine government's act of pushing for and approving the sale of the PTIC shares, which is equivalent to 12 million PLDT common shares, to foreign investors precludes it from asserting that the purchase violates the Constitutional limit on foreign ownership of public utilities so that the foreign investors must now divest the common PLDT shares bought. The elementary principle that a person is prevented from going back on his own act or representation to the prejudice of another who relied thereon[107] finds application in the present case.

Art. 1431 of the Civil Code provides that an "admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against a person relying thereon." This rule is supported by Section 2(a) of Rule 131 of the Rules of Court on the burden of proof and presumptions, which states:

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[104] G.R. No. 158693, November 17, 2004, 442 SCRA 573. Emphasis supplied.

[105] G.R. No. 84404, October 18, 1990, 190 SCRA 717.

[106] *Id*. at 729.

[107] *PNB v. Palma*, G.R. No. 157279, August 9, 2005; citing *Laurel v. Civil Service Commission*, G.R. No. 71562, October 28, 1991, 203 SCRA 195; *Stokes v. Malayan Insurance Inc.*, 212 Phil. 705 (1984); *Medija v. Patcho*, 217 Phil. 509 (1984); *Llacer v. Muñoz*, 12 Phil. 328 (1908).

Section 2. Conclusive presumptions. – The following are instances of conclusive presumptions:

(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

The government cannot plausibly hide behind the mantle of its general immunity to resist the application of this equitable principle for "[t]he rule on non-estoppel of the government is not designed to perpetrate an injustice."[108] Hence, this Court has allowed several exceptions to the rule on the government's non-estoppel. As succinctly explained in ***Republic of the Philippines v. Court of Appeals***:[109]

> The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exceptions, *viz.*:
>
> "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, **the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities** as well as against private individuals."

In *Republic v. Sandiganbayan*, the government, in its effort to recover ill-gotten wealth, tried to skirt the application of estoppel against it by invoking a specific constitutional provision. The Court

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[108] *Leca Realty Corporation v. Republic of the Philippines, represented by the Department of Public Works and Highways*, G.R. No. 155605, September 27, 2006, 503 SCRA 563.

[109] G.R. No. 116111, January 21, 1999, 301 SCRA 366.

countered:

> "We agree with the statement that the State is immune from estoppel, but this concept is understood to refer to acts and mistakes of its officials especially those which are irregular (*Sharp International Marketing vs. Court of Appeals*, 201 SCRA 299; 306 [1991]; *Republic v. Aquino*, 120 SCRA 186 [1983]), which peculiar circumstances are absent in the case at bar. Although the State's right of action to recover ill-gotten wealth is not vulnerable to estoppel[;] it is non sequitur to suggest that **a contract, freely and in good faith executed between the parties thereto is susceptible to disturbance *ad infinitum*. A different interpretation will lead to the absurd scenario of permitting a party to unilaterally jettison a compromise agreement which is supposed to have the authority of *res judicata* (Article 2037, New Civil Code), and like any other contract, has the force of law between parties thereto** (Article 1159, New Civil Code; Hernaez vs. Kao, 17 SCRA 296 [1966]; 6 Padilla, Civil Code Annotated, 7th ed., 1987, p. 711; 3 Aquino, Civil Code, 1990 ed., p. 463) . . ."

The Court further declared that "(t)he real office of the equitable norm of estoppel is limited to supply[ing] deficiency in the law, but it should not supplant positive law."[110] (Emphasis supplied.)

Similarly, in ***Ramos v. Central Bank of the Philippines***,[111] this Court berated the government for reneging on its representations and urged it to keep its word, *viz*:

> Even in the absence of contract, the record plainly shows that the CB [Central Bank] made express representations to petitioners herein that it would support the OBM [Overseas Bank of Manila], and avoid its liquidation if the petitioners would execute (a) the Voting Trust Agreement turning over the management of OBM to the CB or its nominees, and (b) mortgage or assign their properties to the Central Bank to cover the overdraft balance of OBM. The petitioners having complied with these conditions and parted with

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[110] Citing 31 CJS 675-676; *Republic v. Sandiganbayan*, G.R. No. 108292, September 10, 1993, 226 SCRA 314.

[111] G.R. No. 29352, October 4, 1971, 41 SCRA 565; see also *San Roque Realty and Development Corporation v. Republic of the Philippines (through the Armed Forced of the Philippines)*, G.R. No. 155605, September 27, 2006.

value to the profit of the CB (which thus acquired additional security for its own advances), the CB may not now renege on its representations and liquidate the OBM, to the detriment of its stockholders, depositors and other creditors, under the rule of promissory estoppel (19 Am. Jur., pages 657-658; 28 Am. Jur. 2d, 656-657; Ed. Note, 115 ALR, 157).

> "The broad general rule to the effect that a promise to do or not to do something in the future does not work an estoppel must be qualified, since there are numerous cases in which an estoppel has been predicated on promises or assurances as to future conduct. The doctrine of 'promissory estoppel' is by no means new, although the name has been adopted only in comparatively recent years. According to that doctrine, an estoppel may arise from the making of a promise even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. In this respect, the reliance by the promises is generally evidenced by action or forbearance on his part, and the idea has been expressed that such action or forbearance would reasonably have been expected by the promisor. Mere omission by the promisee to do whatever the promisor promised to do has been held insufficient 'forbearance' to give rise to a promissory estoppel." (19 Am. Jur., loc. cit.)

The exception established in the foregoing cases is particularly appropriate presently since the "indirect" sale of PLDT common shares to foreign investors partook of a propriety business transaction of the government which was not undertaken as an incident to any of its governmental functions. Accordingly, the government, by concluding the sale, has descended to the level of an ordinary citizen and stripped itself of the vestiges of immunity that is available in the performance of governmental acts.[112]

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[112] *Republic v. Vinzon*, G.R. No. 154705, June 26, 2003, 405 SCRA 126; *Air Transportation Office v. David and Ramos*. G.R. No. 159402, February 23, 2011. See also *Minucher v. Court of Appeals*, G.R. No. 142396, February 11, 2003 *citing* Gary L. Maris', "*International Law, An Introduction,*" University Press of America, 1984, p. 119; D.W. Grieg, "*International Law,*" London Butterworths, 1970, p. 221.

Ergo, the government is vulnerable to, and cannot hold off, the application of the principle of estoppel that the foreign investors can very well invoke in case they are compelled to divest the voting shares they have previously acquired through the inducement of no less the government. In other words, the government is precluded from penalizing these alien investors for an act performed upon its guarantee, through its facilities, and with its imprimatur.

Under the "fair and equitable treatment" clause of our bilateral investment treaties and fair trade agreements, foreign investors have the right to rely on the same legal framework existing at the time they made their investments

Not only is the government put in estoppel by its acts and representations during the sale of the PTIC shares to MPAH, it is likewise bound by its guarantees in the Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) with other countries.

To date, the Philippines has concluded numerous BITs and FTAs to encourage and facilitate foreign direct investments in the country. These BITs and FTAs invariably contain guarantees calculated to ensure the safety and stability of these foreign investments. Foremost of these is the commitment to give fair and equitable treatment (FET) to the foreign investors and investments in the country.

Take for instance the BIT concluded between the Philippines and China,[113] Article 3(1) thereof provides that "investments

[113] Particularly relevant in the case of PLDT whose biggest group of foreign shareholders is Chinese, followed by the Japanese and the Americans. Per the General Information Sheet (GIS) of PLDT as of June 14, 2012, the following are the foreign shareholders of PLDT: (1) Hong-Kong based J.P. Morgan Asset Holdings (HK) Limited owns 49,023,801 common shares [including 8,533,253, shares of PLDT common stock underlying ADS beneficially owned by NTT DoCoMo and 7,653,703 shares of PLDT common stock underlying ADS beneficially-owned by non-Philippine wholly-owned subsidiaries of First Pacific Company, Limited]; the Japanese firms, (2) NTT DoCoMo, Inc. holding 22,796,902 common shares; (3) NTT Communications Corporation with 12,633,487 common shares; and the

and activities associated with such investments of investors of either Contracting Party **shall be accorded equitable treatment and shall enjoy protection** in the territory of the other Contracting Party."[114] The same assurance is in the Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the People's Republic of China (ASEAN-China Investment Agreement)[115] where the Philippines assured Chinese investors that the country "shall accord to [them] **fair and equitable treatment** and full protection and security."[116] In the same manner, the Philippines agreed to "accord investments [made by Japanese investors] treatment in accordance with international law, including **fair and equitable treatment** and full protection and security"[117] in the Agreement between the Republic of the Philippines and Japan for Economic Partnership (JPEPA).[118]

Similar provisions are found in the ASEAN Comprehensive Investment Agreement (ACIA)[119] and the BITs concluded by the

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Americans, (4) HSBC OBO A/C 000-370817-550 with 2,690,316 common shares; (5) Edward Tortorici and/or Anita R. Tortorici with 96,874 common shares; (6) Hare and Co., holding 34,811 common shares; and (7) Maurice Verstraete, with 29,744 common shares. (http://www.pldt.com.ph/investor/Documents/GIS_(as%20of%2006%2029%2012)_final.pdf last accessed September 25, 2012)

[114] 1992 Agreement Between the Government of The People's Republic Of China and The Government of the Republic of the Philippines Concerning Encouragement and Reciprocal Protection of Investments, Signed in Manila, Philippines on July 20, 1992. Emphasis and underscoring supplied.

[115] January 14, 2007.

[116] ASEAN-China Investment Agreement, Article 7(1), emphasis and underscoring supplied. See also the ASEAN-Korea Investment Agreement, Article 5 (1).

[117] JPEPA, Article 91. Emphasis and underscoring supplied.

[118] Signed on September 9, 2006.

[119] ACIA, Article II (1) requires that the parties thereto must give "investments of investors of [the other parties] **fair and equitable treatment** and full protection and security." Emphasis and underscoring supplied.

Philippines with, among others, the Argentine Republic,[120] Australia,[121] Austria,[122] Bangladesh,[123] Belgium,[124] Cambodia,[125] Canada,[126] Chile,[127] the Czech Republic,[128]

[120] Article III (1) – Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof, through unjustified and discriminatory measures. (Emphasis and underscoring supplied.)

[121] Article 3(2) thereof provides that the Philippines "shall ensure that [Australian] investments are accorded fair and equitable treatment."

[122] Article 2 (1) – Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments in accordance with its legislation and in any case accord such investments fair and equitable treatment. (Emphasis and underscoring supplied.)

[123] Article III (1) – Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. (Emphasis and underscoring supplied.)

[124] Article II – Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its Constitution, laws, and regulations. Such investments shall be accorded fair and equitable treatment. (Emphasis and underscoring supplied.)

[125] Article II (2) – Investments of nationals of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party. Emphasis and underscoring supplied.)

[126] Article II (2) – Each Contracting Party shall accord investments or returns of investors of the other Contracting Party [:] (a) fair and equitable treatment in accordance with the principles of international law, and (b) full protection and security. (Emphasis and underscoring supplied.)

[127] Article IV (1) – Each Contracting Party shall guarantee fair and equitable treatment to investments made by investors of the other Contracting Party on its territory and shall ensure that the exercise of the right thus recognized shall not be hindered in practice. (Emphasis and underscoring supplied.)

[128] Article II (2) – Investment[s[] of investors of [the] other Contracting Party shall at all times be accorded fair and equitable treatment and enjoy full protection and security in the territory of the other Contracting Party. (Emphasis and underscoring supplied.)

Denmark,[129] Finland,[130] France,[131] Germany,[132] India,[133] Indonesia,[134] Iran,[135] Italy,[136] Mongolia,[137] Myanmar,[138]

[129] Article III (1) – Each Contracting Party shall accord to investments made by investors of the other Contracting Party fair and equitable treatment. (Emphasis and underscoring supplied.)

[130] Article 3(1) – Each Contracting Party shall guarantee fair and equitable treatment to investments made by investors of the other Contracting Party in its territory. (Emphasis and underscoring supplied.)

[131] Article 3 – Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party in its territory and shall ensure that the exercise of the right thus recognized shall not be hindered. (Emphasis and underscoring supplied.)

[132] Article 2 (1) – Each Contracting State shall promote as far as possible investments in its territory by investors of the other Contracting Party and admit such investments in accordance with its Constitution, laws and regulations as referred to in Article 1 paragraph 1. Such investments shall be accorded fair and equitable treatment. (Emphasis and underscoring supplied.)

[133] Article IV (1) – Each Contracting Party shall accord fair and equitable treatment to investments made by investors of the other Contracting Party in its territory. (Emphasis and underscoring supplied)

[134] Article II (2) – Investments of investors of either Contracting party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party. (Emphasis and underscoring supplied)

[135] Article 4(1) – Admitted investments of investors of one Contracting Party effected within the territory of the other Contracting Party in accordance with the laws and regulations of the latter, shall receive in the other Contracting Party full legal protection and fair treatment not less favourable than that accorded to its own investor or investors of any third state which are in a comparable situation.

[136] Article I – Each Contracting Party shall promote as far as possible the investments in its territory by investors of the other Contracting party admit such investments according to its laws and regulations and accord such investments equitable and reasonable treatment. (Emphasis and underscoring supplied)

[137] Article IV (2) – Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party… (Emphasis and underscoring supplied)

[138] Article I(1) – Each Contracting Party shall promote as far as possible investments in its territory by nationals and companies of one Contracting

Netherlands,[139] Pakistan,[140] Portuguese Republic,[141] Romania,[142] Russia,[143] Saudi Arabia,[144] Spain,[145] Sweden,[146]

Party and shall admit such investments in accordance with its Constitution, laws and regulations. Such investments shall be accorded equitable and reasonable treatment. ((Emphasis and underscoring supplied)

[139] Article 3 (2) – Investments of nationals of either Contracting Party shall, in their entry, operation, management, maintenance, use enjoyment or disposal, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting party. (Emphasis and underscoring supplied)

[140] Article I – Each Contracting Party shall promote as far as possible investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its Constitution, laws, and regulations. Such investments shall be accorded equitable and reasonable treatment. (Emphasis supplied)

[141] Article 2(1) – Each contracting party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment. (Emphasis and underscoring supplied)

[142] Article 2(3) – Each Contracting Party undertakes to provide in its territory a fair and equitable treatment for investments of investors of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary, unreasonable or discriminatory measures the management, maintenance or use of investments as well as the right to the disposal thereof. (Emphasis and underscoring supplied)

[143] Article III (1) – Each Contracting Party shall ensure in its territory fair and equitable treatment of the investments made by the investor of the other Contracting Party and any activities in connection with such investments exclude the use of discriminatory measures that might hinder management and administration of investments. (Emphasis and underscoring supplied)

[144] Article @(1) – Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation. It shall in any case accord such investments free and equitable treatment. (Emphasis supplied)

[145] Article II – Each party shall promote, as far as possible, investments in its territory by investors of the other Party and shall admit such investments in accordance with its existing laws and regulation. Such investments shall be accorded equitable and fair treatment.(Emphasis and underscoring supplied)

[146] Article III (1) – Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other

Switzerland,[147] Thailand,[148] Turkey,[149] United Kingdom,[150] and Vietnam.[151]

Explaining the FET as a standard concordant with the rule of law, Professor Vandevelde wrote that it requires the host country to treat foreign investments with consistency, security, non-discrimination and reasonableness:

> The thesis is that the awards issued to date implicitly have interpreted the fair and equitable treatment standard as requiring treatment in accordance with the concept of the rule of law. That is, **the concept of legality is the unifying theory behind the fair and equitable treatment standard.**
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contracting party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures. (Emphasis and underscoring supplied)

[147] Article IV (1) – Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. (Emphasis and underscoring supplied)

[148] Article III (2) – Investments of national or companies of one Contracting Party in the territory of the other Contracting Party, and also the returns therefrom, shall at all times be accorded fair and equitable treatment and shall enjoy the constant protection and security in the territory of the host country. (Emphasis and underscoring supplied)

[149] Article II (1) – Each Contracting Party shall promote as far as possible investments in its territory of one Contracting Party and shall admit, on a basis no less favourable than that accorded in similar situations to investments of any third country, in accordance with its Constitution, laws and regulations. Such investments shall be accorded equitable and reasonable treatment. (Emphasis and underscoring supplied)

[150] Article III (2) – Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other contracting party. (Emphasis and underscoring supplied)

[151] Article II (2) – Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party. (Emphasis and underscoring supplied)

Thus, international arbitral awards interpreting the fair and equitable treatment standard have incorporated the substantive and procedural principles of the rule of law into that standard. **The fair and equitable treatment standard in BITs has been interpreted as requiring that covered investment or investors receive treatment that is reasonable, consistent, non-discriminatory, transparent, and in accordance with due process.** As will be seen, these principles explain virtually all of the awards applying the fair and equitable treatment standard. No award is inconsistent with this theory of the standard.

Understanding fair and equitable treatment as legality is consistent with the purposes of the BITs. BITs essentially are instruments that impose legal restraints on the treatment of covered investments and investors by host states. The very essence of a BIT is a partial subordination of the sovereign's power to the legal constraints of the treaty. Further, individual BIT provisions are themselves a reflection of the principles of the rule of law. (Emphasis and underscoring supplied.)[152]

On the requirement of consistency, the International Centre for the Settlement of Investment Disputes (ICSID) explained in ***Tecnicas Medioambientales Tecmed S.A. v. The united Mexican States***[153] that the host country must maintain **a stable** and **predictable legal and business environment** to accord a fair and equitable treatment to foreign investors.

153. The Arbitral Tribunal finds that t**he commitment of fair and equitable treatment** included in Article 4(1) of the Agreement **is an expression and part of the *bona fide* principle recognized in international law**, although bad faith from the State is not required for its violation:

> To the modern eye, what is unfair or inequitable need not equate with the outrageous or the egregious. In particular, a State may treat foreign investment unfairly and inequitably without necessarily acting in bad faith.

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[152] Kenneth J. Vandevelde, *A Unified Theory of Fair and Equitable Treatment*, 43 N.Y.U. J. Int'l L. & Pol. 43.

[153] ICSID Case No. ARB AF/00/2, Award of May 29, 2003.

154. The Arbitral Tribunal considers that **this provision** of the Agreement, in light of the good faith principle established by international law, **requires the Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment**. **The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations.** Any and all State actions conforming to such criteria should relate not only to the guidelines, directives or requirements issued, or the resolutions approved thereunder, but also to the goals underlying such regulations. **The foreign investor also expects the host State to act consistently, *i.e.* without arbitrarily revoking any preexisting decisions or permits issued by the State that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities**. **The investor also expects the State to use the legal instruments that govern the actions of the investor or the investment in conformity with the function usually assigned to such instruments, and not to deprive the investor of its investment without the required compensation**. In fact, failure by the host State to comply with such pattern of conduct with respect to the foreign investor or its investments affects the investor's ability to measure the treatment and protection awarded by the host State and to determine whether the actions of the host State conform to the fair and equitable treatment principle. Therefore, **compliance by the host State with such pattern of conduct is closely related to the above-mentioned principle, to the actual chances of enforcing such principle, and to excluding the possibility that state action be characterized as arbitrary**; *i.e*. as presenting insufficiencies that would be recognized "…by any reasonable and impartial man," or, although not in violation of specific regulations, as being contrary to the law because:

> ...(it) shocks, or at least surprises, a sense of juridical propriety. (Emphasis and underscoring supplied added.)

The Philippines, therefore, cannot, without so much as a notice of policy shift, alter and change the legal and business

environment in which the foreign investments in the country were made in the first place. These investors obviously made the decision to come in after studying the country's legal framework—its restrictions and incentives—and so, as a matter of fairness, they must be accorded the right to expect that the same legal climate and the same substantive set of rules will remain during the period of their investments.

The representation that foreigners can invest up to 40% of the entirety of the total stockholdings, and not just the voting shares, of a public utility corporation is an implied covenant that the Philippines cannot renege without violating the FET guarantee. Especially in this case where the Philippines made specific commitments to countries like Japan and China that their investing nationals can own up to 40% of the **equity** of a public utility like a telecommunications corporation. In the table contained in Schedule 1(B), Annex 6 of the JPEPA, the Philippines categorically represented that Japanese investors' entry into the Philippine telecommunications industry, specifically corporations offering "voice telephone services," is subject to only the following requirements and conditions:

A. Franchise from Congress of the Philippines

B. Certificate of Public Convenience and Necessity (CPCN) from the National Telecommunications Commission

C. Foreign equity is permitted up to 40 percent.

D. x x x[154] (Emphasis supplied.)

The same representation is made in the Philippines' Schedule of Specific Commitments appended to the ASEAN-China Agreement on Trade in Services.[155]

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[154] Annex 6 Referred to in Chapter 7 of the JPEPA: Schedule of Specific Commitments and List of Most-Favored-Nation Treatment Exemptions. Last accessed at http://www.mofa.go.jp/region/asia-paci/philippine/epa0609/annex6.pdf on August 30, 2012.

[155] Annex 1/SC1, ASEAN-China Agreement on Trade in Services. Last accessed at http://www.asean.org/22160.htm on August 30, 2012.

Further, as previously pointed out, it was the Philippine government that pushed for and approved the sale of the 111,415 PTIC shares to MPAH, thereby indirectly transferring the ownership of 6.3 *percent* of the outstanding common shares of PLDT, to a foreign firm and so increasing the foreign voting shareholding in PLDT. Hence, the presence of good faith may not be convincingly argued in favour of the Philippine government in a suit for violation of its FET guarantee.

In fact, it has been held that a *bona fide* change in policy by a branch of government does not excuse compliance with the FET obligations. In ***Occidental Exploration and Production Company (OEPC) v. the Republic of Ecuador***,[156] the United Nations Commission on International Trade Law (UNCITRAL) ruled that Ecuador violated the US/Ecuador BIT by denying OEPC fair and equitable treatment when it failed to provide a predictable framework for its investment planning. Ruling thus, the tribunal cited Ecuador's change in tax law and its tax authority's unsatisfactory and vague response to OEPC's *consulta, viz*:

> 183. x x x The stability of the legal and business framework is thus an essential element of fair and equitable treatment.
>
> 184. The tribunal must note **in this context that the framework under which the investment was made and operates has been changed in an important manner by actions adopted by [the Ecuadorian tax authority].** … The clarifications that OEPC sought on the applicability of VAT by means of "consulta" made to [the Ecuadorian tax authority] received a wholly unsatisfactory and thoroughly vague answer. **The tax law was changed without providing any clarity abut its meaning and extend and the practice and regulations were also inconsistent with such changes.**
>
> 185. Various arbitral tribunals have recently insisted on the need for this stability. The tribunal in *Metalcad* held that the

[156] London Court of International Arbitration Administered Case No. UN 3467, July 1, 2004. Last accessed at http://arbitrationlaw.com/files/free_pdfs/Occidental%20v%20Ecuador%20-%20Award.pdf on August 30, 2012.

> Respondent "failed to ensure a transparent and predictable framework for Metalcad's business planning and investment. The totality of these circumstances demonstrate a lack of orderly process and timely disposition in relation to an investor of a Party acting in the expectation that it would be treated fairly and justly…" x x x
>
> 186. It is quite clear from the record of this case and from the events discussed in this Final Award that such requirements were not met by Ecuador. Moreover, **this is an objective requirement that does not depend on whether the Respondent has proceeded in good faith or not.**
>
> 187. The Tribunal accordingly holds that the Respondent has breached its obligations to accord fair and equitable treatment under Article II (3) (a) of the Treaty. x x x
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> xxx xxx xxx
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> 191. The relevant question for international law in this discussion is not whether there is an obligation to refund VAT, which is the point on which the parties have argued most intensely, but rather **whether the legal and business framework meets the requirements of stability and predictability under international law.** It was earlier concluded that there is not a VAT refund obligation under international law, except in the specific case of the Andean Community Law, which provides for the option of either compensation or refund, but **there is certainly an obligation not to alter the legal and business environment in which the investment has been made. In this case it is the latter question that triggers a treatment that is not fair and equitable**. (Emphasis supplied.)

To maintain the FET guarantee contained in the various BITs and FTAs concluded by the country and avert a deluge of investor suits before the ICSID, the UNCITRAL or other *fora*, **any decision of this court that tends to drastically alter the foreign investors' basic expectations when they made their investments**, taking into account the consistent SEC Opinions and the executive and legislative branches' Specific Commitments, **must be applied prospectively**.

This Court cannot turn oblivious to the fact that if We diverge from the prospectivity rule and implement the resolution on the

present issue immediately and, without giving due deference to the foreign investors' rights to due process and the equal protection of the laws, compel the foreign stockholders to divest their voting shares against their wishes at prices lower than the acquisition costs, these foreign investors may very well shy away from Philippine stocks and avoid investing in the Philippines. Not to mention, the validity of the franchise granted to PLDT and similarly situated public utilities will be put under a cloud of doubt. Such uncertainty and the unfair treatment of foreign investors who merely relied in good faith on the policies, rules and regulations of the PSE and the SEC will likely upset the volatile capital market as it would have a negative impact on the value of these companies that will discourage investors, both local and foreign, from purchasing their shares. In which case, foreign direct investments (FDIs) in the country (which already lags behind our Asian neighbors) will take a nosedive. Indeed, it cannot be gainsaid that a sudden and unexpected deviation from the accepted and consistent construction of the term "capital" will create a domino effect that may cripple our capital markets.

Therefore, in applying the new comprehensive interpretation of Sec. 11, Art. XII of the Constitution, the current voting shares of the foreign investors in public utilities in excess of the 40% capital shall be maintained and honored. Otherwise the due process guarantee under the Constitution and the long established precepts of justice, equity and fair play would be impaired.

Prospective application of new laws or changes in interpretation

The June 28, 2011 Decision construed "capital" in the first sentence of Section 11, Article XII of the Constitution as "full beneficial ownership of 60 percent of the outstanding capital stocks coupled with 60 percent of the voting rights." In the Resolution denying the motions for reconsideration, it further amplified the scope of the word "capital" by clarifying that "the 60-40 ownership requirement in favor of Filipino citizens must apply separately to each class of shares whether common,

preferred, preferred voting or any other class of shares." This is a radical departure from the clear intent of the framers of the 1987 Constitution and the long established interpretation ascribed to said word by the Securities and Exchange Commission—that "capital" in the first sentence of Sec. 11, Art. XII means capital stock or BOTH voting and non-voting shares. The recent interpretation enunciated in the June 28, 2011 and in the Resolution at hand can only be applied PROSPECTIVELY. It cannot be applied retroactively to corporations such as PLDT and its investors such as its shareholders who have all along relied on the consistent reading of "capital" by SEC and the Philippine government to apply it to a public utility's total capital stock.

Lex prospicit, non respicit – "laws have no retroactive effect unless the contrary is provided."[157] As a necessary corollary, judicial rulings should not be accorded retroactive effect since "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."[158] It has been the constant holding of the Court that a judicial decision setting a new doctrine or principle ("precedent-setting decision") shall not retroactively apply to parties who relied in good faith on the principles and doctrines standing prior to the promulgation thereof ("old principles/doctrines"), especially when a retroactive application of the precedent-setting decision would impair the rights and obligations of the parties. So it is that as early as 1940, the Court has refused to apply the new doctrine of *jus sanguinis* to persons who relied in good faith on the principle of *jus soli* adopted in ***Roa v. Collector of Customs***.[159] Similarly, in ***Co v. Court of Appeals***,[160] the Court sustained petitioner Co's bona fide reliance on the Minister of Justice's Opinion dated December 15, 1981

[157] Article 4, Civil Code of the Philippines.

[158] Article 8, Civil Code of the Philippines.

[159] 23 Phil. 315 (1912).

[160] G.R. No. 100776, October 28, 1993, 227 SCRA 444, 448-455; *Monge, et al. v. Angeles, et al.*, 101 Phil. 563 (1957); among others.

that the delivery of a "rubber" check as guarantee for an obligation is not a punishable offense despite the Court's pronouncement on September 21, 1987 in ***Que v. People*** that *Batas Pambansa Blg.* (BP) 22 nonetheless covers a check issued to guarantee the payment of an obligation. In so ruling, the Court quoted various decisions applying precedent-setting decisions prospectively. We held:

Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines," according to Article 8 of the Civil Code. "Laws shall have no retroactive effect, unless the contrary is provided," declares Article 4 of the same Code, a declaration that is echoed by Article 22 of the Revised Penal Code: "Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal . . ."

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The principle of prospectivity has also been applied to judicial decisions which, "although in themselves not laws, are nevertheless evidence of what the laws mean, . . . (this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . .'"

So did this Court hold, for example, in *Peo. v. Jabinal*, 55 SCRA 607, 611:

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So, too, did the Court rule in *Spouses Gauvain and Bernardita Benzonan v. Court of Appeals, et al.* (G.R. No. 97973) and *Development Bank of the Philippines v. Court of Appeals, et al.* (G.R. No 97998), Jan. 27, 1992, 205 SCRA 515, 527-528:

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A compelling rationalization of the prospectivity principle of judicial decisions is well set forth in the oft-cited case of *Chicot County Drainage Dist. v. Baxter States Bank*, 308 US 371, 374 [1940]. The Chicot doctrine advocates **the imperative necessity to take account of the actual existence of a statute prior to its nullification, as an operative fact negating acceptance of "a principle of absolute retroactive invalidity.**"

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Much earlier, in *De Agbayani v. PNB*, 38 SCRA 429 xxx the Court made substantially the same observations…

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Again, treating of the effect that should be given to its decision in *Olaguer v. Military Commission No 34*, — declaring invalid criminal proceedings conducted during the martial law regime against civilians, which had resulted in the conviction and incarceration of numerous persons — this Court, in *Tan vs. Barrios*, 190 SCRA 686, at p. 700, ruled as follows:

> "**In the interest of justice and consistency, we hold that Olaguer should, in principle, be applied prospectively only to future cases and cases still ongoing or not yet final when that decision was promulgated.** x x x"

It would seem, then, that the weight of authority is decidedly in favor of the proposition **that the Court's decision of September 21, 1987** in *Que v. People*, 154 SCRA 160 (1987) — *i.e.*, that a check issued merely to guarantee the performance of an obligation is nevertheless covered by B.P. Blg. 22 — **should not be given retrospective effect to the prejudice of the petitioner and other persons similarly situated, who relied on the official opinion of the Minister of Justice** that such a check did not fall within the scope of B.P. Blg. 22. (Emphasis supplied).

Indeed, pursuant to the doctrine of prospectivity, new doctrines and principles must be applied only to acts and events transpiring **after** the precedent-setting judicial decision, and not to those that occurred and were caused by persons who relied on the "old" doctrine and acted on the faith thereof.

Not content with changing the rule in the middle of the game, the majority, in the June 28, 2011 Decision, went a little further by ordering respondent SEC Chairperson "to apply this definition of the term 'capital' in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law." This may be viewed as unreasonable and arbitrary.

The Court in the challenged June 28, 2011 Decision already made a finding that foreigners hold 64.27% of the total number of PLDT common shares while Filipinos hold only 35.73%.[161] In this factual setting, PLDT will, as clear as day, face sanctions since its present capital structure is presently in breach of the rule on the 40% cap on foreign ownership of voting shares even without need of a SEC investigation.

In answering the SEC's query regarding the proper period of application and imposition of appropriate sanctions against PLDT, Justice Carpio tersely stated that "once the 28 June 2011 Decision becomes final, the SEC shall impose the appropriate sanctions only if it finds after due hearing that, *at the start* of the administrative cases or investigation, there is an existing violation of Sec. 11, Art. XII of the Constitution."[162] As basis therefor, Justice Carpio cited *Halili v. Court of Appeals*[163] and *United Church Board for World Ministries (UCBWM) v. Sebastian*.[164] However, these cases do not provide a jurisprudential foundation to this mandate that may very well deprive PLDT foreign shareholders of their voting shares. In fact, *UCBWM v. Sebastian* respected the voluntary transfer in a will by an American of his shares of stocks in a land-holding corporation. In the same manner, *Halili v. Court of Appeals* sustained as valid the waiver by an alien of her right of inheritance over a piece of land in favour of her son. Nowhere in these cases did this Court order the involuntary dispossession of corporate stocks by alien stockholders. At most, these two cases only recognized the principle validating the transfer of land to an alien who, after the transfer, subsequently becomes a Philippine citizen or transfers the land to a Filipino citizen. They do not encompass the situation that will eventually ensue after the investigation conducted by the SEC in accordance with the June 28, 2011 and the present resolution. They do not justify the compulsory

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[161] Decision, G.R. No. 176579, June 28, 2011.

[162] Resolution, p. 47.

[163] 350 Phil. 906 (1998).

[164] 242 Phil. 848 (1988).

deprivation of voting shares in public utility corporations from foreign stockholders who had legally acquired these stocks in the first instance.

The abrupt application of the construction of Sec. 11, Art. XII of the Constitution to foreigners currently holding voting shares in a public utility corporation is not only constitutionally problematic; it is likewise replete with pragmatic difficulties that could hinder the real-world translation of this Court's Resolution. Although apparently benevolent, the majority's concession to allow "public utilities that fail to comply with the nationality requirement under Section 11, Article XII and the FIA [to] **cure their deficiencies prior to the start of the administrative case or investigation**"[165] could indirectly occasion a compulsory deprivation of the public utilities' foreign stockholders of their voting shares. Certainly, these public utilities must immediately pare down their foreign-owned voting shares to avoid the imposable sanctions. This holds true especially for PLDT whose 64.27% of its common voting shares are foreign-subscribed and held. PLDT is, therefore, forced to immediately deprive, or at the very least, dilute the property rights of their foreign stockholders before the commencement of the administrative proceedings, which would be a mere farce considering the transparency of the public utility from the onset.

Even with the chance granted to the public utilities to remedy their supposed deficiency, the nebulous time-frame given by the majority, *i.e.*, "prior to the start of the administrative case or investigation,"[166] may very well prove too short for these public utilities to raise the necessary amount of money to increase the number of their authorized capital stock in order to dilute the property rights of their foreign stockholders holding voting shares.[167] Similarly, if they induce their foreign stockholders to

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[165] Resolution, p. 47.

[166] *Id.*

[167] Sec. 38, Corporation Code. *Power to increase or decrease capital stock; incur, create or increase bonded indebtedness*. - No corporation shall increase or decrease its capital stock or incur, create or increase any

transfer the excess voting shares to qualified Philippine nationals, this period before the filing of the administrative may not be sufficient for these stockholders to find Philippine nationals willing to purchase these voting shares at the market price. This Court cannot ignore the fact that the voting shares of Philippine public utilities like PLDT are listed and sold at large in foreign capital markets. Hence, foreigners who have previously purchased

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bonded indebtedness unless approved by a majority vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. Written notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholder's meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.

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Any increase or decrease in the capital stock or the incurring, creating or increasing of any bonded indebtedness shall require prior approval of the Securities and Exchange Commission.

One of the duplicate certificates shall be kept on file in the office of the corporation and the other shall be filed with the Securities and Exchange Commission and attached to the original articles of incorporation. From and after approval by the Securities and Exchange Commission and the issuance by the Commission of its certificate of filing, the capital stock shall stand increased or decreased and the incurring, creating or increasing of any bonded indebtedness authorized, as the certificate of filing may declare: Provided, That **the Securities and Exchange Commission shall not accept for filing any certificate of increase of capital stock unless accompanied by the sworn statement of the treasurer of the corporation lawfully holding office at the time of the filing of the certificate, showing that at least twenty-five (25%) percent of such increased capital stock has been subscribed and that at least twenty-five (25%) percent of the amount subscribed has been paid either in actual cash to the corporation or that there has been transferred to the corporation property the valuation of which is equal to twenty-five (25%) percent of the subscription**: Provided, further, That no decrease of the capital stock shall be approved by the Commission if its effect shall prejudice the rights of corporate creditors. (Emphasis supplied.)

their voting shares in these markets will not have a ready Philippine market to immediately transfer their shares. More than likely, these foreign stockholders will be forced to sell their voting shares at a loss to the few Philippine nationals with money to spare, or the public utility itself will be constrained to acquire these voting shares to the prejudice of its retained earnings.[168]

Whatever means the public utilities choose to employ in order to cut down the foreign stockholdings of voting shares, it is necessary to determine who among the foreign stockholders of these public utilities must bear the burden of unloading the voting shares or the dilution of their property rights. In a situation like this, there is at present no settled rule on who should be deprived of their property rights. Will it be the foreign stockholders who bought the latest issuances? Or the first foreign stockholders of the public utility corporations? This issue cannot be realistically settled within the time-frame given by the majority without raising more disputes. With these loose ends, the majority cannot penalize the public utilities if they should fail to comply with the directive of complying with the "nationality requirement under Section 11, Article XII and the FIA" within the unreasonably nebulous and limited period "prior to the start of the administrative case or investigation."[169]

In the light of the new pronouncement of the Court that public utilities that fail to comply with the nationality requirement under

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[168] Sec. 41, Corporation Code. *Power to acquire own shares.* - A stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including but not limited to the following cases: Provided, That the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired:

1. To eliminate fractional shares arising out of stock dividends;

2. To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and

3. To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code.

[169] Resolution, p. 47.

Section 11, Article XII of the Constitution CAN CURE THEIR DEFICIENCIES prior to the start of the administrative case or investigation, I submit that affected companies like PLDT should be given reasonable time to undertake the necessary measures to make their respective capital structure compliant, and the SEC, as the regulatory authority, should come up with the appropriate guidelines on the process and supervise the same. SEC should likewise adopt the necessary rules and regulations to implement the prospective compliance by all affected companies with the new ruling regarding the interpretation of the provision in question. Such rules and regulations must respect the due process rights of all affected corporations and define a reasonable period for them to comply with the June 28, 2011 Decision.

A final note.

Year in and year out, the government's trade managers attend economic summits courting businessmen to invest in the country, doubtless promising them a playing field where the rules are friendly as they are predictable. So it would appear odd if a branch of government would make business life complicated for investors who are already here. Indeed, stability and predictability are the key pillars on which our legal system must be founded and run to guarantee a business environment conducive to the country's sustainable economic growth. Hence, it behooves this Court to respect the basic expectations taken into account by the investors at the time they made the investments. In other words, it is the duty of this Court to stand guard against any untoward change of the rules in the middle of the game.

I, therefore, vote to **GRANT** the motions for reconsideration and accordingly **REVERSE** and **SET ASIDE** the June 28, 2011 Decision. The Court should declare that the word "capital" in the first sentence of Section 11, Article XII of the 1987 Constitution means the entire capital stock or both voting and non-voting shares.

Since the June 28, 2011 Decision was however sustained, I submit that said decision should take effect only on the date of its finality and should be applied **prospectively**.

PLDT should be given time to undertake the necessary measures to make its capital structure compliant, and the Securities and Exchange Commission should formulate appropriate guidelines and supervise the process. Said Commission should also adopt rules and regulations to implement the prospective compliance by all affected companies with the new ruling on the interpretation of Sec. 11, Art. XII of the Constitution. Such rules and regulations must respect the due process rights of all affected corporations and provide a reasonable period for them to comply with the June 28, 2011 Decision. The rights of foreigners over the voting shares they presently own in excess of 40% of said shares should, in the meantime, be respected.

DISSENTING OPINION

ABAD, *J.*:

In the Decision dated June 28, 2011, the Court partially granted the petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale, of Wilson P. Gamboa, a Philippine Long Distance Telephone Company (PLDT) stockholder, and ruled that the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). The Court also directed the Chairperson of the Securities and Exchange Commission (SEC) to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in PLDT, and to impose the appropriate sanctions if there is a violation of Section 11, Article XII of the 1987 Constitution.

Respondents Manuel V. Pangilinan, Napoleon L. Nazareno, Francis Lim, Pablito V. Sanidad, Arno V. Sanidad, and the SEC filed their respective motions for reconsideration.

Thereafter, the Court conducted oral arguments to hear the parties on the following issues:

1. Whether the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock with the right to vote in the election of directors (common shares), or to all kinds of shares of stock, including those with no right to vote in the election of directors;

2. Assuming the term "capital" refers only to shares of stock with the right to vote in the election of directors, whether this ruling of the Court should have retroactive effect to affect such shares of stock owned by foreigners prior to this ruling;

3. Whether PLDT and its foreign stockholders are indispensable parties in the resolution of the legal issue on the definition of the term "capital" in Section 11, Article XII of the 1987 Constitution; and

    3.1 If so, whether the Court has acquired jurisdiction over the persons of PLDT and its foreign stockholders.

I am constrained to maintain my dissent to the majority opinion.

One. To reiterate, the authority to define and interpret the meaning of "capital" in Section 11, Article XII of the 1987 Constitution belongs, not to the Court, but to Congress, as part of its policy making powers. This matter is addressed to the sound discretion of the lawmaking department of government since the power to authorize and control a public utility is admittedly a prerogative that stems from Congress.[1] It may very well in its wisdom define the limit of foreign ownership in public utilities.

Section 11, Article XII of the 1987 Constitution which reads:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations

[1] *Francisco, Jr. v. Toll Regulatory Board*, G.R. No. 166910, October 19, 2010, 633 SCRA 470, 499.

organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

is one of the constitutional provisions that are not self-executing and need sufficient details for a meaningful implementation. While the provision states that no franchise for the operation of a public utility shall be granted to a corporation organized under Philippine laws unless at least 60% of its capital is owned by Filipino citizens, it does not provide for the meaning of the term "capital."

As Fr. Joaquin G. Bernas, S.J. explained, acting as *Amicus Curiae*, the result of the absence of a clear definition of the term "capital," was to base the 60-40 proportion on the total outstanding capital stock, that is, the combined total of both common and non-voting preferred shares. But while this has become the popular and common understanding of the people, it is still incomplete. He added that in the Foreign Investments Act of 1991 (FIA), Congress tried to clarify this understanding by specifying what capital means for the purpose of determining corporate citizenship, thus:

Sec. 3. Definitions. — As used in this Act:

a. The term "Philippine national" shall mean a citizen of the Philippines; of a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock

outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a "Philippine national." (As amended by Republic Act 8179)

Indeed, the majority opinion also resorted to the various investment laws[2] in construing the term "capital." But while these laws admittedly govern foreign investments in the country, they do not expressly or impliedly seek to supplant the ambiguity in the definition of the term "capital" nor do they seek to modify foreign ownership limitation in public utilities. It is a rule that when the operation of the statute is limited, the law should receive a restricted construction.[3]

More particularly, much discussion was made on the FIA since it was enacted after the 1987 Constitution took effect. Yet it does not seem to be a supplementary or enabling legislation which accurately defines the term "capital."

For one, it specifically applies only to companies which intend to invest in certain areas of investment. It does not apply to companies which intend to apply for a franchise, much less to those which are already enjoying their franchise. It aims "to attract, promote or welcome productive investments from foreign individuals, partnerships, corporations and government, including their political subdivisions, in activities which significantly

[2] These laws include the Investment Incentives Act of 1967, the Foreign Business Regulations Act of 1968, the Omnibus Investments Code of 1981, the Omnibus Investments Code of 1987, and the Foreign Investments Act of 1991.

[3] *Lokin, Jr. v. Commission on Elections*, G.R. Nos. 179431-32 & 180443, June 22, 2010, 621 SCRA 385, 410.

contribute to national industrialization and socio-economic development."[4] What the FIA provides are new rules for investing in the country.

Moreover, with its adoption of the definition of the term "Philippine national," has the previous understanding that the term "capital" referred to the total outstanding capital stock, as Fr. Bernas explained, been supplanted or modified? While it is clear that the term "Philippine national" shall mean a corporation organized under Philippine laws at least 60% of the capital stock outstanding and entitled to vote is owned and held by Filipino citizens "**as used in [the FIA]**," it is not evident whether Congress intended this definition to be used in all other cases where the term "capital" presents itself as an issue.

Two. Granting that it is the Court, and not Congress, which must define the meaning of "capital," I submit that it must be interpreted to encompass the entirety of a corporation's outstanding capital stock (both common and preferred shares, voting or non-voting).

First, the term "capital" is also used in the fourth sentence of Section 11, Article XII, as follows:

> Section 11. x x x The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

If the term "capital" as used in the first sentence is interpreted as pertaining only to shares of stock with the right to vote in the election of directors, then such sentence will already prescribe the limit of foreign participation in the election of the board of directors. On the basis of the first sentence alone, the capacity of foreign stockholders to elect the directors will already be limited by their ownership of 40% of the voting shares. This will then render the fourth sentence meaningless and will run counter to the principle that the provisions of the Constitution should be read in consonance with its other related provisions.

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[4] Section 2, Foreign Investments Act of 1991.

Second, Dr. Bernardo M. Villegas, also an *Amicus Curiae*, who was the Chairman of the Committee on the National Economy that drafted Article XII of the 1987 Constitution, emphasized that by employing the term "capital," the 1987 Constitution itself did not distinguish among classes of shares.

During their Committee meetings, Dr. Villegas explained that in both economic and business terms, the term "capital" found in the balance sheet of any corporation always meant the entire capital stock, both common and preferred. He added that even the non-voting shares in a corporation have a great influence in its major decisions such as: (1) the amendment of the articles of incorporation; (2) the adoption and amendment of by-laws; (3) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property; (4) incurring, creating or increasing bonded indebtedness; (5) the increase or decrease of capital stock; (6) the merger or consolidation of the corporation with another corporation or other corporations; (7) the investment of corporate funds in another corporation or business in accordance with this Code; and (8) the dissolution of the corporation.

Thus, the Committee decisively rejected in the end the proposal of the UP Law Center to define the term "capital" as voting stock or controlling interest. To quote Dr. Villegas, "in the minds of the Commissioners the word 'capital' in Section 11 of Article XII refers, not to voting stock, but to total subscribed capital, both common and preferred."

Finally, Dr. Villegas observed that our existing policy on foreign ownership in public utilities already discourages, as it is, foreign investments to come in. To impose additional restrictions, such as the restrictive interpretation of the term "capital," will only aggravate our already slow economic growth and incapacity to compete with our East Asian neighbours.

The Court can simply adopt the interpretations given by Fr. Bernas and Dr. Villegas since they were both part of the Constitutional Commission that drafted the 1987 Constitution. No one is in a better position to determine the intent of the framers of the questioned provision than they are. Furthermore,

their interpretations also coincide with the long-standing practice to base the 60-40 proportion on the total outstanding capital stock, that is, both common and preferred shares.

For sure, both common and preferred shares have always been considered part of the corporation's capital stock. Its shareholders are no different from ordinary investors who take on the same investment risks. They participate in the same venture, willing to share in the profits and losses of the enterprise. Under the doctrine of equality of shares — all stocks issued by the corporation are presumed equal with the same privileges and liabilities, provided that the Articles of Incorporation is silent on such differences.[5]

As a final note, the Filipinization of public utilities under the 1987 Constitution is a recognition of the very strategic position of public utilities both in the national economy and for national security.[6] The participation of foreign capital is enjoined since the establishment and operation of public utilities may require the investment of substantial capital which Filipino citizens may not afford. But at the same time, foreign involvement is limited to prevent them from assuming control of public utilities which may be inimical to national interest.[7] Section 11, Article XII of the 1987 Constitution already provides three limitations on foreign participation in public utilities. The Court need not add more by further restricting the meaning of the term "capital" when none was intended by the framers of the 1987 Constitution.

Based on these considerations, I vote to **GRANT** the motions for reconsideration.

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[5] *Commissioner of Internal Revenue v. Court of Appeals*, 361 Phil. 103, 134 (1999).

[6] BERNAS, JOAQUIN G., *FOREIGN RELATIONS IN CONSTITUTIONAL LAW*, 1995 Ed., p. 87 citing *Smith, Bell and Co. v. Natividad*, 40 Phil. 136, 148 (1919); *Luzon Stevedoring Corporation v. Anti-Dummy Board*, 46 SCRA 474, 490 (1972); DE LEON, HECTOR S., *PHILIPPINE CONSTITUTIONAL LAW (Principles and Cases)*, 2004 Ed., Vol. 2, p. 940.

[7] DE LEON, HECTOR S., *PHILIPPINE CONSTITUTIONAL LAW* (Principles and Cases), 2004 Ed., Vol. 2, p. 946.

EN BANC

[G.R. No. 192088. October 9, 2012]

INITIATIVES FOR DIALOGUE AND EMPOWERMENT THROUGH ALTERNATIVE LEGAL SERVICES, INC. (IDEALS, INC.), represented by its Executive Director, Mr. Edgardo Ligon, and FREEDOM FROM DEBT COALITION (FDC), represented by its Vice President Rebecca L. Malay, AKBAYAN CITIZEN'S ACTION PARTY, represented by its Chair Emeritus Loretta Anne P. Rosales, ALLIANCE OF PROGRESSIVE LABOR, represented by its Chairperson, Daniel L. Edralin, REP. WALDEN BELLO, in his capacity as duly-elected Member of the House of Representatives, *petitioners, vs.* **POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), represented by its Acting President and Chief Executive Officer Atty. Ma. Luz L. Caminero, METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS), represented by its Administrator Atty. Diosdado M. Allado, NATIONAL IRRIGATION ADMINISTRATION (NIA), represented by its Administrator Carlos S. Salazar, KOREA WATER RESOURCES CORPORATION, represented by its Chief Executive Officer, Kim Kuen-Ho and/or Attorneys-in-fact, Atty. Anna Bianca L. Torres and Atty. Luther D. Ramos, FIRST GEN NORTHERN ENERGY CORP., represented by its President, Mr. Federico R. Lopez, SAN MIGUEL CORP., represented by its President, Mr. Ramon S. Ang, SN ABOITIZ POWER-PANGASINAN, INC., represented by its President, Mr. Antonio R. Moraza, TRANS-ASIA OIL AND ENERGY DEVELOPMENT CORPORATION, represented by its President and CEO, Mr. Francisco L. Viray, and DMCI POWER CORP., represented by its President, Mr. Nestor Dadivas,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND PROHIBITION; MOOTNESS THEREOF WILL NOT PREVENT THE COURT FROM RULING IN CASE OF GRAVE VIOLATION OF THE CONSTITUTION; CASE AT BAR.— PSALM's contention that the present petition had already been mooted by the issuance of the Notice of Award to K-Water is misplaced. Though petitioners had sought the immediate issuance of injunction against the bidding commenced by PSALM — specifically enjoining it from proceeding to the next step of issuing a notice of award to any of the bidders — they further prayed that PSALM be permanently enjoined from disposing of the AHEPP through privatization. The petition was thus filed not only as a means of enforcing the State's obligation to protect the citizens' "right to water" that is recognized under international law and legally enforceable under our Constitution, but also to bar a foreign corporation from exploiting our water resources in violation of Sec. 2, Art. XII of the 1987 Constitution. If the impending sale of the AHEPP to K-Water indeed violates the Constitution, it is the duty of the Court to annul the contract award as well as its implementation. As this Court held in *Chavez v. Philippine Estates Authority*, "[s]upervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution."

2. ID.; PARTIES; LEGAL STANDING OF PETITIONERS AS CITIZENS RE ISSUE OF WATER SUPPLY, APPRECIATED.— The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." This Court, however, has adopted a liberal attitude on the *locus standi* of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people, as when the issues raised are of paramount importance to the public. Thus, when the proceeding involves the assertion of a public right, the mere fact that the petitioner is a citizen satisfies the requirement of personal interest. There can be no doubt that the matter of

ensuring adequate water supply for domestic use is one of paramount importance to the public. That the continued availability of potable water in Metro Manila might be compromised if PSALM proceeds with the privatization of the hydroelectric power plant in the Angat Dam Complex confers upon petitioners such personal stake in the resolution of legal issues in a petition to stop its implementation. Moreover, we have held that if the petition is anchored on the people's right to information on matters of public concern, any citizen can be the real party in interest.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION; INTERTWINED WITH THE GOVERNMENT'S CONSTITUTIONAL DUTY OF FULL PUBLIC DISCLOSURE OF ALL TRANSACTIONS INVOLVING PUBLIC INTEREST; THUS, RA 9136, THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA) ON THE PRIVATIZATION OF NATIONAL POWER CORPORATION'S (NPC) ASSETS AND LIABILITIES.— The people's constitutional right to information [under Section 7, Article III of the Constitution] is intertwined with the government's constitutional duty of full public disclosure of all transactions involving public interest [as provided in] Section 28, Article II thereof. x x x [They] seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. They are also essential to hold public officials "at all times x x x accountable to the people," for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy. Consistent with this policy, the EPIRA was enacted to provide for "an orderly and transparent privatization" of NPC's assets and liabilities. Specifically, said law mandated that "[a]ll assets of NPC shall be sold in an open and transparent manner through public bidding."

4. ID.; ID.; ID.; ID.; COVERAGE AND LIMITATIONS; DISTINGUISHED FROM DUTY OF THE GOVERNMENT

TO PERMIT ACCESS TO INFORMATION UPON REQUEST ON MATTERS OF PUBLIC CONCERN; INSUFFICIENT COMPLIANCE IN CASE AT BAR.— *Chavez v. Public Estates Authority* laid down the rule that the constitutional right to information includes official information on on-going negotiations before a final contract. The information, however, must constitute definite propositions by the government and should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order. In addition, Congress has prescribed other limitations on the right to information in several legislations. x x x In *Chavez v. National Housing Authority*, the Court held that pending the enactment of an enabling law, the release of information through postings in public bulletin boards and government websites satisfies the constitutional requirement. x x x The Court, however, distinguished the duty to disclose information from the duty to permit access to information on matters of public concern under Sec. 7, Art. III of the Constitution. Unlike the disclosure of information which is mandatory under the Constitution, the other aspect of the people's right to know requires a demand or request for one to gain access to documents and paper of the particular agency. Moreover, the duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency. Such relief must be granted to the party requesting access to official records, documents and papers relating to official acts, transactions, and decisions that are relevant to a government contract. Here, petitioners' second letter dated May 14, 2010 specifically requested for detailed information regarding the winning bidder, such as company profile, contact person or responsible officer, office address and Philippine registration. PSALM's letter-reply dated May 21, 2010 advised petitioners that their letter-request was referred to the counsel of K-Water. We find such action insufficient compliance with the constitutional requirement and inconsistent with the policy under EPIRA to implement the privatization of NPC assets in an "open and transparent" manner. PSALM's evasive response to the request for information was unjustified because all bidders were required

to deliver documents such as company profile, names of authorized officers/representatives, financial and technical experience.

5. ID.; ADMINISTRATIVE LAW; ANGAT HYDRO-ELECTRIC POWER PLANT (AHEPP); UNDER THE JURISDICTION OF THE DEPARTMENT OF ENERGY THROUGH THE NATIONAL POWER CORPORATION (NPC).— Based on factual backdrop, there seems to be no dispute as to the complete jurisdiction of NPC over the government-owned Angat Dam and AHEPP. x x x The Angat Dam is one of the dams under the management of NPC. x x x NAPOCOR or NPC is a government-owned corporation created under Commonwealth Act (C.A.) No. 120, which, among others, was vested with the following powers under Sec. 2, paragraph (g): (g) **To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs**, pipes, mains, transmission lines, **power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof**; x x x On September 10, 1971, R.A. No. 6395 was enacted which revised the charter of NPC, extending its corporate life to the year 2036. NPC thereafter continued to exercise complete jurisdiction over dams and power plants including the Angat Dam, Angat Reservoir and AHEPP. x x x On December 9, 1992, by virtue of R.A. No. 7638, NPC was placed under the Department of Energy (DOE) as one of its attached agencies. Aside from its ownership and control of the Angat Dam and AHEPP, NPC was likewise mandated to exercise complete jurisdiction and control over its watershed, pursuant to Sec. 2 (n) and (o) of R.A. No. 6395 for development and conservation purposes.

6. ID.; ID.; ID.; PRIVATIZATION THEREOF MANDATORY UNDER THE EPIRA; DISCUSSED.— With the advent of EPIRA in 2001, PSALM came into existence for the principal purpose of managing the orderly sale, privatization and disposition of generation assets, real estate and other disposable assets of the NPC including Independent Power Producer (IPP) Contracts. Accordingly, PSALM was authorized to take title to and possession of, those assets transferred to it. EPIRA mandated that all such assets shall be sold through public bidding with the exception of Agus and Pulangui complexes in

Mindanao, the privatization of which was left to the discretion of PSALM in consultation with Congress. x x x The EPIRA exempted from privatization only those two plants in Mindanao and the Small Power Utilities Group (SPUG). Expressio unius est exclusio alterius, the express inclusion of one implies the exclusion of all others. x x x The Court therefore cannot sustain the position of petitioners, adopted by respondent MWSS, that PSALM should have exercised the discretion not to proceed with the privatization of AHEPP, or at least the availability of the option to transfer the said facility to another government entity such as MWSS. Having no such discretion in the first place, PSALM committed no grave abuse of discretion when it commenced the sale process of AHEPP pursuant to the EPIRA.

7. ID.; CONSTITUTIONAL LAW; STATE'S POLICY ON MANAGEMENT OF WATER RESOURCES; P.D. No. 1067 AND THE RULE OF NWRB; DISCUSSED.— Sec. 2, Art. XII of the 1987 Constitution provides in part. x x x **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State**. x x x The State's policy on the management of water resources is implemented through the regulation of water rights. Presidential Decree No. 1067, otherwise known as "The Water Code of the Philippines" is the basic law governing the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources and rights to land related thereto. x x x The National Water Resources Board [NWRB] is the chief coordinating and regulating agency for all water resources management development activities which is tasked with the formulation and development of policies on water utilization and appropriation, the control and supervision of water utilities and franchises, and the regulation and rationalization of water rates. [Under] the pertinent provisions of Art. 3, P.D. No. 1067. x x x It is clear that the law limits the grant of water rights only to Filipino citizens and juridical entities duly qualified by law to exploit and develop water resources, including private corporations with sixty percent of their capital owned by Filipinos.

8. ID.; ADMINISTRATIVE LAW; EPIRA; ON THE GENERATION OF ELECTRIC POWER AND ISSUE OF WATER SECURITY; DISCUSSED.— Under the EPIRA, the generation of electric power, a business affected with public

interest, was opened to private sector and any new generation company is required to secure a certificate of compliance from the Energy Regulatory Commission (ERC), as well as health, safety and environmental clearances from the concerned government agencies. Power generation shall not be considered a public utility operation, and hence no franchise is necessary. Foreign investors are likewise allowed entry into the electric power industry. However, there is no mention of water rights in the privatization of multi-purpose hydropower facilities. Section 47 (e) addressed the issue of water security, as follows: (e) In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the national government may **direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest.** x x x This provision is consistent with the priority accorded to domestic and municipal uses of water under the Water Code.

9. ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS (IRR) OF THE EPIRA; STRUCTURE OF APPROPRIATION OF WATER RESOURCES IN MULTI-PURPOSE HYDROPOWER PLANTS WHICH WILL UNDERGO PRIVATIZATION; CASE AT BAR.— Rule 23, Section 6 of the Implementing Rules and Regulations (IRR) of the EPIRA provided for the structure of appropriation of water resources in multi-purpose hydropower plants which will undergo privatization. x x x In accordance with the foregoing implementing regulations, and in furtherance of the Asset Purchase Agreement 64 (APA), PSALM, NPC and K-Water executed on April 28, 2010 an Operations and Maintenance Agreement (O & M Agreement) for the administration, rehabilitation, operation, preservation and maintenance, by K-Water as the eventual owner of the AHEPP, of the Non-Power Components meaning the Angat Dam, non-power equipment, facilities, installations, and appurtenant devices and structures, including the *water sourced from the Angat Reservoir*. It is the position of PSALM that as the new owner only of the hydroelectric power plant, K-Water will be a mere operator of the Angat Dam. In the power generation activity, K-Water will have to utilize the waters already extracted from the river and impounded on the dam. This process of generating electric power from the dam water entering the power plant

thus does not constitute appropriation within the meaning of natural resource utilization in the Constitution and the Water Code.

10. ID.; ID.; ID.; FOREIGN OWNERSHIP OF HYDROPOWER FACILITY IS NOT PROHIBITED UNDER THE EXISTING LAWS.— Foreign ownership of a hydropower facility is not prohibited under existing laws. The construction, rehabilitation and development of hydropower plants are among those infrastructure projects which even wholly-owned foreign corporations are allowed to undertake under the Amended Build-Operate-Transfer (Amended BOT) Law (R.A. No. 7718). Beginning 1987, the policy has been openness to foreign investments as evident in the fiscal incentives provided for the restructuring and privatization of the power industry in the Philippines, under the Power Sector Restructuring Program (PSRP) of the Asian Development Bank. x x x With respect to foreign investors, the nationality issue had been framed in terms of the character or nature of the power generation process itself, *i.e.*, whether the activity amounts to utilization of natural resources within the meaning of Sec. 2, Art. XII of the Constitution. If so, then foreign companies cannot engage in hydropower generation business; but if not, then government may legally allow even foreign-owned companies to operate hydropower facilities. The DOJ has consistently regarded hydropower generation by foreign entities as not constitutionally proscribed based on the definition of water appropriation under the Water Code. x x x The latest [affirming] executive interpretation is stated in DOJ Opinion No. 52, s. 2005 which was rendered upon the request of PSALM in connection with the proposed sale structure for the privatization of hydroelectric and geothermal generation assets (Gencos) of NPC.

11. ID.; ID.; ID.; ID.; ON APPROPRIATION OF WATER AND WATER RIGHTS AS PROVIDED IN THE WATER CODE; CASE AT BAR.— *Appropriation of water,* as used in the Water Code refers to the "acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law." x x x On the other hand, "water right" is defined in the Water Code as the privilege granted by the government to appropriate and use water. Under the Water Code concept of appropriation, a foreign company may not be said to be "appropriating" our

natural resources if it utilizes the waters collected in the dam and converts the same into electricity through artificial devices. Since the NPC remains in control of the operation of the dam by virtue of water rights granted to it, as determined under DOJ Opinion No. 122, s. 1998, there is no legal impediment to foreign-owned companies undertaking the generation of electric power *using waters already appropriated by NPC, the holder of water permit.* Such was the situation of hydropower projects under the BOT contractual arrangements whereby foreign investors are allowed to finance or undertake construction and rehabilitation of infrastructure projects and/or own and operate the facility constructed. However, in case the facility requires a public utility franchise, the facility operator must be a Filipino corporation or at least 60% owned by Filipino.

12. ID.; ID.; ID.; NOTHING IN EPIRA REQUIRES TRANSFER OF WATER RIGHTS TO BUYERS OF MULTI-PURPOSE HYDROPOWER FACILITIES AS PART OF THE PRIVATIZATION PROCESS; CASE AT BAR.— [T]here is nothing in the EPIRA which declares that it is mandatory for PSALM or NPC to transfer or assign NPC's water rights to buyers of its multi-purpose hydropower facilities as part of the privatization process. While PSALM was mandated to transfer the ownership of all hydropower plants except those mentioned in Sec. 47 (f), any transfer of possession, operation and control of the multi-purpose hydropower facilities, the intent to preserve water resources under the full supervision and control of the State is evident when PSALM was obligated to prescribe safeguards to enable the national government to direct water usage to domestic and other requirements "imbued with public interest." There is no express requirement for the transfer of water rights in all cases where the operation of hydropower facilities in a multi-purpose dam complex is turned over to the private sector. As the new owner of the AHEPP, K-Water will have to utilize the waters in the Angat Dam for hydropower generation. Consistent with the goals of the EPIRA, private entities are allowed to undertake power generation activities and acquire NPC's generation assets. But since only the hydroelectric power plants and appurtenances are being sold, the privatization scheme should enable the buyer of a hydroelectric power plant in NPC's multi-purpose dam complex to have **beneficial** use of the waters diverted or collected in the Angat Dam for its hydropower generation activities, and

at the same time ensure that the NPC retains full supervision and control over the extraction and diversion of waters from the Angat River. In fine, the Court rules that while the sale of AHEPP to a foreign corporation pursuant to the privatization mandated by the EPIRA did not violate Sec. 2, Art. XII of the 1987 Constitution. x x x the stipulation in the Asset Purchase Agreement and Operations and Maintenance Agreement whereby NPC consents to the transfer of water rights to the foreign buyer, K-Water, contravenes the aforesaid constitutional provision and the Water Code.

VELASCO, JR., *J., dissenting opinion*:

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; A WHOLLY FOREIGN-OWNED CORPORATION IS DISQUALIFIED FROM EXPLOITING THE WATER AND NATURAL RESOURCES OF THE STATE.— Subject of this petition for *certiorari* and prohibition are two Agreements entered into by and between Power Sector Assets and Liabilities Management Corporation (PSALM) and Korean Water Resources Corporation (K-Water), involving the Angat Hydro-Electric Power Plant (AHEPP) and the Angat Dam Complex. The first agreement, denominated as Asset Purchase Agreement (APA), covers AHEPP, while the second, the Operation and Maintenance Agreement (O & M), covers the non-power components of AHEPP, including Angat Dam. PSALM entered into the said agreements pursuant to its mandate under Republic Act No. (RA) 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) to privatize the assets of National Power Corporation (NPC). x x x I submit that the two Agreements themselves are, in their entirety, null and void for infringing the ownership and nationality limitations in Sec. 2, Art. XII of the 1987 Constitution. x x x K-Water, being a wholly foreign-owned corporation, is disqualified from engaging in activities involving the exploration, development, and utilization of water and natural resources belonging to the state. Necessarily, it is barred from operating Angat Dam, a structure indispensable in ensuring water security in Metro Manila. PSALM, therefore, committed grave abuse of discretion amounting to lack or excess of

jurisdiction when it allowed K-Water to participate in the bidding out of properties that will directly extract and utilize natural resources of the Philippines.

2. ID.; ID.; JUDICIAL DEPARTMENT; JURISDICTION OVER QUESTIONS OF GRAVE ABUSE OF DISCRETION; INCLUDES ACTIONS OF GOVERNMENT AGENCY DISCHARGING OFFICIAL FUNCTIONS.— The Court's jurisdiction over questions of grave abuse of discretion finds expression in Art. VIII, Sec. 1 of the Constitution. x x x In the case before Us, the petitioners allege that respondent PSALM exceeded its jurisdiction when it allowed K-Water to participate in the bidding for the privatization of AHEPP, and later awarded the contract to it. In its exercise of its mandate under the EPIRA, PSALM exercises not only ministerial, but also discretionary powers. The EPIRA merely provides that the privatization be done "in an open and transparent manner through public bidding," suggesting that it is up to PSALM to decide the specific manner and method in conducting the bidding process. In determining the terms of reference of the public bidding to be conducted, as well as in determining the qualifications of the respective bidders, respondent PSALM exercises discretionary, not ministerial, powers. Corollarily, when it allowed K-Water to participate in the bidding, and when it eventually awarded the contract to K-Water as the highest bidder, PSALM was engaged not in ministerial functions, but was actually exercising its discretionary powers. Hence, as a government agency discharging official functions, its actions are subject to judicial review by this Court, as expressly provided under Art. VIII, Sec. 1, par. 2 of the Constitution.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DIRECT RECOURSE TO THE COURT IN DEFIANCE OF THE DOCTRINE OF HIERARCHY OF COURTS ALLOWED FOR MATTERS OF SERIOUS CONSTITUTIONAL CHALLENGES AND THE PRIMORDIAL RIGHT OF THE PEOPLE.— This Court's jurisdiction over petitions for *certiorari* under Rule 65 is concurrent with Regional Trial Courts. This jurisdiction arrangement calls for the application of the doctrine of hierarchy of courts, such that this Court generally will not entertain petitions filed directly before it. However, direct recourse to this Court may be allowed in certain situations. x x x [H]erein

petitioners have made serious constitutional challenges not only with respect to the constitutional provision on exploitation, development, and utilization of natural resources, but also the primordial right of the people to access to clean water. The matter concerning Angat Dam and its impact on the water supply to the entire Metro Manila area and neighboring cities and provinces, involving a huge number of people has, to be sure, far-reaching consequences. These imperatives merit direct consideration by this Court.

4. ID.; ID.; MOOTNESS OF THE ISSUES DISREGARDED WHERE THERE WAS A VIOLATION OF THE CONSTITUTION.— PSALM maintains that the petition no longer presents an actual justiciable controversy due to the mootness of the issues presented in the petition, for, as claimed, the petitioners are seeking to enjoin the performance of an act that it has already performed, *i.e.*, that of the issuance of a Notice of Award to the highest winning bidder in the public bidding for AHEPP. x x x Even assuming that the Notice of Award finalizes the privatization of AHEPP, this Court will not shirk from its duty to prevent the execution of a contract award violative of the Constitution. This Court can still enjoin, if it must, the transfer of ownership of AHEPP if such transfer is repugnant to the spirit and the letter of the Constitution.

5. POLITICAL LAW; POLITICAL QUESTION DOCTRINE; APPLICATION.— [P]olitical question doctrine applies when the question calls for a ruling on the wisdom, and not the legality, of a particular governmental act or issuance. The political question doctrine has no application in the case here. x x x Petitioners' challenge is not directed, as it were, against the wisdom of or the inherent infirmity of the EPIRA, but the legality of PSALM's acts, which, to the petitioners, violate their paramount constitutional rights. This falls squarely within the expanded jurisdiction of this Court. At any rate, political questions, without more, are now cognizable by the Court under its expanded judicial review power. The Court said so in *Osmeña v. COMELEC*.

6. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; LEGAL STANDING OF PETITIONER; UPHELD FOR CITIZENS ON ISSUE OF RIGHT TO INFORMATION AND DISREGARDED FOR MATTERS OF TRANSCENDENTAL IMPORTANCE.— Where the issue

revolves around the people's right to information, the requisite legal standing is met by the mere fact that the petitioner is a citizen. x x x [O]n the constitutional limitation on the exploration, development, and utilization of natural resources, the rule on *locus standi* is not sufficiently overcome by the mere fact that the petitioners are citizens. The general rule applies and the petition must show that the party filing has a "personal stake in the outcome of the controversy." x x x The issues they have raised, including the effect of the Agreements on water security in Metro Manila, and the significance of Angat Dam as part of the Angat-Ipo-La Mesa system, is, however, a matter of transcendental importance. Hence, the technical rules on standing may be brushed aside, and enable this Court to exercise judicial review.

7. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT TO INFORMATION; INCLUDES ACCESS TO MATTERS OF PUBLIC CONCERN UPON DEMAND BUT THE SAME LIMITED TO OFFICIAL DOCUMENTS, ACTS AND TRANSACTIONS.— The people's right to information is based on Art. III, Sec. 7 of the Constitution. x x x The policy of public disclosure and transparency of governmental transactions involving public interest enunciated in Art. II, Sec. 28 of the Constitution complements the right of the people to information. x x x This right to information, however, is not without limitation. Fr. Joaquin Bernas S.J. notes that the two sentences of Section 7 guarantee only one general right, the right to information on matters of public concern. The right to access official records merely implements the right to information. Thus, regulatory discretion must include both authority to determine what matters are of public concern and authority to determine the manner of access to them. x x x Here, PSALM routinely published news and updates on the sale of AHEPP on its website. It also organized several forums where various stakeholders were apprised of the procedure to be implemented in the privatization of AHEPP. [T]hese unilateral actions from PSALM must be construed to be a sufficient compliance of its duty under the Constitution. x x x It must be noted however, that x x x PSALM further has the duty to *allow* access to information on matters of public concern. This burden requires a demand or request from a member of the public, to which the right properly belongs. "The gateway to information opens to the public the following:

(1) official records; (2) documents and papers pertaining to official acts, transactions, or decisions; and (3) government research data used as a basis for policy development." When petitioners' wrote PSALM a letter requesting certain documents and information relating to the privatization of AHEPP but was denied, PSALM veritably violated the petitioners' right to information. x x x Petitioners must be granted relief by granting them access to such documents and papers relating to the disposition of AHEPP, provided the accommodation is limited to official documents and official acts and transactions.

8. ID.; ADMINISTRATIVE LAW; PRIVATIZATION OF AHEPP; PROPER AS MANDATED TO PSALM UNDER EPIRA.— The mandate of PSALM under EPIRA is clear — privatization sale of NPC generation assets, real estate, and other disposable assets. x x x The law merely authorized PSALM to decide upon the specific program to utilize in the disposition of NPC assets, and not the power to determine the coverage of the privatization. The EPIRA itself had laid down which particular assets are to be privatized, and which are not. x x x By express provision, only three facilities are excepted from privatization, viz.: Agus and Pulangui Complexes, and the Caliraya-Botokan-Kalayaan pump storage complex, and the assets of the Small Power Utilities Group (SPUG). Nowhere in EPIRA is the AHEPP mentioned as part of the excluded properties. It can, thus, be inferred that the legislative intent is to include AHEPP in the privatization scheme that PSALM will implement. *Expresio unius est exclusio alterius.*

9. ID.; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; PROVISION AGAINST THE EXPLOITATION OF OUR NATURAL RESOURCES BY PURELY FOREIGN CORPORATION; VIOLATED WITH THE AGREEMENTS APA AND O&M ENTERED INTO BY PSALM AND K-WATER INVOLVING THE AHEPP AND THE ANGAT DAM COMPLEX.— The APA transfers ownership of the Angat Hydro-electric Power Plant to the buyer, K-Water. To operate this power plant, K-Water, as the new owner, will have to utilize the waters coming from Angat Dam, as it is the energy generated by the downstream of water that will be used to generate electricity. The use of natural resources in the operation of a power plant by a foreign corporation is contrary to the words and spirit of the Constitution. The O &

M is more straightforward in that it expressly authorizes the operator, K-Water, to administer and manage non-power components, which it defines as "the Angat Dam, non-power equipment, facilities and installations, and appurtenant devices and structures which ae particularly described in Annex 1." While it is true, as PSALM argues, that Angat Dam itself is not being sold, the operation and management of the same is being handed to a wholly foreign corporation. This is cannot be countenanced under the express limitations in Constitution and the Water Code. In fine, the Agreements between PSALM and K-Water necessarily grant to corporation wholly owned by a foreign state not just access to but direct control over the water resources of Angat Dam, and consequently some portions of Angat River as well. On this ground, both agreements are constitutionally and statutorily infirm. They must be nullified.

10. ID.; ID.; ID.; ID.; WHILE POWER GENERATION IS NOT COVERED BY THE NATIONALITY RESTRICTIONS, USE OF NATURAL RESOURCES THEREFOR IS SUBJECT TO LIMITATION.— While it is established that power generation is not considered a public utility operation, thus not subject to the nationality requirement for public utilities, the operator of a power plant is nevertheless bound to comply with the pertinent constitutional provision when using natural resources of the Philippines, including water resources. As already discussed, the operation of AHEPP necessarily requires the utilization and extraction of water resources. Thus, its operation should be limited to Filipino citizens and corporations or associations at least sixty per centum of whose capital is owned by such citizens, following the clear mandate of the Constitution.

11. ID.; ID.; ID.; ID.; PSALM HAS NO POWER TO CEDE CONTROL OVER ANGAT DAM.— The O & M Agreement hands over to the operator, lock, stock, and barrel, the operation of the entire Angat Dam, among other non-power components within the Angat Dam Complex, to K-Water. There is an utter lack of supposed protocols in the management of water between the operator and the various government agencies, as there is yet no finalized Water Protocol. The provisions of the O & M Agreement by themselves unreasonably limit the powers and responsibilities of the different government agencies involved insofar as control of the waters of Angat Dam is concerned. Their participation in the finalization of the Water Protocol

is already unjustly limited in that the provisions they may propose to include in the Protocol must respect the powers already given to the operator in the O & M Agreement. This may result in dangerous consequences, as the operator can effectively inhibit the responsible governmental agencies from conducting activities within Angat Dam — activities that are vital not only to those entities with operation within Angat Dam, but also to the general public who will suffer the consequences of improper management of the waters in Angat Dam. To require the buyer to operate Angat Dam and the non-power components is null and void. The operation must always be in the hands of the government. The buyer can only be obliged to maintain the non-power components, but still under the control and supervision of the government. x x x The maintenance of the dam, however, is a different matter. It is a proprietary function that the government may assign or impose to private entities. In the case here, We find it just to impose such duty to maintain the facility to the buyer of AHEPP, as it is in the best interest of the operations of AHEPP to ensure the optimal conditions of the structures of the dam. The performance of this duty, however, must still be under the supervision of the government.

APPEARANCES OF COUNSEL

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NIA Legal Services Department for National Irrigation Administration.

Puno and *Puno* for SN Aboitiz Power-Pangasinan, Inc.

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Quiason Makalintal Barot Torres Ibarra & Sison for First Gen Northern Energy Corp.

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Atty. Rosa Christina R. Hermoso for DMCI Power Corp.

The Government Corporate Counsel for MWSS Office of the Government Corporate Counsel.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for *certiorari* and prohibition seeking to permanently enjoin the sale of the Angat Hydro-Electric Power Plant (AHEPP) to Korea Water Resources Corporation (K-Water) which won the public bidding conducted by the Power Sector Assets and Liabilities Management Corporation (PSALM).

The Facts

Respondent PSALM is a government-owned and controlled corporation created by virtue of Republic Act No. 9136,[1] otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). The EPIRA provided a framework for the restructuring of the electric power industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities. Said law mandated PSALM to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and Independent Power Producer (IPP) contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner, which liquidation is to be completed within PSALM's 25-year term of existence.[2]

Sometime in August 2005, PSALM commenced the privatization of the 246-megawatt (MW) AHEPP located in San Lorenzo, Norzagaray, Bulacan. AHEPP's main units built in 1967 and 1968, and 5 auxiliary units, form part of the Angat Complex which includes the Angat Dam, Angat Reservoir and the outlying watershed area. A portion of the AHEPP — the 10 MW Auxiliary Unit No. 4 completed on June 16, 1986 and the

[1] Approved on June 8, 2001.

[2] Sections 3, 49, 50 and 51 (a), R.A. No. 9136.

18 MW Auxiliary Unit No. 5 completed on January 14, 1993 — is owned by respondent Metropolitan Waterworks and Sewerage System (MWSS).[3] The main units produce a total of 200 MW of power while the auxiliary units yield the remaining 46 MW of power. The Angat Dam and AHEPP are utilized for power generation, irrigation, water supply and flood control purposes. Because of its multi-functional design, the operation of the Angat Complex involves various government agencies, namely: (1) NPC; (2) National Water Resources Board (NWRB); (3) MWSS; (4) respondent National Irrigation Administration (NIA); and (5) Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAG-ASA).

On December 15, 2009, PSALM's Board of Directors approved the Bidding Procedures for the privatization of the AHEPP. An Invitation to Bid was published on January 11, 12 and 13, 2010 in three major national newspapers. Subject of the bid was the AHEPP consisting of 4 main units and 3 auxiliary units with an aggregate installed capacity of 218 MW. The two auxiliary units owned by MWSS were excluded from the bid.

The following terms and conditions for the purchase of AHEPP were set forth in the Bidding Package:

IB-05 CONDITION OF THE SALE

The Asset shall be sold on an "*AS IS, WHERE IS*" basis.

The Angat Dam (which is part of the Non-Power Components) is a multi-purpose hydro facility which currently supplies water for domestic use, irrigation and power generation. The four main units of the Angat Plant release water to an underground trailrace that flows towards the Bustos Dam which is owned and operated by the National Irrigation Administration ("NIA") and provides irrigation requirements to certain areas in Bulacan. The water from the auxiliary

[3] *Rollo* (Vol. II), p. 927. Auxiliary Units 1, 2 and 3 are owned by NPC. Auxiliary Unit 4 is being operated and maintained by NPC under a lease agreement between NPC and MWSS; Auxiliary Unit 5 was installed and operated by NPC under a letter agreement between NPC and MWSS. The 4 main units and 5 auxiliary units are all situated in a single structure ("Power House"). [*Rollo* (Vol. II), p. 924.]

units 1, 2 and 3 flows to the Ipo Dam which is owned and operated by MWSS and supplies domestic water to Metro Manila and other surrounding cities.

The priority of water usage under Philippine Law would have to be observed by the Buyer/Operator.

The Winning Bidder/Buyer shall be requested to enter into **an operations and maintenance agreement with PSALM for the Non-Power Components** in accordance with the terms and conditions of the O & M Agreement to be issued as part of the Final Transaction Documents. The Buyer, as Operator, shall be required to operate and maintain the Non-Power Components at its own cost and expense.

PSALM is currently negotiating a water protocol agreement with various parties which are currently the MWSS, NIA, the National Water Resources Board and NPC. If required by PSALM, **the Buyer will be required to enter into the said water protocol agreement as a condition to the award of the Asset.**

The Buyer shall be responsible for securing the necessary rights to occupy the land underlying the Asset.[4] (Emphasis supplied.)

All participating bidders were required to comply with the following: (a) submission of a Letter of Interest; (b) execution of Confidentiality Agreement and Undertaking; and (c) payment of a non-refundable fee of US$ 2,500 as Participation Fee.[5] After holding pre-bid conferences and forum discussions with various stakeholders, PSALM received the following bids from six competing firms:

K-Water	US$	440,880,000.00
First Gen Northern Energy Corporation		365,000,678.00
San Miguel Corporation		312,500,000.00
SN Aboitiz Power-Pangasinan, Inc.		256,000,000.00
Trans-Asia Oil & Energy Development Corporation		237,000,000.00
DMCI Power Corporation		188,890,000.00

[4] *Rollo* (Vol. II), back of p. 1056.

[5] *Id.* at 1055.

On May 5, 2010, and after a post-bid evaluation, PSALM's Board of Directors approved and confirmed the issuance of a Notice of Award to the highest bidder, K-Water.[6]

On May 19, 2010, the present petition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction was filed by the Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. (IDEALS), Freedom from Debt Coalition (FDC), AKBAYAN Citizen's Action Party (AKBAYAN) and Alliance of Progressive Labor.

On May 24, 2010, this Court issued a *Status Quo Ante* Order directing the respondents to maintain the *status quo* prevailing before the filing of the petition and to file their respective Comments on the petition.[7]

Arguments of the Parties

Petitioners contend that PSALM gravely abused its discretion when, in the conduct of the bidding it disregarded and violated the people's right to information guaranteed under the Constitution, as follows: (1) the bidding process was commenced by PSALM without having previously released to the public critical information such as the terms and conditions of the sale, the parties qualified to bid and the minimum bid price, as laid down in the case of *Chavez v. Public Estates Authority*;[8] (2) PSALM refused to divulge significant information requested by petitioners, matters which are of public concern; and (3) the bidding was not conducted in an open and transparent manner, participation was indiscriminately restricted to the private sectors in violation of the EPIRA which provides that its provisions shall be "construed in favor of the establishment, promotion, preservation of competition and people empowerment so that the widest participation of the people, whether directly or indirectly, is ensured."[9]

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[6] *Rollo* (Vol. I), pp. 409-411.

[7] *Id.* at 119-122.

[8] G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[9] Sec. 75, R.A. No. 9136.

Petitioners also assail the PSALM in not offering the sale of the AHEPP to MWSS which co-owned the Angat Complex together with NPC and NIA. Being a mere co-owner, PSALM cannot sell the AHEPP without the consent of co-owners MWSS and NIA, and being an indivisible thing, PSALM has a positive obligation to offer its undivided interest to the other co-owners before selling the same to an outsider. Hence, PSALM's unilateral disposition of the said hydro complex facility violates the Civil Code rules on co-ownership (Art. 498) and Sec. 47 (e) of the EPIRA which granted PSALM the legal option of transferring possession, control and operation of NPC generating assets like the AHEPP to another entity in order "to protect potable water, irrigation and all other requirements imbued with public interest."

As to the participation in the bidding of and award of contract to K-Water which is a foreign corporation, petitioners contend that PSALM clearly violated the constitutional provisions on the appropriation and utilization of water as a natural resource, as implemented by the Water Code of the Philippines limiting water rights to Filipino citizens and corporations which are at least 60% Filipino-owned. Further considering the importance of the Angat Dam which is the source of 97% of Metro Manila's water supply, as well as irrigation for farmlands in 20 municipalities and towns in Pampanga and Bulacan, petitioners assert that PSALM should prioritize such domestic and community use of water over that of power generation. They maintain that the Philippine Government, along with its agencies and subdivisions, have an obligation under international law, to recognize and protect the legally enforceable human right to water of petitioners and the public in general.

Petitioners cite the Advisory on the "Right to Water in Light of the Privatization of the Angat Hydro-Electric Power Plant"[10] dated November 9, 2009 issued by the Commission on Human Rights (CHR) urging the Government to revisit and reassess its policy on water resources *vis-à-vis* its concurrent obligations under international law to provide, and ensure and sustain, among

[10] *Rollo* (Vol. I), pp. 110-117.

others, "safe, sufficient, affordable and convenient access to drinking water." Since investment in hydropower business is primarily driven by generation of revenues both for the government and private sector, the CHR warns that once the AHEPP is privatized, there will be less accessible water supply, particularly for those living in Metro Manila and the Province of Bulacan and nearby areas which are currently benefited by the AHEPP. The CHR believes that the management of AHEPP is better left to MWSS being a government body and considering the public interest involved. However, should the decision to privatize the AHEPP become inevitable, the CHR strongly calls for specific and concrete safeguards to ensure the right to water of all, as the domestic use of water is more fundamental than the need for electric power.

Petitioners thus argue that the protection of their right to water and of public interest requires that the bidding process initiated by PSALM be declared null and void for violating such right, as defined by international law and by domestic law establishing the State's obligation to ensure water security for its people.

In its Comment With Urgent Motion to Lift *Status Quo Ante* Order, respondent PSALM prayed for the dismissal of the petition on the following procedural grounds: (a) a petition for *certiorari* is not the proper remedy because PSALM was not acting as a tribunal or board exercising judicial or quasi-judicial functions when it commenced the privatization of AHEPP; (b) the present petition is rendered moot by the issuance of a Notice of Award in favor of K-Water; (c) assuming the petition is not mooted by such contract award, this Court has no jurisdiction over the subject matter of the controversy involving a political question, and also because if it were the intent of Congress to exclude the AHEPP in the privatization of NPC assets, it should have clearly expressed such intent as it did with the Agus and Pulangui power plants under Sec. 47 of the EPIRA; (d) petitioners' lack of standing to question the bidding process for failure to show any injury as a result thereof, while Rep. Walden Bello likewise does not have such legal standing in his capacity as a duly elected

member of the House of Representatives as can be gleaned from the rulings in *David v. Arroyo*[11] and *Philippine Constitutional Association v. Enriquez*.[12]

On the alleged violation of petitioners' right to information, PSALM avers that it conducted the bidding in an open and transparent manner, through a series of events in accordance with the governing rules on public bidding. The non-disclosure of certain information in the invitation to bid was understandable, such as the minimum or reserve price which are still subject to negotiation and approval of PSALM's Board of Directors. The ruling in *Chavez v. Public Estates Authority*[13] is inapplicable since it involved government property which has become unserviceable or was no longer needed and thus fell under Sec. 79 of the Government Auditing Code whereas the instant case concerns a hydroelectric power plant adjacent to a dam which still provides water supply to Metro Manila. In the bidding for the AHEPP, PSALM claims that it relied on the Rules and Regulations Implementing the EPIRA, as well as COA Circular No. 89-296 on the general procedures for bidding by government agencies and instrumentalities of assets that will be divested or government property that will be disposed of. PSALM likewise avers that it was constrained to deny petitioner IDEALS' letter dated April 20, 2010 requesting documents relative to the privatization of Angat Dam due to non-submission of a Letter of Interest, Confidentiality and Undertaking and non-payment of the Participation Fee. With regard to IDEALS' request for information about the winning bidder, as contained in its letter dated May 14, 2010, the same was already referred to respondent K-Water's counsel for appropriate action. In any case, PSALM maintains that not all details relative to the privatization of the AHEPP can be readily disclosed; the confidentiality of certain matters was necessary to ensure the optimum bid price for the property.

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[11] G.R. Nos. 171396, 171409, *etc*., May 3, 2006, 489 SCRA 160.

[12] G.R. Nos. 113105, 113174, *etc*., August 19, 1994, 235 SCRA 506.

[13] *Supra* note 8.

PSALM further refutes the assertion of petitioners that the Angat Complex is an indivisible system and co-owned with MWSS and NIA. It contends that MWSS's contribution in the funds used for the construction of the AHEPP did not give rise to a regime of co-ownership as the said funds were merely in exchange for the supply of water that MWSS would get from the Angat Dam, while the Umiray-Angat Transbasin Rehabilitation Project the improvement and repair of which were funded by MWSS, did not imply a co-ownership as these facilities are located in remote places. Moreover, PSALM points out that PSALM, MWSS and NIA each was issued a water permit, and are thus holders of separate water rights.

On the alleged violation of petitioners' and the people's right to water, PSALM contends that such is baseless and proceeds from the mistaken assumption that the Angat Dam was sold and as a result thereof, the continuity and availability of domestic water supply will be interrupted. PSALM stresses that only the hydroelectric facility is being sold and not the Angat Dam which remains to be owned by PSALM, and that the NWRB still governs the water allocation therein while the NPC-FFWSDO still retains exclusive control over the opening of spillway gates during rainy season. The foregoing evinces the continued collective control by government agencies over the Angat Dam, which in the meantime, is in dire need of repairs, the cost of which cannot be borne by the Government.

PSALM further debunks the nationality issue raised by petitioners, citing previous opinions rendered by the Department of Justice (DOJ) consistently holding that the utilization of water by a hydroelectric power plant does not constitute appropriation of water from its natural source considering that the source of water (dam) that enters the intake gate of the power plant is an artificial structure. Moreover, PSALM is mindful of the State's duty to protect the public's right to water when it sold the AHEPP. In fact, such concern as taken into consideration by PSALM in devising a privatization scheme for the AHEPP whereby the water allocation is continuously regulated by the NWRB and the dam and its spillway gates remain under the ownership and control of NPC.

In its Comment,[14] respondent MWSS asserts that by virtue of its various statutory powers since its creation in 1971, which includes the construction, maintenance and operation of dams, reservoir and other waterworks within its territorial jurisdiction, it has supervision and control over the Angat Dam given that the Angat Reservoir supplies approximately 97% of the water requirements of Metro Manila. Over the course of its authority over the Angat Dam, Dykes and Reservoir, MWSS has incurred expenses to maintain their upkeep, improve and upgrade their facilities. Thus, in 1962, MWSS contributed about 20% for the construction cost of the Angat Dam and Dykes (then equivalent to about ₱21 million); in 1992, MWSS contributed about ₱218 million for the construction of Auxiliary Unit No. 5; in 1998, MWSS contributed ₱73.5 million for the construction cost of the low level outlet; and subsequently, MWSS invested ₱3.3 billion to build the Umiray-Angat Transbasin Tunnel to supplement the water supply available from the Angat Dam, which tunnel contributes a minimum of about 9 cubic meters per second to the Angat Reservoir, thus increasing power generation. MWSS argues that its powers over waterworks are vested upon it by a special law (MWSS Charter) which prevails over the EPIRA which is a general law, as well as other special laws, issuances and presidential edicts. And as contained in Sec. 1 of the MWSS Charter, which remains valid and effective, it is expressly provided that the establishment, operation and maintenance of waterworks systems must always be supervised by the State.

MWSS further alleges that after the enactment of EPIRA, it had expressed the desire to acquire ownership and control of the AHEPP so as not to leave the operation of the Angat Reservoir to private discretion that may prejudice the water allocation to MWSS as dictated by NWRB rules. Representations were thereafter made with the Office of the President (OP) for the turn over of the management of these facilities to MWSS, and joint consultation was also held with PSALM officials for the possibility of a Management Committee to manage and control

[14] *Rollo* (Vol. I), pp. 529-553.

the Angat Dam Complex under the chairmanship of the water sector, which position was supported by former Secretary Hermogenes Ebdane of the Department of Public Works and Highways (DPWH). In March 2008, PSALM proposed the creation of an inter-agency technical working group (TWG) to draft the Operations and Maintenance (O & M) Agreement for the AHEPP that will be in effect after its privatization. PSALM likewise sought the view of the Office of the Government Corporate Counsel (OGCC) which opined that PSALM may turn over the facility to a qualified entity such as MWSS without need of public bidding. In 2009, various local governments supported the transfer of the control and management of the AHEPP to MWSS, while the League of Cities and Municipalities interposed its opposition to the privatization of the AHEPP fearing that it might increase the cost of water in Metro Manila, and also because it will be disadvantageous to the national government since the AHEPP only contributes 246 MW of electricity to the Luzon Grid. Even the CHR has advised the Government to reassess its privatization policy and to always consider paramount the most basic resources necessary and indispensable for human survival, which includes water.

MWSS further avers that upon the facilitation of the OGCC and participated in by various stakeholders, including its two concessionaires, Manila Water Company, Inc. and Maynilad Water Services, Inc., various meetings and conferences were held relative to the drafting of the Memorandum of Agreement on the Angat Water Protocol. On April 20, 2010, the final draft of the Angat Water Protocol was finally complete. However, as of June 18, 2010, only MWSS and NIA signed the said final draft. MWSS thus contends that PSALM failed to institute any safeguards as prescribed in Sec. 47 of the EPIRA when it proceeded with the privatization of the AHEPP.

As to the issue of nationality requirement in the appropriation of water resources under the Constitution, MWSS cites the case of *Manila Prince Hotel v. Government Service Insurance System*[15] which interpreted paragraph 2, Sec. 10, Art. XII of

[15] G.R. No. 122156, February 3, 1997, 267 SCRA 408.

the 1987 Constitution providing that "[i]n the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos" to imply "a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement x x x and is *per se* judicially enforceable." In this case, the AHEPP is in dire danger of being wholly-owned by a Korean corporation which probably merely considers it as just another business opportunity, and as such cannot be expected to observe and ensure the smooth facilitation of the more critical purposes of water supply and irrigation.

Respondent First Gen Northern Energy Corporation (FGNEC) also filed a Comment[16] disagreeing with the contentions of petitioners and respondent MWSS on account of the following: (1) the NPC charter vested upon it complete jurisdiction and control over watersheds like the Angat Watershed surrounding the reservoir of the power plants, and hence Art. 498 of the Civil Code is inapplicable; (2) NPC, MWSS and NIA are not co-owners of the various rights over the Angat Dam as in fact each of them holds its own water rights; (3) the State through the EPIRA expressly mandates PSALM to privatize all NPC assets, which necessarily includes the AHEPP; (4) the privatization of the AHEPP will not affect the priority of water for domestic and municipal uses as there are sufficient safeguards to ensure the same, and also because the Water Code specifically mandates that such use shall take precedence over other uses, and even the EPIRA itself gives priority to use of water for domestic and municipal purposes over power generation; (5) the Water Protocol also safeguards priority of use of water for domestic purposes; (6) the bidding procedure for the AHEPP was valid, and the bidding was conducted by PSALM in an open and transparent manner; and (7) the right to information of petitioners and the public in general was fully satisfied, and PSALM adopted reasonable rules and regulations for the orderly conduct of its functions pursuant to its mandate under the EPIRA.

[16] *Rollo* (Vol. I), pp. 191-238.

FGNEC nevertheless prays of this Court to declare the nationality requirements for the ownership, operation and maintenance of the AHEPP as prescribed by the Constitution and pertinent laws. Considering the allegation of petitioners that K-Water is owned by the Republic of South Korea, FGNEC asserts that PSALM should not have allowed said entity to participate in the bidding because under our Constitution, the exploration, development and utilization of natural resources are reserved to Filipino citizens or to corporations with 60% of their capital being owned by Filipinos.

Respondent NIA filed its Comment[17] stating that its interest in this case is limited only to the protection of its water allocation drawn from the Angat Dam as determined by the NWRB. Acknowledging that it has to share the meager water resources with other government agencies in fulfilment of their respective mandate, NIA submits that it is willing to sit down and discuss issues relating to water allocation, as evidenced by the draft Memorandum of Agreement on the Angat Water Protocol. Since the reliefs prayed for in the instant petition will not be applicable to NIA which was not involved in the bidding conducted by PSALM, it will thus not be affected by the outcome of the case.

Respondents San Miguel Corporation (SMC), DMCI Power Corporation, Trans-Asia Oil and Energy Development Corporation and SN Aboitiz Power-Pangasinan, Inc. filed their respective Comments[18] with common submission that they are not real parties-in-interest and should be excluded from the case. They assert that PSALM acted pursuant to its mandate to privatize the AHEPP when it conducted the bidding, and there exists no reason for them to take any action to invalidate the said bidding wherein they lost to the highest bidder K-Water.

On its part, respondent K-Water filed a Manifestation In Lieu of Comment[19] stating that it is not in a position to respond to

[17] *Id.* at 474-478.

[18] *Id.* at 127-134, 149-154, 163-166 and 467-471.

[19] *Id.* at 169-175.

petitioners' allegations, having justifiably relied on the mandate and expertise of PSALM in the conduct of public bidding for the privatization of the AHEPP and had no reason to question the legality or constitutionality of the privatization process, including the bidding. K-Water submits that its participation in the bidding for the AHEPP was guided at all times by an abiding respect for the Constitution and the laws of the Philippines, and hopes for a prompt resolution of the present petition to further strengthen and enhance the investment environment – considering the level of investment entailed, not only in financial terms – by providing a definitive resolution and reliable guidance for investors, whether Filipino or foreign, as basis for effective investment and business decisions.

In their Consolidated Reply,[20] petitioners contend that the instant petition is not mooted with the issuance of a Notice of Award to K-Water because the privatization of AHEPP is not finished until and unless the deed of absolute sale has been executed. They cite the ruling in *David v. Arroyo*,[21] that courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and fourth, the case is capable of repetition yet evading review.

Petitioners reiterate their legal standing to file the present suit in their capacity as taxpayers, or as Filipino citizens asserting the promotion and protection of a public right, aside from being directly injured by the proceedings of PSALM. As to the absence of Certification and Verification of Non-Forum Shopping from petitioner Bello in the file copy of PSALM, the same was a mere inadvertence in photocopying the same.

On the matter of compliance with an open and transparent bidding, petitioners also reiterate as held in *Chavez v. Public*

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[20] *Id.* at 624-655.

[21] *Supra* note 11.

Estates Authority,[22] that the Court's interpretation of public bidding applies to any law which requires public bidding, especially since Sec. 79 of the Government Auditing Code does not enumerate the data that must be disclosed to the public. PSALM should have followed the minimum requirements laid down in said case instead of adopting the "format generally used by government entities in their procurement of goods, infrastructure and consultancy services," considering that what was involved in *Chavez* is an amended Joint Venture Agreement which seeks to transfer title and ownership over government property. Petitioners point out that the requirement under COA Circular 89-296 as regards confidentiality covers only sealed proposals and not all information relating to the AHEPP privatization. PSALM's simple referral of IDEALS' request letter to the counsel of K-Water is very telling, indicating PSALM's limited knowledge about a company it allowed to participate in the bidding and which even won the bidding.

On the transfer of water rights to K-Water, petitioners reiterate that this violates the Water Code, and contrary to PSALM's statements, once NPC transfers its water permit to K-Water, in accordance with the terms of the Asset Purchase Agreement, NPC gives up its authority to extract or utilize water from the Angat River. Petitioners further assert that the terms of the sale of AHEPP allowing the buyer the operation and management of the Non-Power Components, constitutes a relinquishment of government control over the Angat Dam, in violation of Art. XII, Sec. 2 of the Constitution. PSALM likewise has not stated that all stakeholders have signed the Water Protocol. Such absence of a signed Water Protocol is alarming in the light of PSALM's pronouncement that the terms of the sale to K-Water would still be subject to negotiation. Is PSALM's refusal to sign the Water Protocol part of its strategy to negotiate the terms of the sale with the bidders? If so, then PSALM is blithely and cavalierly bargaining away the Filipinos' right to water.

Responding to the claims of MWSS in its Comment, PSALM contends that MWSS's allegations regarding the bidding process

[22] *Supra* note 8.

is belied by MWSS's own admission that it held discussions with PSALM to highlight the important points and issues surrounding the AHEPP privatization that needed to be threshed out. Moreover, MWSS also admits having participated, along with other agencies and stakeholders, various meetings and conferences relative to the drafting of a Memorandum of Agreement on the Angat Water Protocol.

As regards the Angat Dam, PSALM emphasizes that MWSS never exercised jurisdiction and control over the said facility. PSALM points out that the Angat Dam was constructed in 1967, or four years before the enactment of Republic Act No. 6234, upon the commissioning thereof by the NPC and the consequent construction by Grogun, Inc., a private corporation. MWSS' attempt to base its claim of jurisdiction over the Angat Dam upon its characterization of EPIRA as a general law must likewise fail. PSALM explains that EPIRA cannot be classified as a general law as it applies to a particular portion of the State, *i.e.*, the energy sector. The EPIRA must be deemed an exception to the provision in the Revised MWSS Charter on MWSS's general jurisdiction over waterworks systems.

PSALM stresses that pursuant to the EPIRA, PSALM took ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and other disposable assets, which necessarily includes the AHEPP Complex, of which the Angat Dam is part. As to the OGCC opinion cited by MWSS to support its position that control and management of the Angat Dam Complex should be turned over to MWSS, the OGCC had already issued a second opinion dated August 20, 2008 which clarified the tenor of its earlier Opinion No. 107, s. 2008, stating that "the disposal of the [Angat] HEPP by sale through public bidding – the principal mode of disposition under [EPIRA] – remains PSALM's primary option." Moreover, as pointed out by the National Economic Development Authority (NEDA) in its letter dated September 16, 2009, the ownership and operation of a hydropower plant goes beyond the mandate of MWSS. This view is consistent with the provisions of EPIRA mandating the transfer of ownership and control of NPC generation assets,

IPP Contracts, real estate and other disposable assets to a private person or entity. Consequently, a transfer to another government entity of the said NPC assets would be a clear violation of the EPIRA. Even assuming such is allowed by EPIRA, it would not serve the objective of the EPIRA, *i.e.*, that of liquidating all NPC's financial obligations and would merely transfer NPC's debts from the hands of one government entity to another, the funds that would be utilized by MWSS in the acquisition of the AHEPP would doubtless come from the pockets of the Filipino people.

As regards the opposition of various local government units to the sale of the AHEPP, PSALM said that a forum was held specifically to address their concerns. After the said forum, these LGUs did not anymore raise the same concerns; such inaction on their part could be taken as an acquiescence to, and acceptance of, the explanations made by PSALM during the forum. PSALM had made it clear that it is only the AHEPP and not the Angat Dam which was being privatized. The same wrong premise underpinned the position of the CHR with its erroneous allegation that MWSS is allowed, under its Revised Charter, to operate and maintain a power plant.

PSALM further contends that the sale of AHEPP to K-Water did not violate the Constitution's provision on the State's natural resources and neither is the ruling in *Manila Prince Hotel* applicable as said case was decided under different factual circumstances. It reiterates that the AHEPP, being a generation asset, can be sold to a foreign entity, under the EPIRA, in accordance with the policy reforms said law introduced in the power sector; the EPIRA aims to enable open access in the electricity market and then enable the government to concentrate more fully on the supply of basic needs to the Filipino people. Owing to the competitive and open nature of the generation sector, foreign corporation may own generation assets.

Issues

The present controversy raised the following issues:

1) Legal standing of petitioners;

2) Mootness of the petition;

3) Violation of the right to information;

4) Ownership of the AHEPP;

5) Violation of Sec. 2, Art. XII of the Constitution;

6) Violation of the Water Code provisions on the grant of water rights; and

7) Failure of PSALM to comply with Sec. 47 (e) of EPIRA.

Mootness and Locus Standi

PSALM's contention that the present petition had already been mooted by the issuance of the Notice of Award to K-Water is misplaced. Though petitioners had sought the immediate issuance of injunction against the bidding commenced by PSALM — specifically enjoining it from proceeding to the next step of issuing a notice of award to any of the bidders — they further prayed that PSALM be permanently enjoined from disposing of the AHEPP through privatization. The petition was thus filed not only as a means of enforcing the State's obligation to protect the citizens' "right to water" that is recognized under international law and legally enforceable under our Constitution, but also to bar a foreign corporation from exploiting our water resources in violation of Sec. 2, Art. XII of the 1987 Constitution. If the impending sale of the AHEPP to K-Water indeed violates the Constitution, it is the duty of the Court to annul the contract award as well as its implementation. As this Court held in *Chavez v. Philippine Estates Authority*,[23] "[s]upervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution."

We also rule that petitioners possess the requisite legal standing in filing this suit as citizens and taxpayers.

"Legal standing" or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained

[23] *Supra* note 8, at 177.

or will sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[24] This Court, however, has adopted a liberal attitude on the *locus standi* of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people, as when the issues raised are of paramount importance to the public.[25] Thus, when the proceeding involves the assertion of a public right, the mere fact that the petitioner is a citizen satisfies the requirement of personal interest.[26]

There can be no doubt that the matter of ensuring adequate water supply for domestic use is one of paramount importance to the public. That the continued availability of potable water in Metro Manila might be compromised if PSALM proceeds with the privatization of the hydroelectric power plant in the Angat Dam Complex confers upon petitioners such personal stake in the resolution of legal issues in a petition to stop its implementation.

Moreover, we have held that if the petition is anchored on the people's right to information on matters of public concern, any citizen can be the real party in interest. The requirement of personal interest is satisfied by the mere fact that the petitioner

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[24] *La Bugal-B'laan Tribal Association, Inc. v. Ramos,* G.R. No. 127882, January 27, 2004, 421 SCRA 148, 178, citing *Integrated Bar of the Philippines v. Zamora,* G.R. No. 141284, August 15, 2000, 338 SCRA 81, 100; *Dumlao v. COMELEC,* G.R. No. 52245, January 22, 1980, 95 SCRA 392; and *People v. Vera,* 65 Phil. 56 (1937).

[25] *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.,* G.R. Nos. 160261, 160262, *etc.,* November 10, 2003, 415 SCRA 44, 139, citing *Kilosbayan, Inc. v. Morato,* G.R. No. 118910, November 16, 1995, 250 SCRA 130.

[26] *Id.* at 136, citing *Chavez v. Presidential Commission on Good Government,* G.R. No. 130716, December 9, 1998, 299 SCRA 744.

is a citizen, and therefore, part of the general public which possesses the right. There is no need to show any special interest in the result. It is sufficient that petitioners are citizens and, as such, are interested in the faithful execution of the laws.[27]

Violation of Right to Information

The people's right to information is provided in Section 7, Article III of the Constitution, which reads:

> Sec. 7. The right of the people to information on matters of public concern shall be recognized. **Access to official records, and to documents**, and papers **pertaining to official acts, transactions,** or decisions, as well as to government research data used as basis for policy development, **shall be afforded the citizen**, subject to such limitations as may be provided by law. (Emphasis supplied.)

The people's constitutional right to information is intertwined with the government's constitutional duty of full public disclosure of all transactions involving public interest.[28] Section 28, Article II of the Constitution declares the State policy of full transparency in all transactions involving public interest, to wit:

> Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a *policy of full public disclosure of all its transactions involving public interest.* (Italics supplied.)

The foregoing constitutional provisions seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. They are also essential to hold public officials "at all times x x x accountable to the people," for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is

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[27] *Guingona, Jr. v. Commission on Elections,* G.R. No. 191846, May 6, 2010, 620 SCRA 448, 460.

[28] *Id.* at 461.

essential to the existence and proper functioning of any democracy.[29]

Consistent with this policy, the EPIRA was enacted to provide for "an orderly and transparent privatization" of NPC's assets and liabilities.[30] Specifically, said law mandated that "[a]ll assets of NPC shall be sold in an *open* and *transparent* manner through public bidding."[31]

In *Chavez v. Public Estates Authority*[32] involving the execution of an Amended Joint Venture Agreement on the disposition of reclaimed lands without public bidding, the Court held:

x x x **Before the consummation of the contract, PEA must, on its own and without demand from anyone, disclose to the public matters relating to the disposition of its property**. These include the size, location, technical description and nature of the property being disposed of, the terms and conditions of the disposition, the parties qualified to bid, the minimum price and similar information. PEA must prepare all these data and disclose them to the public at the start of the disposition process, long before the consummation of the contract, because the Government Auditing Code requires *public bidding*. If PEA fails to make this disclosure, any citizen can demand from PEA this information at any time during the bidding process.

Information, however, on *on-going evaluation or review* of bids or proposals being undertaken by the bidding or review committee is not immediately accessible under the right to information. While the evaluation or review is still on-going, there are no "official acts, transactions, or decisions" on the bids or proposals. However,

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[29] *Chavez v. Philippine Estates Authority, supra* note 8, at 184, citing Sec. 1, Art. XI of the 1987 Constitution and *Valmonte v. Belmonte, Jr.*, G.R. No. 74930, February 13, 1989, 170 SCRA 256.

Sec. 1, Art. XI of the 1987 Constitution reads: "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

[30] Sec. 2 (i), R.A. No. 9136.

[31] Sec. 47 (d), *id.* Italics supplied.

[32] *Supra* note 8, at 186-187.

once the committee makes its *official recommendation*, there arises a "*definite proposition*" on the part of the government. From this moment, the public's right to information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition. In *Chavez v. PCGG*, the Court ruled as follows:

> "Considering the intent of the framers of the Constitution, we believe that it is incumbent upon the PCGG and its officers, as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. **Such information, though, must pertain to *definite propositions of the government* not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the "exploratory" stage.** There is need, of course, to observe the same restrictions on disclosure of information in general, as discussed earlier – such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information." (Emphasis supplied.)

Chavez v. Public Estates Authority thus laid down the rule that the constitutional right to information includes official information on *on-going negotiations* before a final contract. The information, however, must constitute definite propositions by the government and should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order. In addition, Congress has prescribed other limitations on the right to information in several legislations.[33]

In this case, petitioners' first letter dated April 20, 2010 requested for documents such as Terms of Reference and proposed bids submitted by the bidders. At that time, the bids were yet

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[33] *Id.* at 189, citing *People's Movement for Press Freedom, et al. v. Hon. Raul Manglapus,* G.R. No. 84642, *En Banc* Resolution dated April 13, 1988; *Chavez v. Presidential Commission on Good Government*, *supra* note 26; and Sec. 270 of the National Internal Revenue Code, Sec. 14 of R.A. No. 8800 (Safeguard Measures Act), Sec. 6 (j) of R.A. No. 8043 (Inter-Country Adoption Act), and Sec. 94 (f) of R.A. No. 7942 (Philippine Mining Act).

to be submitted at the bidding scheduled on April 28, 2010. It is also to be noted that PSALM's website carried news and updates on the sale of AHEPP, providing important information on bidding activities and clarifications regarding the terms and conditions of the Asset Purchase Agreement (APA) to be signed by PSALM and the winning bidder (Buyer).[34]

In *Chavez v. National Housing Authority*,[35] the Court held that pending the enactment of an enabling law, the release of information through postings in public bulletin boards and government websites satisfies the constitutional requirement, thus:

> It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day if and when Congress decides to approve the proposed "Freedom of Access to Information Act." **In the meantime, it would suffice that government agencies post on their bulletin boards the documents incorporating the information on the steps and negotiations that produced the agreements and the agreements themselves, and if finances permit, to upload said information on their respective websites for easy access by interested parties.** Without any law or regulation governing the right to disclose information, the NHA or any of the respondents cannot be faulted if they were not able to

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[34] *"PSALM launches sale of Angat hydro plant"* posted 12 January 2010 at http://www.psalm.gov.ph/News.asp?id=20100012; *"12 bidders attend pre-bid conference for Angat HEPP sale"* posted 19 February 2010 at http://www.psalm.gov.ph/News.asp?id=20100048; *"Angat Dam not for sale"* posted 11 March 2010 at http://www.psalm.gov.ph/News.asp?id=20100067; *"PSALM discusses Angat water protocol with prospective bidders"* posted 5 April 2010 at http://www.psalm.gov.ph/News.asp?id=20100086; *"Korean company declared highest bidder for Angat power plant"* posted 28 Aril 2010 at http://www.psalm.gov.ph/News.asp?id=20100111; *"Sale of Angat HEPP supported by EPIRA"* posted 30 April 2010 at http://www.psalm.gov.ph/News.asp?id=20100114; *rollo* (Vol. I), pp. 121-129.

[35] G.R. No. 164527, August 15, 2007, 530 SCRA 235.

disclose information relative to the SMDRP to the public in general.[36] (Emphasis supplied.)

The Court, however, distinguished the duty to disclose information from the duty to permit access to information on matters of public concern under Sec. 7, Art. III of the Constitution. Unlike the disclosure of information which is mandatory under the Constitution, the other aspect of the people's right to know requires a demand or request for one to gain access to documents and paper of the particular agency. Moreover, the duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency.[37] Such relief must be granted to the party requesting access to official records, documents and papers relating to official acts, transactions, and decisions that are relevant to a government contract.

Here, petitioners' second letter dated May 14, 2010 specifically requested for detailed information regarding the winning bidder, such as company profile, contact person or responsible officer, office address and Philippine registration. But before PSALM could respond to the said letter, petitioners filed the present suit on May 19, 2010. PSALM's letter-reply dated May 21, 2010 advised petitioners that their letter-request was referred to the counsel of K-Water. We find such action insufficient compliance with the constitutional requirement and inconsistent with the policy under EPIRA to implement the privatization of NPC assets in an "open and transparent" manner. PSALM's evasive response to the request for information was unjustified because all bidders were required to deliver documents such as company profile, names of authorized officers/representatives, financial and technical experience.

Consequently, this relief must be granted to petitioners by directing PSALM to allow petitioners access to the papers and

[36] *Id.* at 330.

[37] *Id.* at 331.

documents relating to the company profile and legal capacity of the winning bidder. Based on PSALM's own press releases, K-Water is described as a Korean firm with extensive experience in implementing and managing water resources development projects in South Korea, and also contributed significantly to the development of that country's heavy and chemical industries and the modernization of its national industrial structure.

Angat HEPP is Under the Jurisdiction of the Department of Energy Through NPC

It must be clarified that though petitioners had alleged a co-ownership by virtue of the joint supervision in the operation of the Angat Complex by MWSS, NPC and NIA, MWSS actually recognized the ownership and jurisdiction of NPC over the hydroelectric power plant itself. While MWSS had initially sought to acquire ownership of the AHEPP without public bidding, it now prays that PSALM be ordered to turn over the possession and control of the said facility to MWSS. MWSS invokes its own authority or "special powers" by virtue of its general jurisdiction over waterworks systems, and in consideration of its substantial investments in the construction of two auxiliary units in the AHEPP, as well as the construction of the Umiray-Angat Transbasin Tunnel to supplement the water intake at the Angat Reservoir which resulted in increased power generation.

Records disclosed that as early as December 2005, following the decision of PSALM's Board of Directors to commence the sale process of the AHEPP along with Magat and Amlan HEPPs in August 2005, MWSS was actively cooperating and working with PSALM regarding the proposed Protocol for the Privatization of the AHEPP, specifically on the terms and conditions for the management, control and operation of the Angat Dam Complex taking into consideration the concerns of its concessionaires. A Technical Working Group (TWG) similar to that formed for the Operation and Management Agreement of Pantabangan and Magat dams was created, consisting of representatives from PSALM, MWSS and other concerned agencies, to formulate strategies for the effective implementation of the privatization

of AHEPP and appropriate structure for the operation and management of the Angat Dam Complex.[38]

In March 2008, PSALM sought legal advice from the OGCC on available alternatives to a sale structure for the AHEPP. On May 27, 2008, then Government Corporate Counsel Alberto C. Agra issued Opinion No. 107, s. 2008[39] stating that PSALM is not limited to "selling" as a means of fulfilling its mandate under the EPIRA, and that in dealing with the AHEPP, PSALM has the following options:

1. Transfer the ownership, possession, control, and operation of the Angat Facility to another entity, which may or may not be a private enterprise, as specifically provided under Section 47 (e) of RA 9136;

2. Transfer the Angat Facility, through whatever form, to another entity for the purpose of protecting the public interest.[40]

The OGCC cited COA Circular No. 89-296 which provides that government property or assets that are no longer serviceable or needed "may be transferred to other government entities/ agencies without cost or at an appraised value upon authority of the head or governing body of the agency or corporation, and upon due accomplishment of an Invoice and Receipt of Property." Pointing out the absence of any prohibition under R.A. No. 9136 and its IRR for PSALM to transfer the AHEPP to another government instrumentality, and considering that MWSS is allowed under its charter to acquire the said facility, the OGCC expressed the view that PSALM may, "in the interest of stemming a potential water crisis, turn over the ownership, operations and management of the Angat Facility to a qualified entity, such as the MWSS, without need of public bidding as the latter is also a government entity."[41]

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[38] *Rollo* (Vol. I), pp. 309-312, *rollo* (Vol. II), pp. 1457, 1470, 1489.

[39] *Id.* at 313-318.

[40] *Id.* at 317.

[41] *Id.* at 317-318.

Consequently, MWSS requested the Office of the President (OP) to exclude the AHEPP from the list of NPC assets to be privatized under the EPIRA. Said request was endorsed to the Department of Finance (DOF) which requested the National Economic Development Authority (NEDA) to give its comments. Meanwhile, on August 20, 2008, the OGCC issued a Clarification[42] on its Opinion No. 107, s. 2008 stating that the tenor of the latter issuance was "permissive" and "[n]ecessarily, the disposal of the AHEPP by sale through public bidding – the principal mode of disposition under x x x R.A. 9136 – remains PSALM's primary option." The OGCC further explained its position, thus:

> If, in the exercise of PSALM's discretion, it determines that privatization by sale through public bidding is the best mode to fulfill its mandate under R.A. 9136, and that this mode will not contravene the State's declared policy on water resources, then the same is legally permissible.
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> Finally, in OGCC Opinion No. 107 s. 2008, this Office underscored "the overriding policy of the State x x x recogniz[ing] that 'water is vital to national development x x x' [and] the crucial role which the Angat Facility plays in the uninterrupted and adequate supply and distribution of potable water to residents of Metro Manila." This Office reiterates "the primacy of the State's interest in mitigating the possible deleterious effects of an impending "water crisis" encompassing areas even beyond Metro Manila." **Any transfer of the AHEPP to be undertaken by PSALM – whether to a private or public entity – must not contravene the State's declared policy of ensuring the flow of clean, potable water under RA 6395 and 9136, and Presidential Decree 1067.** Hence, said transfer and/or privatization scheme must ensure the preservation of the AHEPP as a vital source of water for Metro Manila and the surrounding provinces.[43] (Emphasis supplied.)

On September 16, 2009, NEDA Deputy Director General Rolando G. Tungpalan, by way of comment to MWSS's position, wrote the DOF stating that MWSS's concern on ensuring an

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[42] *Id.* at 319-321.

[43] *Id.* at 321.

uninterrupted and adequate supply of water for domestic use is amply protected and consistently addressed in the EPIRA. Hence, NEDA concluded that there appears to be no basis to exclude AHEPP from the list of NPC generation assets to be privatized and no compelling reason to transfer its management, operations and control to MWSS.[44] NEDA further pointed out that:

> **Ownership and operation of a hydropower plant, however, goes beyond the mandate of MWSS.** To operate a power generation plant, given the sector's legislative setup would require certification and permits that has to be secured by the operator. MWSS does not have the technical capability to undertake the operation and maintenance of the AHEPP nor manage the contract of a contracted private party to undertake the task for MWSS. While MWSS may tap NPC to operate and maintain the AHEPP, this, similar to contracting out a private party, may entail additional transaction costs, and ultimately result to higher generation rates.[45] (Emphasis supplied.)

Thereafter, MWSS sought the support of the DPWH in a letter dated September 24, 2009 addressed to then Secretary Hermogenes E. Ebdane, Jr., for the exclusion of the AHEPP from the list of NPC assets to be privatized and instead transfer the ownership, possession and control thereof to MWSS with reasonable compensation. Acting on the said request, Secretary Ebdane, Jr. wrote a memorandum for the President recommending that "the *Angat Dam* be excluded from the list of NPC assets to be privatized, and that the ownership, management and control of the Dam be transferred from NPC to MWSS, with reasonable compensation."[46]

Based on the foregoing factual backdrop, there seems to be no dispute as to the complete jurisdiction of NPC over the government-owned Angat Dam and AHEPP.

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[44] *Id.* at 332-333.

[45] *Id.* at 333.

[46] *Id.* at 107-108.

The Angat Reservoir and Dam were constructed from 1964 to 1967 and have become operational since 1968. They have multiple functions:

1) To provide irrigation to about 31,000 hectares of land in 20 municipalities and towns in Pampanga and Bulacan;

2) To supply the domestic and industrial water requirements of residents in Metro Manila;

3) To generate hydroelectric power to feed the Luzon Grid; and

4) To reduce flooding to downstream towns and villages.[47]

The Angat Dam is a rockfill dam with a spillway equipped with three gates at a spilling level of 219 meters and has storage capacity of about 850 million cubic meters. Water supply to the MWSS is released through five auxiliary turbines where it is diverted to the two tunnels going to the Ipo Dam.[48] The Angat Dam is one of the dams under the management of NPC while the La Mesa and Ipo dams are being managed by MWSS. MWSS is a government corporation existing by virtue of R.A. No. 6234.[49] NAPOCOR or NPC is also a government-owned corporation created under Commonwealth Act (C.A.) No. 120,[50] which, among others, was vested with the following powers under Sec. 2, paragraph (g):

(g) **To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs,** pipes, mains, transmission lines, **power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof**; to acquire, construct, install, maintain, operate and improve gas, oil, or steam engines, and/or other prime movers, generators and other machinery in plants and/or auxiliary

[47] "Water Supply System – Raw Water Sources" accessed at http://manilawater.com/section.php?section_*id*=6&category_id=35&article_id=6.

[48] *Id*.

[49] Revised Charter of MWSS, approved on June 19, 1971.

[50] Approved on November 3, 1936.

plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting system for the use of the Government and the general public; to sell electric power and to fix the rates and provide for the collection of the charges for any service rendered: Provided, That the rates of charges shall not be subject to revision by the Public Service Commission;

x x x (Emphasis supplied.)

On September 10, 1971, R.A. No. 6395 was enacted which revised the charter of NPC, extending its corporate life to the year 2036. NPC thereafter continued to exercise complete jurisdiction over dams and power plants including the Angat Dam, Angat Reservoir and AHEPP. While the NPC was expressly granted authority to construct, operate and maintain power plants, MWSS was not vested with similar function. Section 3 (f), (o) and (p) of R.A. No. 6234 provides that MWSS's powers and attributes include the following –

(f) To construct, maintain, and operate dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pipes, fire hydrants, pumping stations, machineries and other waterworks **for the purpose of supplying water to the inhabitants of its territory, for domestic and other purposes; and to purify, regulate and control the use, as well as prevent the wastage of water**;

xxx xxx xxx

(o) To assist in the establishment, operation and maintenance of **waterworks and sewerage systems within its jurisdiction** under cooperative basis;

(p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction; x x x. (Emphasis supplied.)

On December 9, 1992, by virtue of R.A. No. 7638,[51] NPC was placed under the Department of Energy (DOE) as one of its attached agencies.

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[51] "Department of Energy Act of 1992."

Aside from its ownership and control of the Angat Dam and AHEPP, NPC was likewise mandated to exercise complete jurisdiction and control over its watershed, pursuant to Sec. 2 (n) and (o) of R.A. No. 6395 for development and conservation purposes:

(n) **To exercise complete jurisdiction and control over watersheds surrounding the reservoirs of plants and/or projects constructed or proposed to be constructed by the Corporation.** Upon determination by the Corporation of the areas required for watersheds for a specific project, the Bureau of Forestry, the Reforestation Administration and the Bureau of Lands shall, upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation of all areas embraced within the watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply;

(o) In the prosecution and maintenance of its projects, the Corporation shall adopt measures to prevent environmental pollution and promote the conservation, development and maximum utilization of natural resources; and

x x x (Emphasis supplied.)

On December 4, 1965, Presidential Proclamation No. 505 was issued amending Proclamation No. 71 by transferring the administration of the watersheds established in Montalban, San Juan del Monte, Norzagaray, Angat, San Rafael, Peñaranda and Infanta, Provinces of Rizal, Bulacan, Nueva Ecija and Quezon, to NPC. Subsequent executive issuances [Presidential Decree (P.D.) No. 1515 which was signed in June 1978 and amended by P.D. No. 1749 in December 1980] led to the creation of the NPC Watershed Management Division which presently has 11 watershed areas under its management.[52]

[52] "…the Watershed Management Group was created with five watershed areas under its management, namely: Ambuklao and Binga (Upper Agno), Angat, Caliraya and Tiwi. Considering its huge investments in hydro and geothermal plants, the complete control and jurisdiction of these five watersheds with addition of Buhi-Barit and Makiling-Banahaw Geothermal

Privatization of AHEPP Mandatory Under EPIRA

With the advent of EPIRA in 2001, PSALM came into existence for the principal purpose of managing the orderly sale, privatization and disposition of generation assets, real estate and other disposable assets of the NPC including IPP Contracts. Accordingly, PSALM was authorized to take title to and possession of, those assets transferred to it. EPIRA mandated that *all* such assets shall be sold through public bidding with the exception of Agus and Pulangui complexes in Mindanao, the privatization of which was left to the discretion of PSALM in consultation with Congress,[53] thus:

> Sec. 47. *NPC Privatization.* – Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. Within six (6) months from the effectivity of this Act, the **PSALM Corp. shall submit a plan** for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines**, on the total privatization of the generation assets**, x x x **of NPC and thereafter, implement the same,** in accordance with the following guidelines, except as provided for in [p]aragraph (f) herein:

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reservation was vested to NPC by virtue of Executive [O]rder No. 224 which was signed in July 16, 1987. At present, a total of eleven (11) watersheds are being managed by NPC with the addition of San Roque watershed (Lower Agno) (portion) for San Roque Multi-Purpose Project (SRMPP) by virtue of PD 2320 and two (2) watershed reservations namely Pantabangan and Magat under an area sharing scheme with National Irrigation Administration (NIA) and two (2) more watersheds, Lake Lanao-Agus and Pulangi Watershed Area under a Memorandum of agreement with the Department of Environmental and Natural Resources (DENR)." Source: http://www.napocor.gov.ph/WMD%20WEBPAGE/about%20us.htm.

[53] Sec. 47 (f), R.A. No. 9136 provides: "The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, x x x. The privatization of Agus and Pulangui complexes shall be **left to the discretion of PSALM Corp. in consultation with Congress**." (Emphasis supplied.)

xxx xxx xxx

(d) **All assets of NPC shall be sold** in an open and transparent manner through public bidding, x x x;

xxx xxx xxx

(f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, x x x. The privatization of Agus and Pulangui complexes shall be **left to the discretion of PSALM Corp. in consultation with Congress**;

xxx xxx xxx (Emphasis supplied.)

The intent of Congress not to exclude the AHEPP from the privatization of NPC generation assets is evident from the express provision exempting only the aforesaid two power plants in Mindanao. Had the legislature intended that PSALM should likewise be allowed discretion in case of NPC generation assets other than those mentioned in Sec. 47, it could have explicitly provided for the same. But the EPIRA exempted from privatization only those two plants in Mindanao and the Small Power Utilities Group (SPUG).[54] *Expressio unius est exclusio alterius*, the express inclusion of one implies the exclusion of all others.[55]

It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others. The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius.*

The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is principle that what is expressed puts an end to that which is implied. *Expressium facit cessare tacitum*. Thus, where a statute, by its terms, is expressly

[54] Sec. 4 (tt): "Small Power Utilities Group or "SPUG" refers to the functional unit of NPC created to pursue missionary electrification function."

[55] See *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178, 186.

limited to certain matters, it may not, by interpretation or construction, be extended to other matters.

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The rule *of expressio unius est exclusio alterius* and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own voluntary act and not upon that of others. They proceed from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.[56]

The Court therefore cannot sustain the position of petitioners, adopted by respondent MWSS, that PSALM should have exercised the discretion not to proceed with the privatization of AHEPP, or at least the availability of the option to transfer the said facility to another government entity such as MWSS. Having no such discretion in the first place, PSALM committed no grave abuse of discretion when it commenced the sale process of AHEPP pursuant to the EPIRA.

In any case, the Court finds that the operation and maintenance of a hydroelectric power plant is not among the statutorily granted powers of MWSS. Although MWSS was granted authority to construct and operate dams and reservoirs, such was for the specific purpose of supplying water for domestic and other uses, and the treatment, regulation and control of water usage, and not power generation.[57] Moreover, since the sale of AHEPP by PSALM merely implements the legislated reforms for the electric power industry through schemes that aim "[t]o enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors,"[58] the proposed transfer to MWSS which is another government entity contravenes

[56] *Malinias v. Commission on Elections*, G.R. No. 146943, October 4, 2002, 390 SCRA 480, 491-492, as cited in *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004, 433 SCRA 119, 135.

[57] Sec. 3 (f), R.A. No. 6234.

[58] Sec. 1 (d), R.A. No. 9136.

that State policy. COA Circular No. 89-296 likewise has no application to NPC generating assets which are still serviceable and definitely needed by the Government for the purpose of liquidating NPC's accumulated debts amounting to billions in US Dollars. Said administrative circular cannot prevail over the EPIRA, a special law governing the disposition of government properties under the jurisdiction of the DOE through NPC.

Sale of Government-Owned AHEPP to a Foreign Corporation Not Prohibited But Only Filipino Citizens and Corporations 60% of whose capital is owned by Filipinos May be Granted Water Rights

The core issue concerns the legal implications of the acquisition by K-Water of the AHEPP in relation to the constitutional policy on our natural resources.

Sec. 2, Art. XII of the 1987 Constitution provides in part:

> SEC. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In case of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.
>
> xxx xxx xxx (Emphasis supplied.)

The State's policy on the management of water resources is implemented through the regulation of water rights. Presidential

Decree No. 1067, otherwise known as "The Water Code of the Philippines" is the basic law governing the ownership, appropriation utilization, exploitation, development, conservation and protection of water resources and rights to land related thereto. The National Water Resources Council (NWRC) was created in 1974 under P.D. No. 424 and was subsequently renamed as National Water Resources Board (NWRB) pursuant to Executive Order No. 124-A.[59] The NWRB is the chief coordinating and regulating agency for all water resources management development activities which is tasked with the formulation and development of policies on water utilization and appropriation, the control and supervision of water utilities and franchises, and the regulation and rationalization of water rates.[60]

The pertinent provisions of Art. 3, P.D. No. 1067 provide:

> Art. 3. The underlying principles of this code are:
>
> a. All waters belong to the State.
>
> b. All waters that belong to the State can not be the subject to acquisitive prescription.
>
> c. The State may allow the use or development of waters by administrative concession.
>
> d. The utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the National Water Resources Council x x x
>
> e. Preference in the use and development of waters shall consider current usages and be responsive to the changing needs of the country.
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> xxx xxx xxx

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[59] Issued by President Corazon C. Aquino on July 22, 1987.

[60] Country Paper. National Water Sector Apex Body. *Philippines: National Water Resources Board,* www.pacificwater.org/userfiles/file/IWRM/Philippines.pdf.

Art. 9. Waters may be appropriated and used in accordance with the provisions of this Code.

Appropriation of water, as used in this Code, is the acquisition of rights over the use of waters or the **taking or diverting of waters from a natural source** in the manner and for any purpose allowed by law.

Art. 10. Water may be appropriated for the following purposes:

xxx xxx xxx

(d) Power generation

xxx xxx xxx

Art. 13. Except as otherwise herein provided, no person including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

Water right is the privilege granted by the government to appropriate and use water.

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Art. 15. **Only citizens of the Philippines,** of legal age, as well as juridical persons, who are **duly qualified by law to exploit and develop water resources, may apply for water permits.** (Emphasis supplied.)

It is clear that the law limits the grant of water rights only to Filipino citizens and juridical entities duly qualified by law to exploit and develop water resources, including private corporations with sixty percent of their capital owned by Filipinos. In the case of Angat River, the NWRB has issued separate water permits to MWSS, NPC and NIA.[61]

Under the EPIRA, the generation of electric power, a business affected with public interest, was opened to private sector and any new generation company is required to secure a certificate of compliance from the Energy Regulatory Commission (ERC), as well as health, safety and environmental clearances from the

[61] *Rollo* (Vol. I), pp. 95-97.

concerned government agencies. Power generation shall not be considered a public utility operation,[62] and hence no franchise is necessary. Foreign investors are likewise allowed entry into the electric power industry. However, there is no mention of water rights in the privatization of multi-purpose hydropower facilities. Section 47 (e) addressed the issue of water security, as follows:

> (e) In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the national government may **direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest;**
>
> xxx xxx xxx (Emphasis supplied.)

This provision is consistent with the priority accorded to domestic and municipal uses of water[63] under the Water Code, thus:

> Art. 22. Between two or more appropriators of water from the same sources of supply, priority in time of appropriation shall give the better right, except that **in times of emergency the use of water for domestic and municipal purposes shall have a better right over all other uses**; Provided, That, where water shortage is recurrent and the appropriator for municipal use has a lower priority in time of appropriation, then it shall be his duty to find an alternative source of supply in accordance with conditions prescribed by the [Board]. (Emphasis supplied.)

Rule 23, Section 6 of the Implementing Rules and Regulations (IRR) of the EPIRA provided for the structure of appropriation

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[62] Sec. 6, R.A. No. 9136.

[63] Art.10, P.D. No. 1067 provides in part:

> Use of water for domestic purposes is the utilization of water for drinking, washing, bathing, cooking or other household needs, home gardens, and watering of lawns or domestic animals.
>
> Use of water for municipal purposes is the utilization of water for supplying the water requirements of the community.
>
> Use of water for irrigation is the utilization of water for producing agricultural crops.

of water resources in multi-purpose hydropower plants which will undergo privatization, as follows:

Section 6. *Privatization of Hydroelectric Generation Plants.*

(a) Consistent with Section 47(e) of the Act and Section 4(f) of this Rule, the Privatization of hydro facilities of NPC shall cover the power component **including assignable long-term water rights agreements for the use of water, which shall be passed onto and respected by the buyers of the hydroelectric power plants.**

(b) The National Water Resources Board (NWRB) **shall ensure that the allocation for irrigation**, as indicated by the **NIA and requirements for domestic water supply** as provided for by the appropriate Local Water District(s) **are recognized and provided for in the water rights agreements**. NPC or PSALM may also impose additional conditions in the shareholding agreement with the winning bidders to ensure national security, including, but not limited to, the use of water during drought or calamity.

(c) Consistent with Section 34(d) of the Act, **the NPC shall continue to be responsible for watershed rehabilitation and management** and shall be entitled to the environmental charge equivalent to one-fourth of one centavo per kilowatt-hour sales (₱0.0025/kWh), which shall form part of the Universal Charge. This environmental fund shall be used solely for watershed rehabilitation and management and shall be managed by NPC under existing arrangements. NPC shall submit an annual report to the DOE detailing the progress of the watershed rehabilitation program.

(d) **The NPC and PSALM** or NIA, as the case may be, **shall continue to be responsible for the dam structure and all other appurtenant structures necessary for the safe and reliable operation of the hydropower plants**. The NPC and PSALM or NIA, as the case may be, shall enter **into an operations and maintenance agreement** with the private operator of the power plant to cover the dam structure and all other appurtenant facilities. (Emphasis supplied.)

In accordance with the foregoing implementing regulations, and in furtherance of the Asset Purchase Agreement[64] (APA),

[64] *Rollo* (Vol. II), pp. 1330-1378.

PSALM, NPC and K-Water executed on April 28, 2010 an Operations and Maintenance Agreement[65] (O & M Agreement) for the administration, rehabilitation, operation, preservation and maintenance, by K-Water as the eventual owner of the AHEPP, of the Non-Power Components meaning the Angat Dam, non-power equipment, facilities, installations, and appurtenant devices and structures, including the *water sourced from the Angat Reservoir*.

It is the position of PSALM that as the new owner only of the hydroelectric power plant, K-Water will be a mere operator of the Angat Dam. In the power generation activity, K-Water will have to utilize the waters already extracted from the river and impounded on the dam. This process of generating electric power from the dam water entering the power plant thus does not constitute appropriation within the meaning of natural resource utilization in the Constitution and the Water Code.

The operation of a typical hydroelectric power plant has been described as follows:

> Hydroelectric energy is produced by the force of falling water. The capacity to produce this energy is dependent on both the available flow and the height from which it falls. Building up behind a high dam, water accumulates potential energy. This is transformed into mechanical energy when the water rushes down the sluice and strikes the rotary blades of turbine. The turbine's rotation spins electromagnets which generate current in stationary coils of wire. Finally, the current is put through a transformer where the voltage is increased for long distance transmission over power lines.[66]

Foreign ownership of a hydropower facility is not prohibited under existing laws. The construction, rehabilitation and development of hydropower plants are among those infrastructure projects which even wholly-owned foreign corporations are allowed to undertake under the Amended Build-Operate-Transfer

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[65] *Id.* at 1379-1407.

[66] "Hydroelectric Power Water Use" (Source: Environment Canada), accessed at http://ga.water.usgs.gov/edu/wuhy.html.

(Amended BOT) Law (R.A. No. 7718).[67] Beginning 1987, the policy has been openness to foreign investments as evident in the fiscal incentives provided for the restructuring and privatization of the power industry in the Philippines, under the Power Sector Restructuring Program (PSRP) of the Asian Development Bank.

The establishment of institutional and legal framework for the entry of private sector in the power industry began with the issuance by President Corazon C. Aquino of Executive Order No. 215 in 1987. Said order allowed the entry of private sector – the IPPs –to participate in the power generation activities in the country. The entry of IPPs was facilitated and made attractive through the first BOT Law in 1990 (R.A. No. 6957) which aimed to "minimize the burden of infrastructure projects on the national government budget, minimize external borrowing for infrastructure projects, and use the efficiency of the private sector in delivering a public good." In 1993, the Electric Power Crisis Act was passed giving the President emergency powers to urgently address the power crisis in the country.[68] The full implementation of the restructuring and privatization of the power industry was achieved when Congress passed the EPIRA in 2001. With respect to foreign investors, the nationality issue had been framed in terms of the character or nature of the power generation process itself, *i.e.*, whether the activity amounts to utilization of natural resources within the meaning of Sec. 2, Art. XII of the Constitution. If so, then foreign companies cannot engage in hydropower generation business; but if not, then government may legally allow even foreign-owned companies to operate hydropower facilities.

The DOJ has consistently regarded hydropower generation by foreign entities as not constitutionally proscribed based on the definition of water appropriation under the Water Code, thus:

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[67] Sec. 2, R.A. No. 7718.

[68] "Philippine Power Industry Restructuring and Privatization", Philippine Council for Investigative Journalism (PCIJ), accessed at *http://www. pcij.org/blog/wp-docs/Philippine_Power_Fact_Sheet.pdf.*

Opinion No. 173, 1984

This refers to your request for opinion on the possibility of granting water permits to foreign corporations authorized to do business in the Philippines x x x

xxx xxx xxx

x x x while the Water Code imposes a nationality requirement for the grant of water permits, the same refers to the privilege "to appropriate and use water." This should be interpreted to mean the extraction of water from its natural source (Art. 9, P.D. No. 1067). **Once removed therefrom, they cease to be a part of the natural resources of the country and are the subject of ordinary commerce and may be acquired by foreigners** (Op. No. 55, series of 1939). x x x in case of a contract of lease, the water permit shall be secured by the lessor and included in the lease as an improvement. **The water so removed from the natural source may be appropriated/ used by the foreign corporation leasing the property.**

Opinion No. 14, S. 1995

The nationality requirement imposed by the Water Code refers to the privilege "to appropriate and use water." This, we have consistently interpreted to mean the extraction of water directly from its natural source. Once removed from its natural source the water ceases to be a part of the natural resources of the country and may be subject of ordinary commerce and may even be acquired by foreigners. (Secretary of Justice Op. No. 173, s. 1984; No. 24, s. 1989; No. 100 s. 1994)

In fine, we reiterate our earlier view that **a foreign entity may legally process or treat water after its removal from a natural source by a qualified person, natural or juridical.**

Opinion No. 122, s. 1998

The crucial issue at hand is the determination of whether the utilization of water by the power plant to be owned and operated by a foreign-owned corporation (SRPC) will violate the provisions of the Water Code.

As proposed, the participation of SRPC to the arrangement commences upon construction of the power station, consisting of a dam and a power plant. After the completion of the said station, its ownership and control shall be turned over to NPC. However,

SRPC shall remain the owner of the power plant and shall operate it for a period of twenty-five (25) years.

It appears that the dam, which will be owned and controlled by NPC, will block the natural flow of the river. The power plant, which is situated next to it, will entirely depend upon the dam for its water supply which will pass through an intake gate situated one hundred (100) meters above the riverbed. Due to the distance from the riverbed, water could not enter the power plant absent the dam that traps the flow of the river. It appears further that no water shall enter the power tunnel without specific dispatch instructions from NPC, and such supplied water shall be used only by SRPC for power generation and not for any other purpose. When electricity is generated therein, the same shall be supplied to NPC for distribution to the public. These facts x x x viewed in relation to the Water Code, specifically Article 9 thereof, x x x

clearly show that there is no circumvention of the law.

This Department has declared that the nationality requirement imposed by the Water Code refers to the privilege "*to appropriate and use water*" and has interpreted this phrase to mean the *extraction of water directly from its natural source* (*Secretary of Justice Opinion No. 14, s. 1995*). "Natural" is defined as that which is produced without aid of stop, valves, slides, or other supplementary means (see *Webster's New International Dictionary, Second Edition, p. 1630*). **The water that is used by the power plant could not enter the intake gate without the dam, which is a man-made structure. Such being the case, the source of the water that enters the power plant is of artificial character rather than natural.** This Department is consistent in ruling, that once water is removed from its natural source, it ceases to be a part of the natural resources of the country and may be the subject of ordinary commerce and may even be acquired by foreigners. (*Ibid., No. 173, s. 1984; No. 24, s. 1989; No. 100, s. 1994*).

It is also significant to note that NPC, a government-owned and controlled corporation, has the effective control over all elements of the extraction process, including the amount and timing thereof considering that x x x the water will flow out of the power tunnel and through the power plant, to be used for the generation of electricity, only when the Downstream Gates are opened, which occur only upon the specific water release instructions given by

NPC to SRPC. This specific feature of the agreement, taken together with the above-stated analysis of the source of water that enters the plant, support the view that the nationality requirement embodied in Article XII, Section 2 of the present Constitution and in Article 15 of the Water Code, is not violated.[69] (Emphasis supplied.)

The latest executive interpretation is stated in DOJ Opinion No. 52, s. 2005 which was rendered upon the request of PSALM in connection with the proposed sale structure for the privatization of hydroelectric and geothermal generation assets (Gencos) of NPC. PSALM sought a ruling on the legality of its proposed privatization scheme whereby the non-power components (dam, reservoir and appurtenant structures and watershed area) shall be owned by the State through government entities like NPC or NIA which shall exercise control over the release of water, while the ownership of the power components (power plant and related facilities) is open to both Filipino citizens/corporations and 100% foreign-owned corporations.

Sustaining the position of PSALM, then Secretary Raul M. Gonzalez opined:

> Premised on the condition that only the power components shall be transferred to the foreign bidders while the non-power components/ structures shall be retained by state agencies concerned, we find that both PSALM's proposal and position are tenable.
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> xxx xxx xxx
>
> x x x as ruled in one case by a U.S. court:
>
> > Where the State of New York took its natural resources consisting of Saratoga Spring and, through a bottling process, put those resources into preserved condition where they could be sold to the public in competition with private waters, *the state agencies were not immune from federal taxes imposed upon bottled waters on the theory that state was engaged in the sale of "natural resources."*

Applied to the instant case, and construed in relation to the earlier-mentioned constitutional inhibition, it would appear clear that **while**

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[69] *Rollo* (Vol. I), pp. 436, 439-440.

both waters and geothermal steam are, undoubtedly "natural resources", within the meaning of Section 2 Article XII of the present Constitution, hence, their exploitation, development and utilization should be limited to Filipino citizens or corporations or associations at least sixty per centum of the capital of which is owned by Filipino citizens, **the utilization thereof can be opened even to foreign nationals, after the same have been extracted from the source by qualified persons or entities**. The rationale is because, since they no longer form part of the natural resources of the country, they become subject to ordinary commerce.

A contrary interpretation, *i.e*., that the removed or extracted natural resources would remain inalienable especially to foreign nationals, can lead to absurd consequences, *e.g*. that said waters and geothermal steam, and any other extracted natural resources, cannot be acquired by foreign nationals for sale within or outside the country, which could not [have] been intended by the framers of the Constitution.

The fact that under the proposal, **the non-power components and structures shall be retained and maintained by the government entities** concerned is, to us, **not only a sufficient compliance of constitutional requirement of "full control and supervision of the State"** in the exploitation, development and utilization of natural resources. It is **also an enough safeguard against the evil sought to be avoided by the constitutional reservation** x x x.**[70]** (Italics in the original, emphasis supplied.)

Appropriation of water, as used in the Water Code refers to the "acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law."[71] This definition is not as broad as the concept of appropriation of water in American jurisprudence:

An appropriation of water flowing on the public domain consists in the **capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use** private or personal to the appropriator, to the entire exclusion (or exclusion to the extent of the water appropriated) of all other persons. x x x[72]

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[70] *Id.* at 444-446.

[71] Art. 9, Water Code of the Philippines.

[72] *Black's Law Dictionary*, 5th Ed., p. 93.

On the other hand, "water right" is defined in the Water Code as the privilege granted by the government to appropriate and use water.[73] Black's Law Dictionary defined "water rights" as "[a] legal right, in the nature of a corporeal hereditament, to use the water of a natural stream or water furnished through a ditch or canal, for general or specific purposes, such as irrigation, mining, power, or domestic use, either to its full capacity or to a measured extent or during a defined portion of the time," or "the right to have the water flow so that some portion of it may be reduced to possession and be made private property of individual, and it is therefore the right to divert water from natural stream by artificial means *and apply the same to beneficial use*."[74]

Under the Water Code concept of appropriation, a foreign company may not be said to be "appropriating" our natural resources if it utilizes the waters collected in the dam and converts the same into electricity through artificial devices. Since the NPC remains in control of the operation of the dam by virtue of water rights granted to it, as determined under DOJ Opinion No. 122, s. 1998, there is no legal impediment to foreign-owned companies undertaking the generation of electric power *using waters already appropriated by NPC, the holder of water permit.* Such was the situation of hydropower projects under the BOT contractual arrangements whereby foreign investors are allowed to finance or undertake construction and rehabilitation of infrastructure projects and/or own and operate the facility constructed. However, in case the facility requires a public utility franchise, the facility operator must be a Filipino corporation or at least 60% owned by Filipino.[75]

With the advent of privatization of the electric power industry which resulted in its segregation into four sectors — generation, transmission, distribution and supply – NPC's generation and transmission functions were unbundled. Power generation and

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[73] Art. 13, Water Code of the Philippines.

[74] *Supra* note 71, at 1427-1428.

[75] Sec. 2 (m), R.A. No. 7718.

transmission were treated as separate sectors governed by distinct rules under the new regulatory framework introduced by EPIRA. The National Transmission Corporation (TRANSCO) was created to own and operate the transmission assets and perform the transmission functions previously under NPC. While the NPC continues to undertake missionary electrification programs through the SPUG, PSALM was also created to liquidate the assets and liabilities of NPC.

Under the EPIRA, NPC's generation function was restricted as it was allowed to "generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM" and was prohibited from incurring "any new obligations to purchase power through bilateral contracts with generation companies or other suppliers."[76] PSALM, on the other hand, was tasked "[t]o structure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale prices of said assets."[77] In the case of multi-purpose hydropower plants, the IRR of R.A. No. 9136 provided that their privatization would extend to water rights which shall be transferred or assigned to the buyers thereof, subject to safeguards mandated by Sec. 47(e) to enable the national government to direct water usage in cases of shortage to protect water requirements imbued with public interest.

Accordingly, the Asset Purchase Agreement executed between PSALM and K-Water stipulated:

2.04 Matters Relating to the Non-Power Component

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Matters relating to Water Rights

NPC has issued a certification (the "*Water Certification*") wherein NPC consents, subject to Philippine Law, to the (i) **transfer of the Water Permit to the BUYER or its Affiliate, and** (ii) **use by the BUYER or its Affiliate of the water covered by the Water Permit**

[76] Sec. 47 (j), R.A. No. 9136.

[77] Sec. 51 (m), *id.*

from Closing Date up to a maximum period of one (1) year thereafter **to enable the BUYER to appropriate and use water sourced from Angat reservoir for purposes of power generation**; *provided,* that should the consent or approval of any Governmental Body be required for either (i) or (ii), the BUYER must secure such consent or approval. The BUYER agrees and shall fully comply with the Water Permit and the Water Certification. x x x

xxx xxx xxx

Multi-Purpose Facility

The BUYER is fully aware that the Non-Power Components is a multi-purpose hydro-facility and the water is currently being appropriated for domestic use, municipal use, irrigation and power generation. Anything in this Agreement notwithstanding, the BUYER shall, at all times even after the Payment Date, fully and faithfully comply with Philippine Law, including the Instructions, the Rule Curve and Operating Guidelines and the Water Protocol.[78] (Emphasis supplied.)

Lease or transfer of water rights is allowed under the Water Code, subject to the approval of NWRB after due notice and hearing.[79] However, lessees or transferees of such water rights must comply with the citizenship requirement imposed by the Water Code and its IRR. But regardless of such qualification of water permit holders/transferees, it is to be noted that there is no provision in the EPIRA itself authorizing the NPC to assign or transfer its water rights in case of transfer of operation and possession of multi-purpose hydropower facilities. Since only the power plant is to be sold and privatized, the operation of the non-power components such as the dam and reservoir, including the maintenance of the surrounding watershed, should remain under the jurisdiction and control of NPC which continue to be a government corporation. There is therefore no necessity for NPC to transfer its permit over the water rights to K-Water. Pursuant to its purchase and operation/management contracts with K-Water, NPC may authorize the latter to use water in the dam to generate electricity.

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[78] *Rollo* (Vol. II), p. 1341.

[79] Art. 19, Water Code of the Philippines.

NPC's water rights remain an integral aspect of its jurisdiction and control over the dam and reservoir. That the EPIRA itself did not ordain any transfer of water rights leads us to infer that Congress intended NPC to continue exercising full supervision over the dam, reservoir and, more importantly, to remain in complete control of the extraction or diversion of water from the Angat River. Indeed, there can be no debate that the best means of ensuring that PSALM/NPC can fulfill the duty to prescribe "safeguards to enable the national government to direct water usage to protect potable water, irrigation, and all other requirements imbued with public interest" is for it to retain the water rights over those water resources from where the dam waters are extracted. In this way, the State's full supervision and control over the country's water resources is also assured notwithstanding the privatized power generation business.

Section 6 (a) of the IRR of R.A. No. 9136 insofar as it directs the transfer of water rights in the privatization of multi-purpose hydropower facilities, is thus merely directory.

It is worth mentioning that the Water Code explicitly provides that Filipino citizens and juridical persons who may apply for water permits should be "duly qualified by law to exploit and develop water resources." Thus, aside from the grant of authority to construct and operate dams and power plants, NPC's Revised Charter specifically authorized it –

> (f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof: *Provided*, That just compensation shall be paid to any person or persons whose property is, directly or indirectly, adversely affected or damaged thereby.[80]

[80] Sec. 3 (f), R.A. No. 6395.

The MWSS is likewise vested with the power to construct, maintain and operate dams and reservoirs for the purpose of supplying water for domestic and other purposes, as well to construct, develop, maintain and operate such artesian wells and springs as may be needed in its operation within its territory.[81] On the other hand, NIA, also a water permit holder in Angat River, is vested with similar authority to utilize water resources, as follows:

> (b) To investigate all available and possible water resources in the country for the purpose of utilizing the same for irrigation, and to plan, design and construct the necessary projects to make the ten to twenty-year period following the approval of this Act as the Irrigation Age of the Republic of the Philippines;[82]
>
> (c) To construct multiple-purpose water resources projects designed primarily for irrigation, and secondarily for hydraulic power development and/or other uses such as flood control, drainage, land reclamation, domestic water supply, roads and highway construction and reforestation, among others, provided, that the plans, designs and the construction thereof, shall be undertaken in coordination with the agencies concerned;[83]

To reiterate, there is nothing in the EPIRA which declares that it is mandatory for PSALM or NPC to transfer or assign NPC's water rights to buyers of its multi-purpose hydropower facilities as part of the privatization process. While PSALM was mandated to transfer the ownership of all hydropower plants except those mentioned in Sec. 47 (f), any transfer of possession, operation and control of the multi-purpose hydropower facilities, the intent to preserve water resources under the full supervision and control of the State is evident when PSALM was obligated to prescribe safeguards to enable the national government to direct water usage to domestic and other requirements "imbued with public interest." There is no express requirement for the

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[81] Sec. 3 (f) and (i), R.A. No. 6234.

[82] Sec. 2 (b), R.A. No. 3601, approved on June 22, 1963.

[83] Sec. 2 (c) P.D. No. 552 amending the NIA Charter, issued September 11, 1974.

transfer of water rights in all cases where the operation of hydropower facilities in a multi-purpose dam complex is turned over to the private sector.

As the new owner of the AHEPP, K-Water will have to utilize the waters in the Angat Dam for hydropower generation. Consistent with the goals of the EPIRA, private entities are allowed to undertake power generation activities and acquire NPC's generation assets. But since only the hydroelectric power plants and appurtenances are being sold, the privatization scheme should enable the buyer of a hydroelectric power plant in NPC's multi-purpose dam complex to have **beneficial** use of the waters diverted or collected in the Angat Dam for its hydropower generation activities, and at the same time ensure that the NPC retains full supervision and control over the extraction and diversion of waters from the Angat River.

In fine, the Court rules that while the sale of AHEPP to a foreign corporation pursuant to the privatization mandated by the EPIRA did not violate Sec. 2, Art. XII of the 1987 Constitution which limits the exploration, development and utilization of natural resources under the full supervision and control of the State or the State's undertaking the same through joint venture, co-production or production sharing agreements with Filipino corporations 60% of the capital of which is owned by Filipino citizens, the stipulation in the Asset Purchase Agreement and Operations and Maintenance Agreement whereby NPC consents to the transfer of water rights to the foreign buyer, K-Water, contravenes the aforesaid constitutional provision and the Water Code.

Section 6, Rule 23 of the IRR of EPIRA, insofar as it ordered NPC's water rights in multi-purpose hydropower facilities to be included in the sale thereof, is declared as merely directory and not an absolute condition in the privatization scheme. In this case, we hold that NPC shall continue to be the holder of the water permit even as the operational control and day-to-day management of the AHEPP is turned over to K-Water under the terms and conditions of their APA and O & M Agreement, whereby NPC grants authority to K-Water to utilize the waters diverted or collected in the Angat Dam for hydropower generation. Further, NPC and

K-Water shall faithfully comply with the terms and conditions of the Memorandum of Agreement on Water Protocol, as well as with such other regulations and issuances of the NWRB governing water rights and water usage.

WHEREFORE, the present petition for *certiorari* and prohibition with prayer for injunctive relief/s is **PARTLY GRANTED.**

The following **DISPOSITIONS** are in **ORDER**:

1) The bidding conducted and the Notice of Award issued by PSALM in favor of the winning bidder, KOREA WATER RESOURCES CORPORATION (K-WATER), are declared **VALID and LEGAL**;

2) PSALM is directed to **FURNISH** the petitioners with copies of all documents and records in its files pertaining to K-Water;

3) Section 6 (a), Rule 23, IRR of the EPIRA, is hereby declared as merely **DIRECTORY**, and not an absolute condition in all cases where NPC-owned hydropower generation facilities are privatized;

4) NPC shall **CONTINUE** to be the **HOLDER** of Water Permit No. 6512 issued by the National Water Resources Board. NPC shall authorize K-Water to utilize the waters in the Angat Dam for hydropower generation, subject to the NWRB's rules and regulations governing water right and usage. The Asset Purchase Agreement and Operation & Management Agreement between NPC/PSALM and K-Water are thus amended accordingly.

Except for the requirement of securing a water permit, K-Water remains **BOUND** by its undertakings and warranties under the APA and O & M Agreement;

5) NPC shall be a **CO-PARTY** with K-Water in the Water Protocol Agreement with MWSS and NIA, and not merely as a conforming authority or agency; and

6) The *Status Quo Ante* Order issued by this Court on May 24, 2010 is hereby **LIFTED and SET ASIDE**.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Velasco, Jr., J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

Subject of this petition for *certiorari* and prohibition are two Agreements entered into by and between Power Sector Assets and Liabilities Management Corporation (PSALM) and Korean Water Resources Corporation (K-Water), involving the Angat Hydro-Electric Power Plant (AHEPP) and the Angat Dam Complex. The first agreement, denominated as Asset Purchase Agreement (APA), covers AHEPP, while the second, the Operation and Maintenance Agreement (O & M), covers the non-power components of AHEPP, including Angat Dam. PSALM entered into the said agreements pursuant to its mandate under Republic Act No. (RA) 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) to privatize the assets of National Power Corporation (NPC).

Petitioners question the validity of the said agreements for being repugnant to the 1987 Constitution, specifically Sec. 2, Art. XII thereof, Presidential Decree No. (PD) 1067 or the Water Code of the Philippines (Water Code), and the EPIRA. They allege that PSALM acted with grave abuse of discretion when it allowed K-Water, a corporate entity wholly owned by the Republic of Korea, to participate in the bidding process, and thereafter declaring it the winning bidder.[1]

[1] *Rollo,* p. 40.

I submit that the two Agreements themselves are, in their entirety, null and void for infringing the ownership and nationality limitations in Sec. 2, Art. XII of the 1987 Constitution, which provides:

> Section 2. All lands of the public domain, **waters,** minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, **and other natural resources are owned by the State.** With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements **with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens**. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. (Emphasis supplied.)

The Agreements fall squarely within the ambit of the aforequoted constitutional provision, and are, thus, properly subject to the nationality restriction provided therein.

K-Water, being a wholly foreign-owned corporation, is disqualified from engaging in activities involving the exploration, development, and utilization of water and natural resources belonging to the state. Necessarily, it is barred from operating Angat Dam, a structure indispensable in ensuring water security in Metro Manila. PSALM, therefore, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it allowed K-Water to participate in the bidding out of properties that will directly extract and utilize natural resources of the Philippines.

The Facts

On June 8, 2001, RA 9136 or the EPIRA was passed into law. Among the policies declared therein is the "orderly and

transparent privatization of the assets and liabilities of the National Power Corporation (NPC)."[2] To carry out this policy, the EPIRA created PSALM, a government-owned and controlled corporation with the mandate to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP [independent power producers] contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner."[3] To enable PSALM to effectively discharge its functions under the law, it was allowed to "take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate, and all other disposable assets."[4] On the manner of privatization of NPC assets, the EPIRA provides:

Section 47. *NPC Privatization.*- Except for the assets of SPUG, the generating assets, real estate, and other disposable assets as well as generation contracts of NPC shall be privatized in accordance with this Act. Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing generation contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in paragraph (e) herein:

(a) The privatization value to the national government of the NPC generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized;

(b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged;

In the case of foreign buyers at least seventy-five percent (75%) of the funds used to acquire NPC-generating assets and generating contracts shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas.

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[2] RA 9136, Sec. 2(i).

[3] *Id.*, Sec. 50.

[4] *Id.*, Sec. 49.

> (d) All generation assets and IPP contracts shall be sold in an open and transparent manner through public bidding;
>
> xxx xxx xxx
>
> (h) Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized; and
>
> (i) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp.: Provided, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of this Act.

Pursuant to the EPIRA, PSALM is currently the owner of the subject Angat Dam complex, including AHEPP.

On January 11, 2010, PSALM officially opened the process of privatization of AHEPP, through the publication of an Invitation to Bid in local broadsheets on January 11, 12, and 13, 2010.[5] This notice was also posted on its website.[6] In the Invitation to Bid, interested parties were required to submit a Letter of Interest (LOI) which expresses the interested party's intention to participate in the bidding, a Confidentiality Agreement and Undertaking with PSALM, and a non-refundable participation fee of two thousand five hundred US dollars (USD 2,500).

The bidding package indicated that the prospective bid shall cover the sale and purchase of the asset, and operations and maintenance by the buyer of the non-power components, to wit:

> The four main units each have a rated capacity of 50 MW. Main units 1 and 2 were commission[ed] in 1967 and main units 3 and 4 in 1968. Three auxiliary units each have a rated capacity of 6 MW and were commissioned as follows: auxiliary units 1 and 2 in 1967 and auxiliary unit 3 in 1978. It is the foregoing 4 main units

[5] *Rollo*, p. 1055.

[6] Petition, p. 16; citing *"PSALM Launches Sale of Angat Hydro plant"*<http://www.psalm.gov.ph/News.asp?id=20100012>.

and 3 auxiliary units with an aggregate installed capacity of 218 MW that is the subject of the Bid.

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The Asset includes all the items listed in Schedule A *(List of Assets)*. All other assets which may be found on the site or with the Asset but are not listed in Schedule A do not form part of the Asset. The Non-Power Components are more particularly described in Schedule B (Non-Power Components). The Information Memorandum contained in the Bidding Package also contains relevant information on the Asset and Non-Power Component. The final list of the Asset and the description of the Non-Power Components shall be contained in the Final Transaction Documents.[7] (Emphasis in the original.)

The bidding package also contains the following conditions with respect to the proposed sale of AHEPP:

The Asset shall be sold on an "AS IS, WHERE IS" basis.

The Angat Dam (which is part of the Non-Power Components) is a multi-purpose hydro facility which currently supplies water for domestic use, irrigation and power generation. The four main units of the Angat Plant release water to an underground tailrace that flows towards the Bustos Dam which is owned and operated by the National Irrigation Administration ("NIA") and provides irrigation requirements to certain areas in Bulacan. The water from the auxiliary units 1,2, and 3 flows to the Ipo Dam which is owned and operated by MWSS and supplied domestic water to Metro Manila and other surrounding cities.

The priority of water usage under Philippine Law would have to be observed by the Buyer/Operator.

The Winning Bidder/Buyer shall be required to enter into an operations and maintenance agreement with PSALM for the Non-Power Components in accordance with the terms and conditions of the O&M Agreement to be issued as part of the Final Transaction Documents. The Buyer, as Operator, shall be required to operate and maintain the Non-Power Components at its own cost and expense.

PSALM is currently negotiating a water protocol agreement with various parties which are currently the MWSS, NIA, National Water Resources Board and NPC. If required by PSALM, the Buyer will

[7] *Rollo*, p. 1056.

be required to enter into the said water protocol agreement as a condition to the award of the Asset.

The Buyer shall be responsible for securing the necessary rights to occupy the underlying Asset.[8]

On February 17, 2010, a pre-bid conference was conducted between PSALM, prospective bidders, and government agencies affected by the privatization.[9]

On April 5, 2010, PSALM declared the bids of the following as complying with the bidding procedures: (1) DMCI Power Corporation (DMCI); (2) First Gen Northern Energy Corporation (First Gen); (3) Korean Water Resources Corporation (K-Water); (4) San Miguel Corporation (SMC); (5) SN Aboitiz Power-Pangasinan, Inc. (SN Aboitiz); and (6) Trans-Asia Oil & Energy Development Corporation (Trans-Asia). Five other bidders were, however, disqualified for failure to comply with the pre-qualification requirements.[10]

On April 16, 2010, PSALM approved the Asset Purchase Agreement (for AHEPP) and the Operations & Maintenance Agreement (for the Non-Power Components) for the public bidding.[11] Following the opening and evaluation of the bid envelopes of the six qualifying firms on April 28, 2010, the PSALM Bids and Awards Committee opened the bid envelopes of the six qualifying firms, and found their respective bids as follows:

Korean Water Resources Corporation	USD 440,880,000
First Gen Northern Energy Corporation	365,000,678
San Miguel Corporation	312,500,000
SN Aboitiz Power-Pangasinan, Inc.	256,000,000
Trans-Asia Oil & Energy Development Corporation	237,000,000
DMCI Power Corporation	188,890,000

[8] *Id.* at 1061.

[9] *Id.*

[10] Memorandum for Respondent PSALM, par. 40; *rollo*, p. 941.

[11] *Id.*, par. 41.

On May 5, 2010, after the post-bid evaluation, the Board of Directors of PSALM approved and confirmed the issuance of a Notice of Award in favor of K-Water.[12] In its Manifestation in lieu of Comment,[13] K-Water opted not make any statement as to its being a Korean state-owned corporation. PSALM, however, in its Comment[14] admitted that K-Water is a Korean state-owned corporation.

In the instant petition, petitioners assert that the sale of AHEPP is imbued with public interest, 97% of the water supply of Metro Manila sourced as it were directly from Angat Dam. They argue that the physical control and management of Angat Dam, as well as the security of the water supply, are matters of transcendental interest to them as residents of Metro Manila. In spite of this, petitioners claim, PSALM kept the bidding process largely confidential, and information over such process withheld from the public. Further, they maintain that the bidding process for AHEPP undermined the elements of the right to water.[15] Lastly, they argue that PSALM, in grave abuse of its discretion, overstepped the Constitution and the Water Code in allowing foreign-owned corporation, K-Water, to participate in the bidding, and later favoring it with a Notice of Award.[16] They, thus, urge the nullification of the same, and the enjoinment of the privatization of AHEPP.

On May 24, 2010, this Court issued a *Status Quo Ante* Order,[17] directing the parties and all concerned to maintain the *status quo* prevailing before the filing of the petition, until further orders from the Court.

Respondents Trans-Asia, DMCI, SN Aboitiz, and SMC forthwith filed their respective Comments,[18] all averring that

[12] *Id.*, par. 46.

[13] *Rollo*, pp. 169-175.

[14] *Id.* at 54.

[15] *Id.* at 52-53.

[16] *Id.* at 43-45.

[17] *Id.* at 119-122.

[18] *Id.* at 149-154, 163-166, 127-134, 467-471.

they are merely nominal parties to the petition, and thus are not real parties-in-interest.

In its Comment[19] dated June 17, 2010, respondent NIA disclaimed involvement in the bidding conducted by PSALM concerning AHEPP, adding that its interest is "only limited to the protection of its water allocation drawn from the Angat Dam as determined by the National Water Resources Board (NWRB)."

In its Comment[20] dated June 22, 2010, respondent PSALM stressed its compliance with the relevant laws and the Constitution in conducting the bidding process for AHEPP, describing the process as open and transparent manner, and with full respect to the limitations set forth in the Constitution. It further alleged that contrary to the petitioners' posture, the agreements will have no effect on the right to water, as they do not involve the sale of Angat Dam itself.

On the procedural aspect, PSALM claimed that the petitioners have no standing to file the petition, and that a petition for *certiorari* is not the proper remedy, PSALM not exercising discretionary powers. Further, they take the view that the controversy has been rendered moot and academic by the issuance of a Notice of Award. In any case, they added, the petition poses a political question over which the Court has no jurisdiction.

Vis-à-vis the AHEPP and Angat Dam, PSALM argued that it is the sole owner of the two facilities, by virtue of the transfer of ownership from NPC under Sec. 49 of the EPIRA. Neither MWSS nor NIA, it said, was a co-owner of the said structures. Further, transfer of ownership of AHEPP to MWSS or NIA would not be in accordance with the law, since the respective charters of MWSS and NIA do not have provisions for their operating a hydro-power facility like AHEPP.

Finally, PSALM, citing DOJ Opinions to the effect that there is no constitutional barrier to the operation of a power plant by

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[19] *Id.* at 474-478.

[20] *Id.* at 240-308.

a foreign entity, would assert that the award of the AHEPP to K-Water is in accordance with the law, since AHEPP, as a generation asset, may be sold to a foreign entity.

Respondent First Gen, in its Comment[21] dated June 23, 2010, supported the position of PSALM with respect to the AHEPP being subject to privatization under the terms of the EPIRA. AHEPP, it concurred, is merely one facility in the Angat Complex, exclusively owned and operated by NPC. Further, it claimed that the watershed is under the exclusive jurisdiction and control of NPC, pursuant to Executive Order No. (EO) 258,[22] which provides:

> Section 2. NPC's jurisdiction and control over the Angat Watershed Reservation is hereby restored. Accordingly, NPC shall be responsible for its management, protection, development and rehabilitation in accordance with the provisions of Sec. 3(n) of Republic Act No. 6359, as amended, Sec. 2 of Executive Order No. 224 and the preceding Section.

For its part, respondent MWSS, in its Comment[23] of July 19, 2010, stated that AHEPP is not like any other hydro-electric power plant, because while its power contribution to the Luzon grid is negligible, its water supply to the commercial and domestic needs of the clientele of MWSS is incontestable and indispensable. Pushing this point, MWSS would argue that the case is really about the virtual surrender of the control and operation of the Angat Dam and Reservoir to a foreign country, thereby impinging on the water supply of twelve million Filipinos.

Respondent MWSS further asserted that, by statutory mandate, part of the waterworks that are within its jurisdiction and under its control and supervision *ipso jure* are the Angat Dam, Dykes and Reservoir. This is by virtue of Sections 1 and 3 of the MWSS Charter[24] which vests MWSS with the powers of control,

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[21] *Id.* at 191-237.

[22] Signed July 10, 1995.

[23] *Rollo*, pp. 529-553.

[24] RA 6234.

supervision, and regulation of the use of all waterworks systems, including dams, reservoirs, and other waterworks for the purpose of supplying water to inhabitants of its territory. It claimed that in the exercise of its jurisdiction over Angat Dam, it even incurred expenses for its upkeep and maintenance.

MWSS related that upon the passage of EPIRA, it wrote PSALM informing the latter of its desire to acquire ownership or control, upon payment of just compensation, over AHEPP. In this regard, MWSS draws attention to the support it got for its desire from the Department of Public Works and Highways (DPWH) and various local government units.

In 2006, PSALM also acknowledged the need to come up with effective strategies for the implementation of the privatization of AHEPP. MWSS and PSALM thereafter engaged in several discussions over AHEPP and the control and management of AHEPP and Angat Dam. A draft of the Angat Water Protocol was made between MWSS, PSALM, NIA, NPC, and NWRB. However, only MWSS and NIA signed the draft protocol.

MWSS then went on to argue that due to the non-signing of the Water Protocol, respondent PSALM failed to provide safeguards to protect potable water, irrigation, and all other requirements imbued with public interest, in violation of the EPIRA. It then went on to say that the sale of AHEPP to a foreign corporation violates the Constitution. It said that the waters of the Angat River that propel the AHEPP to supply water and irrigation and generate power form part of the National Patrimony. It added that K-Water would probably simply consider AHEPP as another business opportunity, contrary to the role that the Angat Dam Complex plays in the life of the Filipino people. Thus, MWSS prayed for the granting of the petition, and in the alternative, to order PSALM to turn over control and management of AHEPP to MWSS.

Meanwhile, respondent K-Water filed a Manifestation in lieu of Comment, wherein it averred that it merely relied on the mandate and expertise of PSALM in conducting the bidding process for the privatization of AHEPP. It stated that in

participating with the bidding process, it was guided at all times by the Constitution and the laws of the Philippines.

Petitioners, in their Consolidated Reply[25] dated October 29, 2010, traversed in some detail respondent PSALM's allegations and supportive arguments on the issues of legal standing, mootness of the petition, and on whether a political question is posed in the controversy. On the matter of mootness, they claimed that the issuance of a Notice of Award does not *ipso facto* render the case moot, as it is not the final step for the privatization of AHEPP. On the claim that the controversy constitutes a political question, they replied that they have amply argued that PSALM's exercise of power is limited by the Constitution, the EPIRA, other laws, as well as binding norms of international law. Thus, its acts in conducting the bidding process fall within the expanded jurisdiction of this Court. On the matter of standing, they claimed to have sufficient personality as the issue involves a public right. Moreover, they invoked the transcendental importance doctrine and the rule on liberality when it comes to public rights.

And on the matter of how PSALM conducted the bidding, the petitioners reiterated their contention that PSALM ran roughshod over the public's right to be informed of the bidding process, the terms and conditions of the privatization, the bidding procedures, minimum price, and other similar information. They related that Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc.'s (IDEAL's) request for information on the winning bidder was unheeded, with PSALM merely referring the matter to the counsel of K-Water for appropriate action.

On the matter of water rights, they related that the provisions of the APA itself negate PSALM's contention that it is erroneous to conclude that water rights will be necessarily transferred to respondent K-Water as a result of the AHEPP. They claimed that this is a wanton disregard of the provisions of the Water Code.

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[25] *Rollo*, pp. 624-655.

While conceding that Angat Dam is not being sold, petitioners nonetheless maintain that, by the terms of the Agreements in question, the control over Angat Dam, among other non-power components will also be given to the buyer. This, taken with the fact that the Water Protocol continues to be unsigned, the petitioners argue, leads to no other conclusion except PSALM's failure to provide safeguards to ensure adequate water supply coming from Angat Dam. This, they claimed, would result in the winning K-Water having complete control over the entire Angat Dam Complex.

As a counterpoint, particularly to the allegations of MWSS in its Comment, respondent PSALM, in its Comment,[26] stated that the non-signing of the Water Protocol was merely due to its observance of this Court's *Status Quo Ante* Order. It claimed that MWSS admitted participating, along with various stakeholders, in the discussions over AHEPP, through the various meetings and correspondences held relative to the drafting of the Memorandum of Agreement on the Angat Water Protocol.

On the issue of jurisdiction over Angat Dam, PSALM replied that MWSS never exercised control and jurisdiction over Angat Dam. The arguments of MWSS, so PSALM claims, are based on the faulty characterization of EPIRA as a general law and the MWSS Charter as a special law.

Further, PSALM stressed that its mandate under the EPIRA is to privatize the assets of NPC, *i.e.*, to transfer ownership and control thereof to a private person or entity, not to another government entity.

PSALM also reiterated that AHEPP may be sold to a foreign entity, in accordance with the policy reforms espoused by EPIRA, *i.e.*, to enable open access in the electricity market and then enable the government to concentrate more fully on the supply of basic needs of the people. Even assuming that the transfer of AHEPP to MWSS is allowed under EPIRA, the same would not serve the objective of EPIRA of liquidating all of the financial obligations of NPC.

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[26] *Id.* at 670-694.

The Issues

1.

WHETHER THE PETITIONERS AVAILED OF THE PROPER REMEDY BY FILING THIS PETITION FOR *CERTIORARI* AND PROHIBITION

2.

WHETHER THE PETITION HAS BEEN RENDERED MOOT AND ACADEMIC BY THE ISSUANCE OF A NOTICE OF AWARD IN FAVOR OF RESPONDENT K-WATER ON MAY 5, 2010

3.

WHETHER THE PETITION INVOLVES A POLITICAL QUESTION

4.

WHETHER THE PETITIONERS HAVE LEGAL STANDING TO FILE THE INSTANT PETITION

5.

WHETHER THE PETITIONER'S RIGHT TO INFORMATION HAS BEEN VIOLATED BY THE PUBLIC RESPONDENT PSALM

6.

WHETHER PETITIONER ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT UNDERTOOK THE PRIVATIZATION OF AHEPP

7.

WHETHER THE PUBLIC RESPONDENT PSALM ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ALLOWED K-WATER TO PARTICIPATE IN THE BIDDING FOR AHEPP, AND LATER AWARDED K-WATER AS THE HIGHEST BIDDER

Discussion

First Issue:
Petition for *Certiorari* and Prohibition as the Proper Remedy

The Court's jurisdiction over questions of grave abuse of discretion finds expression in Art. VIII, Sec. 1 of the Constitution vesting the Court the power 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." This expanded power of judicial review allows the Court to review acts of other branches of the government, to determine whether such acts are committed with grave abuse of discretion amounting to lack or excess of jurisdiction.

Grave abuse of discretion generally refers to:

> capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[27] (Citations omitted.)

However, not all errors in exercise of judgment amount to grave abuse of discretion. The transgression, jurisprudence teaches, must be "so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[28]

In the case before Us, the petitioners allege that respondent PSALM exceeded its jurisdiction when it allowed K-Water to participate in the bidding for the privatization of AHEPP, and later awarded the contract to it. In its exercise of its mandate under the EPIRA, PSALM exercises not only ministerial, but also discretionary powers. The EPIRA merely provides that the privatization be done "in an open and transparent manner through public bidding,"[29] suggesting that it is up to PSALM to decide the specific manner and method in conducting the bidding process.

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[27] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506.

[28] *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539.

[29] RA 9136, Sec. 47(d).

In determining the terms of reference of the public bidding to be conducted, as well as in determining the qualifications of the respective bidders, respondent PSALM exercises discretionary, not ministerial, powers. Corollarily, when it allowed K-Water to participate in the bidding, and when it eventually awarded the contract to K-Water as the highest bidder, PSALM was engaged not in ministerial functions, but was actually exercising its discretionary powers.

Hence, as a government agency discharging official functions, its actions are subject to judicial review by this Court, as expressly provided under Art. VIII, Sec. 1, par. 2 of the Constitution.

This Court's jurisdiction over petitions for *certiorari* under Rule 65 is concurrent with Regional Trial Courts. This jurisdiction arrangement calls for the application of the doctrine of hierarchy of courts, such that this Court generally will not entertain petitions filed directly before it. However, direct recourse to this Court may be allowed in certain situations. As We said in *Chavez v. National Housing Authority (NHA)*:[30]

> [S]uch resort may be allowed in certain situations, wherein this Court ruled that petitions for certiorari, prohibition, mandamus, though cognizable by other courts, may directly be filed with us if the redress desired cannot be obtained in the appropriate courts or where exceptions compelling circumstances justify availment of a remedy within and calling for the exercise of this Court's primary jurisdiction. (citation omitted)

As in *Chavez*, herein petitioners have made serious constitutional challenges not only with respect to the constitutional provision on exploitation, development, and utilization of natural resources, but also the primordial right of the people to access to clean water. The matter concerning Angat Dam and its impact on the water supply to the entire Metro Manila area and neighboring cities and provinces, involving a huge number of people has, to be sure, far-reaching consequences. These imperatives merit direct consideration by this Court, and compel us, as now, to turn a blind eye to the judicial structure, like

[30] G.R. No. 164527, August 15, 2007, 530 SCRA 235.

that envisioned in the hierarchy of courts rule, "meant to provide an orderly dispensation of justice and consider the instant petition as a justified deviation from an established precept."[31]

Second Issue:
Mootness of the Petition

PSALM maintains that the petition no longer presents an actual justiciable controversy due to the mootness of the issues presented in the petition, for, as claimed, the petitioners are seeking to enjoin the performance of an act that it has already performed, *i.e.*, that of the issuance of a Notice of Award to the highest winning bidder in the public bidding for AHEPP.[32]

PSALM's contention on mootness cannot be sustained. What the petitioners seek in this recourse is to enjoin the privatization of AHEPP altogether, arguing that it runs counter to the nationality limitation in the Constitution. Moreover, they claim that the issues raised would have consequences to their primordial right to access to clean water. And, as the petitioners aptly argued, the Notice of Award itself is not the final act in the privatization of AHEPP. Also telling is the fact that the water protocol has yet to be finalized. In short, all the acts that, for all intents and purposes, would bring about the privatization of AHEPP have yet to ensue.

Even assuming that the Notice of Award finalizes the privatization of AHEPP, this Court will not shirk from its duty to prevent the execution of a contract award violative of the Constitution. This Court can still enjoin, if it must, the transfer of ownership of AHEPP if such transfer is repugnant to the spirit and the letter of the Constitution. As We said in *Chavez:* "it becomes more compelling for the Court to resolve the issue to ensure the government itself does not violate a provision of the Constitution intended to safeguard the national patrimony. Supervening events, whether intended or accidental, cannot

[31] *Chavez v. NHA, supra*.

[32] *Rollo*, p. 954.

prevent the Court from rendering a decision if there is a grave violation of the Constitution."

Third Issue:
Application of the Political Question Doctrine

Political questions, as defined in *Tañada v. Cuenco*,[33] refer to:

> those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislature or the executive branch of the Government.

Simply put, the political question doctrine applies when the question calls for a ruling on the wisdom, and not the legality, of a particular governmental act or issuance.

The political question doctrine has no application in the case here. In the privatization of AHEPP, PSALM's discretion is circumscribed not only by the provisions of EPIRA and its Implementing Rules and Regulations (IRR), but also by pertinent laws that are consequential and relevant to its mandate of privatizing the power generation assets of NPC. Needless to stress, PSALM is duty bound to abide by the parameters set by the Constitution. In case it violates any existing law or the Constitution, it cannot hide behind the mantle of the political question doctrine, because such violation inevitably calls for the exercise of judicial review by this Court.

This is the very question the petitioners pose. They allege that in the process of pursuing its mandate under EPIRA, PSALM transgressed the Constitution, particularly when it failed to observe the petitioners' right to information, and when it allowed a foreign corporation to utilize the natural resources of the Philippines.

Respondent PSALM's contention that the petition partakes of the nature of a collateral attack on EPIRA[34] is misplaced. Petitioners' challenge is not directed, as it were, against the

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[33] 103 Phil. 1051 (1957).

[34] *Rollo*, p. 959.

wisdom of or the inherent infirmity of the EPIRA, but the legality of PSALM's acts, which, to the petitioners, violate their paramount constitutional rights. This falls squarely within the expanded jurisdiction of this Court.

At any rate, political questions, without more, are now cognizable by the Court under its expanded judicial review power. The Court said so in *Osmeña v. COMELEC*:[35]

> We would still not be precluded from resolving it under the expanded jurisdiction conferred upon us that now covers in proper cases even political questions *(Daza v. Singson, 180 SCRA 496)*, provided naturally, that the question is not solely and exclusively political (as when the Executive extends recognition to a foreign government) but one which really necessitates a forthright determination of constitutionality, involving as it does a question of national importance.

Fourth Issue:
Legal Standing of Petitioners

The petitioners have sufficient *locus standi* to file the instant petition.

The petitioners raise questions relating to two different provisions of the Constitution, to wit: (1) the right to information on matters of public concern[36] and (2) the limitation on the exploration, development, and utilization of natural resources to Filipino citizens and corporations and associations at least sixty per centum of whose capital is owned by such citizens.[37]

On the first constitutional question, the petition urges the Court to compel PSALM to disclose publicly the details and records of the Agreements with K-Water. On the second issue, the petition seeks to declare the Agreements as unconstitutional, for violating the constitutional limitation that only Filipino citizens

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[35] G.R. Nos. 100318, 100308, 100417 & 100420, July 30, 1991, 199 SCRA 750.

[36] CONSTITUTION, Art. III, Sec. 7.

[37] *Id.*, Art. XII, Sec. 2.

and Filipino corporations may engage in the exploration, development, and utilization of natural resources.

Where the issue revolves around the people's right to information, the requisite legal standing is met by the mere fact that the petitioner is a citizen. The Court said as much in *Akbayan Citizens Action Party v. Aquino*:[38]

> In a petition anchored upon the right of the people to information on matters of public concern, which is a public right by its very nature, petitioners need not show that they have any legal or special interest in the result, **it being sufficient to show that they are citizens and, therefore, part of the general public which possesses the right.** (Emphasis supplied.)

Of the same tenor is the Court's pronouncement in *Guingona, Jr. v. Commission on Elections*:[39] "[I]f the petition is anchored on the people's right to information on matters of public concern, any citizen can be a real party in interest."

Here, the members of the petitioner-organizations are Filipino citizens. In view of the relevant jurisprudence on the matter, that fact alone is sufficient to confer upon them legal personality to file this case to assert their right to information on matters of public concern.

On the second constitutional question, on the constitutional limitation on the exploration, development, and utilization of natural resources, the rule on *locus standi* is not sufficiently overcome by the mere fact that the petitioners are citizens. The general rule applies and the petition must show that the party filing has a "personal stake in the outcome of the controversy."[40] As stated in *Telecommunications and Broadcast Attorneys of the Philippines, Inc., v. COMELEC*,[41] "there must be a showing

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[38] G.R. No. 170516, July 16, 2008, 558 SCRA 468, 509.

[39] G.R. No. 191846, May 6, 2010, 620 SCRA 448, 460.

[40] *Pimentel v. Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 622, 630-631.

[41] G.R. No. 132922, April 21, 1998, 289 SCRA 337.

that the citizen personally suffered some actual or threatened injury arising from the alleged illegal official act." Thus, petitioners here technically lack the requisite legal standing to file the petition as taxpayers, as they have no direct and personal interest in the controversy.

The above notwithstanding, the petitioners have sufficiently crafted an issue involving matters of transcendental importance to the public. Thus, the technical procedural rules on *locus standi* may be set aside to allow this Court to make a pronouncement on the issue. We have held before that the Court:

> has discretion to take cognizance of a suit which does not satisfy the requirement of legal standing when paramount interest is involved. In not a few cases, the Court has adopted a liberal attitude on the *locus standi* of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people.[42]

Here, the interest of the petitioners is inchoate in that neither they as organizations nor their respective members will suffer any direct injury in the allowing of a foreign corporation to utilize Philippine water resources. As residents of Metro Manila, the consequences of the privatization of AHEPP will have an impact on the petitioners, albeit not the direct injury contemplated by law.

The issues they have raised, including the effect of the Agreements on water security in Metro Manila, and the significance of Angat Dam as part of the Angat-Ipo-La Mesa system, is, however, a matter of transcendental importance. Hence, the technical rules on standing may be brushed aside, and enable this Court to exercise judicial review.

Fifth Issue:
Alleged Violation of Petitioners' Right to Information

Petitioners fault PSALM for failing to provide them with information on the details of the transaction that PSALM was entering into, in breach of their constitutional right to information

[42] *IBP v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81.

regarding matters of public concern. In particular, petitioners rue that the Invitation to Bid published by PSALM did not specify crucial information related to the sale of the water facility, including the terms and conditions of the disposition, the qualification of bidders, the minimum price, and other basic details.[43] They allege that PSALM should have publicly disclosed such crucial information on the privatization of AHEPP, pursuant to its legal obligation to conduct the bidding in an open and transparent manner.

As a counter-argument, PSALM states that it had discharged its duty of disclosure when it publicly disseminated information regarding the privatization of AHEPP, effected not only through the publication of the Invitation to Bid, but right "from the very start of the disposition process."[44] First, PSALM points out, it wrote the Regional Director of the National Commission on Indigenous Peoples (NCIP), informing him of the planned disposition of AHEPP, and inviting him to a meeting to discuss matters related to the concerns of indigenous peoples in the area. Then, it conducted a forum in a hotel, with various stakeholders in attendance, "to provide them an opportunity to share relevant information and to thoroughly discuss the structure and pertinent provisions of the sale."[45] Third, it also published the relevant information on its website, in the form of press releases.

On April 20, 2010, the petitioners sent a letter to respondent PSALM requesting certain documents and information relating to the privatization of AHEPP. This request was denied, however, allegedly due to a violation of the bidding procedures. In its letter dated April 30, 2010, PSALM stated that it can only release such documents to persons and entities which submitted a Letter of Interest, paid the participation fee, and executed a Confidentiality Agreement and Undertaking.

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[43] *Rollo*, p. 811

[44] Memorandum for Respondent PSALM, par. 58; *rollo*, p. 971.

[45] *Id.*, par. 59.

On May 14, 2010, the petitioners sent a second letter specifically requesting for detailed information on the winning bidder, including its company profile, contact person or responsible officer, office address and Philippine registration. PSALM replied, in a letter dated May 19, 2010, that the petitioner's request has been referred to the counsel of K-Water.

The people's right to information is based on Art. III, Sec. 7 of the Constitution, which states:

> Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The policy of public disclosure and transparency of governmental transactions involving public interest enunciated in Art. II, Sec. 28 of the Constitution complements the right of the people to information:

> Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

The purpose of these two constitutional provisions, as we observed in *Chavez v. Public Estates Authority*, is:

> to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. These twin provisions are essential to the exercise of freedom of expression. x x x Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy.[46]

This right to information, however, is not without limitation. Fr. Joaquin Bernas S.J. notes that the two sentences of Section 7

[46] G.R. No. 133250, July 9, 2002, 384 SCRA 152, 184.

guarantee only one general right, the right to information on matters of public concern. The right to access official records merely implements the right to information. Thus, regulatory discretion must include both authority to determine what matters are of public concern and authority to determine the manner of access to them.[47]

We have sufficiently elucidated the matter of right to information in *Chavez*, where We said:

> We must first distinguish between information the law on public bidding requires PEA to disclose publicly, and information the constitutional right to information requires PEA to release to the public. **Before the consummation of the contract, PEA must, on its own and without demand from anyone, disclose to the public matters relating to the disposition of its property. These include the size, location, technical description and nature of the property being disposed of, the terms and conditions of the disposition, the parties qualified to bid, the minimum price and similar information.** PEA must prepare all these data and disclose them to the public at the start of the disposition process, long before the consummation of the contract, because the Government Auditing Code requires public bidding. **If PEA fails to make this disclosure, any citizen can demand from PEA this information at any time during the bidding process.**
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> **Information, however, on on-going evaluation or review of bids or proposals being undertaken by the bidding or review committee is not immediately accessible under the right to information.** While the evaluation or review is still on-going, there are no "official acts, transactions, or decisions" on the bids or proposals. However, once the committee makes its official recommendation, there arises a "definite proposition" on the part of the government. From this moment, the public's right to information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition. In *Chavez v. PCGG*, the Court ruled as follows:
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> "Considering the intent of the framers of the Constitution, we believe that it is incumbent upon the PCGG and its officers,

[47] Bernas, Joaquin G., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 381 (2009); citing I RECORD CONSTITUTIONAL COMMISSION 677.

> as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information, though, must pertain to definite propositions of the government, not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the "exploratory" stage. There is need, of course, to observe the same restrictions on disclosure of information in general, as discussed earlier – such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information." (Emphasis supplied.)

The right covers three categories of information which are "matters of public concern," namely: (1) official records; (2) documents and papers pertaining to official acts, transactions and decisions; and (3) government research data used in formulating policies. The first category refers to any document that is part of the public records in the custody of government agencies or officials. The second category refers to documents and papers recording, evidencing, establishing, confirming, supporting, justifying or explaining official acts, transactions or decisions of government agencies or officials. The third category refers to research data, whether raw, collated or processed, owned by the government and used in formulating government policies.

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We rule, therefore, that **the constitutional right to information includes official information on on-going negotiations before a final contract.** The information, however, must constitute definite propositions by the government and should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order. Congress has also prescribed other limitations on the right to information in several legislations. (Emphasis supplied, citations omitted.)

We further explored the matter of right to information in *Chavez v. NHA*, where We ruled that:

x x x [G]overnment agencies, without need of demand from anyone, must bring into public view all the steps and negotiations leading to the consummation of the transaction and the contents of the perfected contract. Such information must pertain to "definite propositions of the government," meaning official recommendations or final positions reached on the different matters subject of negotiation. The government agency, however, need not disclose "intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the exploratory stage." The limitation also covers privileged communication like information on military and diplomatic secrets; information affecting national security; information on investigations of crimes by law enforcement agencies before the prosecution of the accused; information on foreign relations, intelligence, and other classified information.[48]

Even without any demand from anyone then, it behooved PSALM to publicly disclose, information regarding the disposition of AHEPP. Here, PSALM routinely published news and updates on the sale of AHEPP on its website.[49] It also organized several forums where various stakeholders were apprised of the procedure to be implemented in the privatization of AHEPP. As there is yet no sufficient enabling law to provide the specific requirements in the discharge of its duty under the Constitution, these unilateral actions from PSALM must be construed to be a sufficient compliance of its duty under the Constitution. As We observed in *Chavez v. NHA*:

It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day if and when Congress decides to approve the proposed "Freedom of Access to Information Act." **In the meantime, it would suffice that government agencies post on their bulletin boards the documents incorporating the information on the steps and negotiations that produced the agreements and the agreements themselves, and if**

[48] *Supra* note 30.

[49] <http://www.psalm.gov.ph>.

finances permit, to upload said information on their respective websites for easy access by interested parties. Without any law or regulation governing the right to disclose information, the NHA or any of the respondents cannot be faulted if they were not able to disclose information relative to the SMDRP to the public in general.[50]

It must be noted however, that aside from its duty to disclose material information regarding the sale of AHEPP, which, We hold, it had sufficiently discharged when it regularly published updates on its website, PSALM further has the duty to *allow* access to information on matters of public concern. This burden requires a demand or request from a member of the public, to which the right properly belongs. "The gateway to information opens to the public the following: (1) official records; (2) documents and papers pertaining to official acts, transactions, or decisions; and (3) government research data used as a basis for policy development."[51]

When petitioners' wrote PSALM a letter of April 20, 2010 requesting certain documents and information relating to the privatization of AHEPP but was denied, PSALM veritably violated the petitioners' right to information. It should have permitted access to the specific documents containing the desired information, in light of the disclosure of the same information thus made in its website. The documents referred to are neither confidential nor privileged in nature, as the gist thereof had already been published in the news bulletins in the website of PSALM, and as such, access thereto must be granted to the petitioner. On the contrary, the documents requested partake of the nature of official information.

The Court also takes stock of the fact that on May 14, 2010, petitioners requested via another letter specifically requesting detailed information on the winning bidder, including its company profile, contact person or responsible officer, office address and Philippine registration. By way of reply, PSALM informed

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[50] *Supra* note 30.

[51] *Chavez v. NHA, supra*.

the petitioners that their request has been referred to the counsel of K-Water.

PSALM's reply to the petitioners' adverted second letter is insufficient to discharge its duty under the Constitution. The reply is evasive, at best. At that stage of the bidding process, PSALM already had possession of and can provide, if so minded, the information requested. As such, there was hardly any need to refer the request to K-Water.

Given the above perspective, the petitioners must be granted relief by granting them access to such documents and papers relating to the disposition of AHEPP, provided the accommodation is limited to official documents and official acts and transactions.

Sixth Issue:
The Legality of the Privatization of AHEPP

The mandate of PSALM under EPIRA is clear—privatization sale of NPC generation assets, real estate, and other disposable assets. Toward the accomplishment of this mandate, EPIRA has vested the PSALM with the following powers:

> (a) To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the Corporation's term of existence;
>
> (b) To take title to and possession of, administer and conserve the assets and IPP contracts transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;
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> xxx xxx xxx
>
> (i) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions.[52]

PSALM, as may be noted, was not empowered under the EPIRA to determine which NPC assets are to be privatized. The law merely authorized PSALM to decide upon the specific

[52] RA 9136, Sec. 51.

program to utilize in the disposition of NPC assets, and not the power to determine the coverage of the privatization. The EPIRA itself had laid down which particular assets are to be privatized, and which are not. Sec. 47 thereof provides:

> Section 47. NPC Privatization. - **Except for the assets of SPUG, the generating assets, real estate, and other disposable assets as well as generation contracts of NPC shall be privatized in accordance with this Act.** Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing generation contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in paragraph (e) herein:
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> xxx xxx xxx
>
> (f) The **Agus and the Pulangui complexes in Mindanao shall be excluded from among the generating companies that will be initially privatized.** Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by NPC. In case of privatization, said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and, until privatized, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other variations pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The **privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress**;
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> xxx xxx xxx
>
> (g) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation and shall continue to be operated by NPC.

It is clear from the aforequoted provision that the intention of EPIRA is to include in the privatization program all generating assets, real estate, and other disposable assets of NPC, save those specifically excluded under the same Act. By express provision, only three facilities are excepted from privatization,

viz.: Agus and Pulangui Complexes, and the Caliraya-Botokan-Kalayaan pump storage complex, and the assets of the Small Power Utilities Group (SPUG). Nowhere in EPIRA is the AHEPP mentioned as part of the excluded properties. It can, thus, be inferred that the legislative intent is to include AHEPP in the privatization scheme that PSALM will implement. *Expresio unius est exclusio alterius.*

PSALM is correct in arguing, therefore, that in privatizing AHEPP, it did no more than to perform its mandate under EPIRA. PSALM is also correct in its position that the respective charters of MWSS and NIA do not grant either of them the power to operate a power plant. It is clear that under the EPIRA, the fate of AHEPP is that of being privatized—PSALM neither has discretion to exclude the property from privatization, nor choose to abandon its duty to dispose of them through public bidding. Thus, PSALM committed no grave abuse of discretion in its decision to privatize AHEPP, and in its subsequent acts toward that end.

Petitioners' prayer to enjoin the privatization sale of AHEPP must therefore, fail. The provisions of EPIRA are determinative of the matter, and where the EPIRA provides that the assets of NPC must be privatized, then the command of the law must reign supreme. This Court must uphold the letter and the spirit of EPIRA, even in light of petitioners' argument on the possible repercussions of the privatization of AHEPP.

Seventh Issue:
The Validity of the APA and O&M agreements

This brings Us to the substantive issue of the case. But first, a brief background on the subject Angat Dam Complex is in order, the assailed Agreements revolving as it were on that enormous infrastructure, its features and operations.

The Angat Dam Complex

The Angat Dam Complex is part of the Anga-Ipo-La Mesa Dam system. Originating from the western flank of the Sierra Madre Mountains, the waters cut through mountainous terrain

in a westerly direction and flow to Angat River in San Lorenzo, Norzagaray, Bulacan, where the Angat Dam and Reservoir is located.[53]

Angat Dam and Reservoir is a multipurpose rockfill dam constructed in 1964-1967, and provides multiple functions:

(1) to provide irrigation to about 31,000 hectares of land in 20 municipalities and towns in Pampanga and Bulacan;

(2) to supply the domestic and industrial water requirements of the residents in Metro Manila;

(3) to generate hydroelectric power to feed the Luzon Grid; and

(4) to reduce flooding to downstream towns and villages.[54]

The reservoir is 35 km. long when the water surface of 2,300 hectares is at normal maximum pool, and 3 km. wide at its widest point.[55] From the reservoir, the water enters the intake tower and is conveyed by the power tunnel to the penstocks and valve chambers, and finally to the turbine runners of the AHEPP.[56]

AHEPP, meanwhile, is a 246 Megawatts (MW) rated hydroelectric power plant also located in San Lorenzo, Norzagaray, Bulacan. It is part of the Angat Dam Complex and is situated near the Angat Dam, as it relies on the waters coming from the dam to generate power. AHEPP consists of four (4) main units, producing 200 MW of power, and five (5) auxiliary units, producing 46MW of power.[57]

AHEPP utilizes the waters of Angat Dam for hydropower generation by taking in water from its intake tower. The waters

[53] "Rain Water Sources" <http://www.manilawater.com/section. php? section_*id*=6&category_*id*=35&article_ id=6>.

[54] *Id*.

[55] Memorandum for Respondent, par. 6; *rollo*, p. 925.

[56] *Id*., par. 7.

[57] *Id*., par. 5.

are then conveyed by the power tunnel to the penstocks and valve chambers, and finally to the turbine runners in the AHEPP. Discharge is conveyed to the outlet by the tailrace tunnel.[58]

From the Angat Dam Complex, the waters may flow in either of two directions. The waters may be directed to Ipo Dam, near its confluence with Ipo River.[59] From there, the waters downstream are diverted to the Novaliches Portal and the La Mesa Dam in Quezon City.[60] From there, the waters are treated to supply water to end consumers in Metro Manila. The waters may also continue to go through the Balara Treatment Plant, and also finally to end consumers in Metro Manila. The waters coming from Angat Dam may also flow through Bustos Dam in Bustos, Bulacan, where the waters are eventually used for irrigation purposes by the National Irrigation Administration (NIA).[61]

Nature, Ownership, and Appropriation of Waters

Though of Spanish origin, the doctrine of *Jura Regalia* was first explicitly enshrined in the 1935 Philippine Constitution which proclaimed, as one of its dominating objectives, the nationalization and conservation of the natural resources of the country.[62] Thus, the 1935 Constitution provides in its Sec. 1 of Art. XIII that:

> Sec. 1. All agricultural, timber, and mineral lands of the public domain, **waters,** minerals, coal, petroleum, and other mineral oils, all forces of potential energy, **and other natural resources of the Philippines belong to the State** x x x (emphasis supplied)

That this doctrine was enshrined in the Constitution was merely a means to an end, as "state ownership of natural resources

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[58] *Rollo*, p. 244

[59] "Rain Water Sources," *supra* note 53.

[60] *Id*.

[61] Memorandum for Respondent, par. 7; *rollo*, p. 925

[62] Separate Opinion, J. Puno, *Cruz v. Secretary of Environment and Natural Resources*, G.R. No. 135385, December 6, 2000, 347 SCRA 128, 171; citing 2 Aruguego, *The Framing of the Philippine Constitution*, p. 592 (1937).

was seen as a necessary starting point to secure recognition of the state's power to control their disposition, exploitation, development, or utilization."[63] In *Miners Association of the Philippines, Inc. v. Factoran*,[64] this Court found the importance of this limitation in the Constitution, thus:

> The exploration, development and utilization of the country's natural resources are **matters vital to the public interest and the general welfare of the people.** The recognition of the importance of the country's natural resources was expressed as early as the 1984 Constitutional Convention. In connection therewith, the 1986 U.P. Constitution Project observed: "The 1984 Constitutional Convention recognized the importance of our natural resources not only for its security and national defense. Our natural resources **which constitute the exclusive heritage of the Filipino nation, should be preserved for those under the sovereign authority of that nation and for their prosperity.** This will ensure the country's survival as a viable and sovereign republic." (Emphasis supplied)

The 1973 Constitution also incorporated the *jura regalia* doctrine in its Sec. 2, Art. XII:

> Sec. 2. All lands of the public domain, **waters,** minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, flora and fauna, **and other natural resources are owned by the State.** x x x (emphasis supplied)

It was then transposed to the 1987 Constitution, with Sec. 2, Art. XII thereof providing:

> Sec. 2 All lands of the public domain, **waters,** minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, **and other natural resources are owned by the State.** x x x (emphasis supplied)

The 1935, 1973, and 1987 Constitutions uniformly provide that all waters belong to the State. Statutorily, the Water Code reaffirms that "all waters belong to the state."[65]

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[63] *Id*.

[64] G.R. No. 98332, January 16, 1995, 240 SCRA 100, 119.

[65] PD 1067, Art. 3(a).

Corollary to the principle of state ownership of all waters is the provision limiting the exploration, development, and utilization of such resources to certain individuals and subject to certain restrictions. In the 1935 Constitution, this rule was enunciated, thus:

> x x x their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution.[66]

The 1973 Constitution carried a similar provision, to wit:

> Sec. 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital which is owned by such citizens x x x[67]

The 1987 Constitution couched the limitations a bit differently:

> x x x **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements **with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens**. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. x x x[68] (emphasis supplied)

In *La Bugal B'laan v. Ramos*,[69] We reconstructed and stratified the foregoing Constitutional provision, thus:

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[66] Sec. 1, Art. XIII, 1935 Constitution

[67] Sec. 9, Art. XIV, 1973 Constitution

[68] Sec. 2, Art. XII, 1987 Constitution

[69] G.R. No. 127882, December 1, 2004, 445 SCRA 1.

1. All natural resources are owned by the State. Except for agricultural lands, natural resources cannot be alienated by the State.

2. The exploration, development and utilization (EDU) of natural resources shall be under the full control and supervision of the State.

3. The State may undertake these EDU activities through either of the following:

(a) By itself directly and solely

(b) By (i) co-production; (ii) joint venture; or (iii) production sharing agreements with Filipino citizens or corporations, at least 60 percent of the capital of which is owned by such citizens

The constitutional policy and bias concerning water resources is implemented primarily by the Water Code. It provides that the state may "allow the use or development of waters by administrative concession"[70] given in the form of a water permit.[71] Article 13 of the Code grants the permit holder the right to appropriate water, "appropriation" being defined under the law as "the acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law."[72] Finally, the Code limits the granting of water permits only to "citizens of the Philippines, of legal age, as well as juridical persons, who are duly qualified by law to exploit and develop water resources."[73]

Created to control and regulate the utilization, exploitation, development, conservation and protection of water resources is the National Water Resources Council,[74] later renamed National Water Resources Board (NWRB).[75] The NWRB is the government agency responsible for the granting of water permits, as well as the regulation of water permits already issued.

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[70] PD 1067, Art. 3(c).

[71] *Amistoso v. Ong*, G.R. No. 60219, June 29, 1984, 130 SCRA 228, 235.

[72] PD 1067, Art. 9.

[73] *Id.*, Art. 15.

[74] *Id.*, Art. 3.

[75] Pursuant to Executive Order No. 124-A, July 22, 1987.

In fine, the Constitution and the Water Code provide that all waters belong to the State. The State may nevertheless allow the exploration, development, and utilization of such water resources, through the granting of water permits, but only to qualified persons and entities. And when the Constitution and the Water Code speak of qualified persons, the reference is explicit: Filipino citizens and associations or corporations sixty percent of the capital of which is owned by Filipinos. Such is the protection afforded to Philippine water resources.

The Operations and Maintenance Agreement

By the O & M Agreement, PSALM cedes to K-Water, as operator, the administration, management, operation, maintenance, preservation, repair, and rehabilitation of what the contract considers as the Non-Power Components,[76] defined thereunder as "the **Angat Dam**, non-power equipment, facilities and installations, and appurtenant devices and structures which are particularly described in Annex 1."[77] The O & M Agreement is for a period of twenty-five (25) years, renewable for another twenty-five (25) years, maximum, upon mutual and written agreement of the parties.[78]

As couched, the agreement does not include the operation of watershed area, which shall continue to be under the NPC's control and administration. However, in case of emergencies and the NPC does not act to alleviate the emergency in connection with its performance of its obligations in the watershed, the operator shall have the option to prevent the emergency, to mitigate its adverse effects on the purchased assets and non-power components, and to undertake remedial measures to address the emergency.[79]

Article 9 of the O & M Agreement also provides that the buyer/operator, if not organized under Philippine law, warrants

[76] *Rollo*, p. 1383.

[77] *Id.* at 1382.

[78] *Id.* at 1383.

[79] *Id.* at 1389.

that "it shall preserve and maintain in full force and effect its existence as a corporation duly organized under such laws and its qualifications to do business in the Republic of the Philippines."[80] The following is also expressly stipulated: the O & M Agreement is merely "being executed in furtherance of and ancillary to the APA [and]"[81] "shall not survive the termination of the APA."[82]

The Asset Purchase Agreement

The APA includes the sale of the 218 MW AHEPP on an "as is where is" basis[83] to buyer, K-Water. Excluded from the sale are Auxiliary Units 4 and 5, with a rated capacity of 10 MW and 18 MW, respectively. The non-power components of the Angat Dam Complex, including Angat Dam, while not subject to sale under the APA, are covered by the O & M Agreement.

On the matter of water rights, the APA, in its Art. 2.05, provides that the "NPC consents, subject to Philippine Law, to the (i) transfer of the Water Permit to the BUYER or its Affiliate, and (ii) use by the BUYER or its Affiliate of the water covered by the Water Permit."[84] The buyer shall then provide NPC with electricity and water free of charge.[85] This bolsters the claim that control over the waters of Angat Dam is, under the APA, handed over to K-Water.

As in the O & M Agreement, the APA also contains a provision on warranties on the buyer's qualification to engage in business in the country and to comply "at all times fully comply with Philippine Law."[86]

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[80] *Id.* at 1393.

[81] *Id.*

[82] *Id.*

[83] *Id.* at 1113.

[84] *Id., id.* at 1341.

[85] *Id.*

[86] *Id.* at 1358.

Clearly then, the purchase agreement grants the buyer not only ownership of the physical structure of AHEPP, but also the corresponding right to operate the hydropower facility for its intended purpose, which in turn requires the utilization of the water resources in Angat Dam. The use and exploitation of water resources critical for power generation is doubtless the underlying purpose of the contract involving the sale of the physical structure of AHEPP.

The waters of Angat Dam and Reservoir form part of the natural resources of the Philippines

Based on the foregoing factual backdrop, I submit that the APA and O & M Agreements, individually or as a package, are themselves infringing on the constitutional imperative limiting the exploration, development, and utilization of the natural resources of the Philippines to Filipino citizens and associations or corporations sixty percent of the capital of which is owned by Filipinos. I also take the view that K-Water was, from the start, disqualified from participating in the bidding for the two projects in question.

Consider:

The waters flowing through Angat River, and eventually to the Angat Dam and Reservoir, form part of the country's natural resources. There cannot be a substantial distinction between the waters in Angat River, on one hand, and those settling in the Angat Dam and Reservoir, on the other. There is no rhyme or reason to claim that the waters in the dam cease to be part of the protected natural resources envisaged in the Constitution.

First, the fact that an artificial structure was constructed to provide a temporary catchment for the naturally-flowing waters does not necessarily remove the waters from being part of the natural resources of the Philippines. The waters themselves are natural in that it is "brought about by nature, as opposed to artificial means."[87]

[87] *cf. Black's Law Dictionary*, 9th Ed., p. 1126.

From the spillway gates of the Angat Dam, some of the waters are diverted to Ipo Dam, and others still flow to Bustos Dam. Eventually, the waters passing through Ipo Dam end up in Tullahan River in Metro Manila. If there is any detention of the waters, it is merely temporary, as Angat Dam is not meant to permanently impound the waters. An examination of the flow of waters from Angat River readily shows that the waters go through a contiguous series of dams and rivers, and the waters are not actually extracted from it, when they pass through structures such as the AHEPP.

To say that the waters in the Angat Dam and Reservoir have already been extracted or appropriated by the mere fact that there is a catchment system in Angat Dam would be to make a distinction between the nature of the waters in different parts of this contiguous series. On the contrary, the waters have not been extracted from its natural source, the river and the dam forming a unitary system. The waters naturally flowing through Angat River are the very same waters that are stored in Angat Dam. Their characteristics, quality, and purity cannot be distinguished from each other. It is the mechanisms in AHEPP that permanently extract water from its natural source. Angat Dam merely serves to temporarily impound the waters, which are later allowed to flow downstream.

Were We to hold that the waters in Angat Dam cease to become a natural resource, the same logic would lead to the conclusion that the waters downstream in Ipo Dam are sourced partly from natural resources (*i.e.* those directly flowing from Ipo River) and partly from artificial sources, since part of the waters passing through Ipo Dam already passed through Angat Dam. By extension, Tullahan River would not be considered a natural resource, as the waters there are sourced from La Mesa Dam. The law could not have intended such absurd distinctions. *Lex simper intendit quod convenitrationi.* The law always intends that which is agreeable to reason.

Appropriation of water implies beneficial use of the water, for any of the particular purposes enumerated in the Water Code. In the case of Angat Dam, the waters in the dam, so long as

they remain in the dam or in the reservoir, carry with them no economic value—they cannot be directly used for any beneficial purpose. They cannot be directly used for any of the purposes specified in the Water Code, including power generation, the intended use of the waters in AHEPP.[88]

Second, the definition of **water** in the Water Code is broad enough to cover the waters of Angat Dam. Waters are defined simply as "water under the grounds, water above the ground, water in the atmosphere and the waters of the sea within the territorial jurisdiction of the Philippines."[89] The requirement of water permits is also broad enough to cover those coming from Angat Dam, because the only exceptions provided in the Code are waters appropriated by means of hand carried receptacles, and those used for bathing, washing, watering or dipping of domestic or farm animals, and navigation of watercrafts or transportation of logs and other objects by floatation.[90]

Pursuant to this water permit requirement, the waters of Angat Dam are presently covered by three separate water permits granted to three different entities, all for specific purposes: (1) Water Permit No. 6504[91] to NIA, for irrigation purposes; (2) Water Permit No. 6512[92] to NPC, for power purposes; and (3) Water Permit No. 11462[93] to MWSS for municipal/industrial purposes. Needless to state, all the entities currently holding water permits over Angat Dam are qualified to hold such permits, both under the Constitution and the Water Code.

The grant by NWRB of permits covering the waters not only within the Angat River but also those already impounded in the dam reveals an intention on the part of the agency to treat the

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[88] *See* PD 1067, Art. 10.

[89] *Id.*, Art. 4.

[90] *Id.*, Art. 14.

[91] *Rollo*, p. 1158.

[92] *Id.* at 1156.

[93] *Id.* at 1161.

waters of Angat River, including the waters in Angat Dam, as part of the water resources of the Philippines. There is an intention to treat the waters flowing from the river to the dam system as one contiguous system, all falling within the ambit of protection afforded by the Constitution and the Water Code to such water resources. Had NWRB through these years viewed the waters in Angat River as not part of the natural resources of the Philippines when they end up in the dam, how explain the water permits extended covering the waters in the dam itself; it would have suffice to grant a single water permit for the sole purpose of building and operating a dam.

Third, the DOJ Opinions cited by PSALM are not authoritative statements of the rule on the matter. Indeed, the DOJ Opinion[94] saying that the agreement between PSALM and K-Water does not violate the constitution is not binding on this Court. Its probative value is limited to just that, an opinion.

The opinion of the DOJ that the waters to be used in the operation of AHEPP have already been extracted is based on a misapplication of a US Supreme Court ruling. The cited *U.S. v. State of New York*,[95] concerning the Saratoga Springs Reservation, is not in point with the facts here. In that case, the issue revolves around the taxability of the bottling for sale and selling of mineral and table water from Saratoga Springs by the State of New York, Saratoga Springs Commission, and Saratoga Springs Authority. The US Supreme Court there ruled that they are subject to taxation, because the activity was a business enterprise and not merely a sale of natural resources. The US Supreme Court noted that the State: "took its natural resources and, through a bottling process, put those resources into a preserved condition where they could be sold to the public in competition with private waters."[96]

The process of bottling water involves the permanent extraction of water from its natural source. There lies the difference. Here,

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[94] DOJ Opinion No. 052, s. 2005, November 22, 2005.

[95] 48 F. Supp. 15, November 17, 1942.

[96] *Id*. at 18.

there is no actual extraction of waters, as the waters remain in the river-dam system. What we have here is the operation of a power plant using resources that originate from Angat River and held in the Angat Dam and Reservoir.

The DOJ further opined that:

> The fact that under the proposal, the non-power components and structures shall be retained and maintained by the government entities concerned is, to us, not only a sufficient compliance of constitutional requirement of "full control and supervision of the State" in the exploration, development, and utilization of natural resources. It is also an enough safeguard against the evil sought to be avoided by the constitutional reservation x x x[97]

This opinion is based on a clear misapprehension of facts. A cursory reading of the express terms of the O & M Agreement reveals that the operation and management of Angat Dam is being handed over the operator, K-Water. There is no such safeguard anywhere in the APA and O & M Agreement.

K-Water is disqualified from participating in the bidding

PSALM argues that NPC's obligation to transfer its water permit is subject to a suspensive condition, i.e., K-Water has to become a Filipino corporation, to become the transferee of NPC of its water permit.[98] This is an implied admission that PSALM knew of K-Water's disqualification to participate in the bidding. PSALM knew that the use of waters is indispensable in the operation of the power plant, and it goes against the spirit of EPIRA to sell the power plant to an entity which is legally barred from operating it. PSALM, therefore, should have disqualified K-Water at the outset.

It is unfortunate that instead of disqualifying K-Water, PSALM allowed the former to bid and eventually inked an Agreement with it on the operation of Angat Dam. That PSALM allowed

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[97] *Id*.

[98] *Rollo*, p. 1012.

this course of events to transpire constitutes a grave abuse of discretion.

The Agreements Violate the Constitution

The APA transfers ownership of the Angat Hydro-electric Power Plant to the buyer, K-Water. To operate this power plant, K-Water, as the new owner, will have to utilize the waters coming from Angat Dam, as it is the energy generated by the downstream of water that will be used to generate electricity. The use of natural resources in the operation of a power plant by a foreign corporation is contrary to the words and spirit of the Constitution.

The O & M is more straightforward, in that it expressly authorizes the operator, K-Water, to administer and manage non-power components, which it defines as "the Angat Dam, non-power equipment, facilities and installations, and appurtenant devices and structures which are particularly described in Annex 1."[99] While it is true, as PSALM argues, that Angat Dam itself is not being sold, the operation and management of the same is being handed to a wholly foreign corporation. This is cannot be countenanced under the express limitations in Constitution and the Water Code.

In fine, the Agreements between PSALM and K-Water necessarily grant to corporation wholly owned by a foreign state not just access to but direct control over the water resources of Angat Dam, and consequently some portions of the Angat River as well. On this ground, both agreements are constitutionally and statutorily infirm. They must be nullified.

The *ponencia* would rule toward the validity of the Agreements, but would disallow the transfer or assignment of NPC of its Water Rights under its Water Permit to K-Water. NPC retains control over the flow of waters (presumably by maintaining control over the spillway gates of Angat Dam), while K-Water is given the right to use the waters coming from the dam to generate electricity.

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[99] Art. 1.03, O & M Agreement, *rollo*, p. 1381.

The Water Permit of NPC itself however, states that the right given to NPC is limited to power generation, and precisely for the purpose of operating the AHEPP.[100] It is not given complete control over the waters of Angat River and Angat Dam, because the waters there are covered by separate water permits for different purposes. What NPC is actually giving up to K-Water is its right to utilize the waters of Angat River for power generation, the very right granted to it under its Water Permit. This, it cannot do, because of an express prohibition under the Water Code and the Constitution.

It would be splitting hairs to differentiate between the control of waters by the NPC and the K-Water's right to use the water for power generation. Water Permit No. 6512 granted to NPC will be rendered inutile if NPC assigns its right to use the water for power generation. That ensuing arrangement has the same effect as an assignment or transfer. To allow K-Water to utilize the waters without a corresponding water permit indirectly circumvents the regulatory measures imposed by the Water Code in appropriating water resources.

Thus, the Agreement concerning water rights is in direct contravention of the Water Code and Sec. 2, Art. XII of the Constitution. K-Water, being a wholly foreign-owned corporation, is disqualified from obtaining water permits and from being the transferee or assignee of an existing Water Permit. It is further barred from entering into any agreement that has the effect of transferring any of the water rights covered by existing water permits.

PSALM argues on this point that it will not be K-Water, as the operator of Angat Dam, which will extract or utilize the water from its natural source. They allege that it will be NPC, MWSS, and NIA that will continue to utilize and extract water, store them in the reservoir, then pass through Angat Dam where the operator, K-Water, will be subjected to rules on water releases.[101]

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[100] *Rollo*, p. 1157.

[101] *Id.* at 1007-1008.

PSALM would have Us believe that the operator of Angat Dam will merely play a passive role in the control of the waters in Angat Dam, yielding instead to MWSS, NIA and NPC, the last being the very entity which grants the operator its rights under its water permit. This argument is hardly convincing, if not altogether implausible. It is foolhardy to believe that NPC, the assignor of the water permit, would get to retain some control over the water, much less retain the right to extract the waters. This goes contrary to the very nature of an assignment. Once it assigns its water permit to the operator, it necessarily relinquishes any right it may have under the water permit. In fact, if it does further engage in water-related activities in Angat River and Angat Dam, it will be violating the Water Code for engaging in appropriation of water without the requisite permit.

Moreover, PSALM made an express admission that it is not NPC alone that engages in water-related activities in Angat Dam, as MWSS and NIA, pursuant to their respective water permits, engage in appropriation of water in Angat Dam. Even PAGASA engages in activities within the dam complex. Yet the O&M Agreement readily grants the operator the power to administer the entire Dam, without consent from the other agencies operating in Angat Dam, as the Water Protocol between the concerned agencies and entities has yet to be finalized.

Power generation may not be covered by the nationality restrictions, but use of natural resources for power generation is subject to the limitation in the Constitution

While it is established that power generation is not considered a public utility operation,[102] thus not subject to the nationality requirement for public utilities, the operator of a power plant is nevertheless bound to comply with the pertinent constitutional provision when using natural resources of the Philippines, including water resources. As already discussed, the operation

[102] RA 9136, Sec. 6.

of AHEPP necessarily requires the utilization and extraction of water resources. Thus, its operation should be limited to Filipino citizens and corporations or associations at least sixty per centum of whose capital is owned by such citizens, following the clear mandate of the Constitution.

PSALM has no power to cede control over Angat Dam

The O&M Agreement, in no uncertain terms, confers the operation of Angat Dam, among other non-power components, to the operator; that is, the buyer of AHEPP. But by express admission[103] of respondent PSALM, the following governmental agencies jointly operate within the Angat Dam Complex:

First, NWRB controls the exploitation, development, and conservation of the waters. It regulates the water from Angat River and allocates them to the three water permit holders, NPC, MWSS, and NIA.

Second, NIA appropriates the water coming from the outflow of the main units of AHEPP to Bustos Dam, for use in its irrigation systems.

Third, MWSS appropriates water coming from the outflow of the auxiliary units of AHEPP, for domestic and other purposes through its two concessionaires, Manila Water Company, Inc. and Maynilad Water Services, Inc.

Fourth, PAGASA uses its facilities located within the Angat Complex to forecast weather in the area, forecasts which are vital to the operation of the complex itself.

Fifth, the Flood Forecasting and Warning System for Dam Operations (NPC-FFWSDO) is responsible for the opening of the spillway gates during the rainy season. It has sole authority to disseminate flood warning and notifies the public, particularly those residing along the riverbanks, during spilling operation.

Sixth, the NPC-Watershed is responsible for preserving and conserving the forest of Angat Watershed, vital to the maintenance

[103] Comment of Respondent PSALM, pars. 17, 17.1-17.6.

of water storage in the Dam.

The O&M Agreement hands over to the operator, lock, stock, and barrel, the operation of the entire Angat Dam, among other non-power components within the Angat Dam Complex, to K-Water. This agreement undermines the capacity and power of the various governmental agencies to operate within the dam, as the operation thereof is being handed over to a private entity.

The distinction that PSALM intends to create is more illusory than real. The O&M Agreement is explicit in handing over the operation of the dam to the operator/buyer of AHEPP. There is an utter lack of supposed protocols in the management of water between the operator and the various government agencies, as there is yet no finalized Water Protocol. The provisions of the O&M Agreement by themselves unreasonably limit the powers and responsibilities of the different government agencies involved insofar as control of the waters of Angat Dam is concerned. Their participation in the finalization of the Water Protocol is already unjustly limited in that the provisions they may propose to include in the Protocol must respect the powers already given to the operator in the O & D Agreement.

This may result in dangerous consequences, as the operator can effectively inhibit the responsible governmental agencies from conducting activities within Angat Dam—activities that are vital not only to those entities with operation within Angat Dam, but also to the general public who will suffer the consequences of improper management of the waters in Angat Dam. In the event of unnatural swelling of the waters in the dam, for purposes of public accountability, the proper government agencies should be the ones to manage the outflow of water from the dam, and not a private operator.

To require the buyer to operate Angat Dam and the non-power components is null and void. The operation must always be in the hands of the government. The buyer can only be obliged to maintain the non-power components, but still under the control and supervision of the government.

The flow of waters to and from Angat Dam must at all times be within the control of the government, lest it lose control over vital functions including ensuring water security and flood control. Water security of the consuming public must take precedence over proprietary interests such as the operation of a power plant. Flood control, an increasingly important government function in light of the changing times, should never be left to a private entity, especially one with proprietary interests.

The operation of Angat Dam not only involves the utilization and extraction of waters, but also important government functions, including flood control, weather forecasting, and providing adequate water supply to the populace. Had it only been the former, the government under the Constitution is permitted to enter into joint venture agreements with those entities qualified under Sec. 2, Art. XII of the Constitution. However, the latter are necessary government functions which the government cannot devolve to private entities, including Filipino citizens and corporations.

It leads Us then to conclude that the pivotal provisions of the O&M Agreement entered into with K-Water, specifically those referring to the operation of Angat Dam, are repugnant to the letter and spirit of the 1987 Constitution.[104] The control and supervision of such areas must at all times be under the direct control and supervision of the government.

The maintenance of the dam, however, is a different matter. It is a proprietary function that the government may assign or impose to private entities. In the case here, We find it just to impose such duty to maintain the facility to the buyer of AHEPP, as it is in the best interest of the operations of AHEPP to ensure the optimal conditions of the structures of the dam. The performance of this duty, however, must still be under the supervision of the government.

In view of the urgency and time constraints in the privatization of AHEPP, PSALM has the option to award the sale of AHEPP

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[104] *See* CONSTITUTION, Art. XII, Sec. 2.

to any of the losing qualified bidders, provided that the Angat Water Protocol is executed and signed by all the concerned government agencies and that the Operations & Maintenance Agreement shall contain the provision that the operation of the Angat Dam, and the non-power components shall remain with the government while the maintenance and repair of the Dam and other non-power components shall be shouldered by the winning bidder, under the supervision and control of the government.

For the foregoing reasons, I vote to **GRANT** the Petition. The following dispositions are in order:

(1) PSALM should **FURNISH** the petitioners with copies of official documents, acts, and records relating to the bidding process for AHEPP;

(2) The award by PSALM of the AHEPP to K-Water is **NULL AND VOID** and **UNCONSTITUTIONAL**, as K-Water is **DISQUALIFIED** from participating in the bidding to privatize AHEPP. Accordingly, the APA and O&M Agreements entered into between PSALM and K-Water should be declared **NULL AND VOID** for being repugnant to Sec. 2, Art. XII of the Constitution; PSALM should be **PERMANENTLY ENJOINED** from further pursuing the sale of AHEPP in favor of K-Water; and

(3) **ONLY** Filipino citizens and corporations at least sixty per centum (60%) of whose capital is owned by Filipino citizens are **QUALIFIED** to participate in the bidding for the sale of AHEPP.

EN BANC

[G.R. No. 193237. October 9, 2012]

DOMINADOR G. JALOSJOS, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS and AGAPITO J. CARDINO,** *respondents.*

[G.R. No. 193536. October 9, 2012]

AGAPITO J. CARDINO, *petitioner, vs.* **DOMINADOR G. JALOSJOS, JR., and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OMNIBUS ELECTION CODE (OEC); A CRIMINAL CONVICTION BY FINAL JUDGMENT IS A PROPER GROUND FOR CANCELLATION OF A CERTIFICATE OF CANDIDACY; EFFECTS.— The **perpetual special disqualification** against Jalosjos arising from his criminal conviction by final judgment is a material fact involving eligibility which is a proper ground for a petition under Section 78 of the Omnibus Election Code. **Jalosjos' certificate of candidacy was void from the start since he was not eligible to run for any public office at the time he filed his certificate of candidacy. Jalosjos was never a candidate at any time, and all votes for Jalosjos were stray votes**. As a result of Jalosjos' certificate of candidacy being void *ab initio*, Cardino, as the only qualified candidate, actually garnered the highest number of votes for the position of Mayor. x x x A false statement in a certificate of candidacy that a candidate is eligible to run for public office is a false material representation which is a ground for a petition under Section 78 of the same Code. x x x Section 74 requires the candidate to state under oath in his certificate of candidacy "**that he is eligible for said office.**" A candidate is eligible if he has **a right to run for the public office**. If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under

oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.

2. ID.; ID.; A SENTENCE OF *PRISION MAYOR* BY FINAL JUDGMENT IS A DISQUALIFICATION UNDER THE OEC AND UNDER THE LOCAL GOVERNMENT CODE (LGC).— A sentence of *prisión mayor* by final judgment is a ground for disqualification under Section 40 of the Local Government Code and under Section 12 of the Omnibus Election Code. It is also a material fact involving the eligibility of a candidate under Sections 74 and 78 of the Omnibus Election Code. Thus, a person can file a petition under Section 40 of the Local Government Code or under either Section 12 or Section 78 of the Omnibus Election Code.

3. ID.; ID.; THE PENALTY OF *PRISION MAYOR* CARRIES WITH IT THE ACCESSORY PENALTIES OF TEMPORARY ABSOLUTE DISQUALIFICATION AND PERPETUAL SPECIAL DISQUALIFICATION; BOTH CONSTITUTE INELIGIBILITIES TO HOLD ELECTIVE PUBLIC OFFICE.— The penalty of *prisión mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification. Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*." The duration of the temporary absolute disqualification is the same as that of the principal penalty. On the other hand, under Article 32 of the Revised Penal Code **perpetual special disqualification** means that "**the offender shall not be permitted to hold any public office during the period of his disqualification,**" ***which is perpetually.*** Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. **A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.**

4. ID.; ID.; ID.; NATURE AND EFFECTS OF THE ACCESSORY PENALTY OF PERPETUAL SPECIAL DISQUALIFICATION,

EXPLAINED.— The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final. The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not. The last sentence of Article 32 states that "the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification." Once the judgment of conviction becomes final, it is immediately executory. Any public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and **the convict becomes ineligible to run for any elective public office perpetually**. ***In the case of Jalosjos, he became ineligible perpetually to hold, or to run for, any elective public office from the time his judgment of conviction became final.*** **Perpetual special disqualification** is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an ineligibility, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath. As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for public office.

5. ID.; ID.; WHEN THE FALSE MATERIAL REPRESENTATION ARISES FROM A CRIME PENALIZED BY *PRISION MAYOR*, A PETITION UNDER THE OEC OR UNDER THE LGC CAN BE FILED AT THE OPTION OF THE PETITIONER.— What is indisputably clear is that the false material representation of Jalosjos is a ground for a petition under Section 78. However, since the false material representation arises from a crime penalized by *prisión mayor*, a petition under Section 12 of the Omnibus Election Code or Section 40 of the Local Government Code can also be properly filed. The petitioner has a choice whether to anchor his petition on Section 12 or Section 78 of the Omnibus Election Code, or on Section 40 of the Local Government Code. The law expressly provides multiple remedies and the choice of which remedy to adopt belongs to the petitioner.

6. ID.; ID.; A CERTIFICATE OF CANDIDACY FILED BY AN INELIGIBLE CANDIDATE IS VOID *AB INITIO*;

EFFECTS.— The COMELEC properly cancelled Jalosjos' certificate of candidacy. A void certificate of candidacy on the ground of ineligibility that existed at the time of the filing of the certificate of candidacy can never give rise to a valid candidacy, and much less to valid votes. Jalosjos' certificate of candidacy was cancelled because he was ineligible from the start to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a valid candidate from the very beginning, his certificate of candidacy being void *ab initio*. Jalosjos' ineligibility existed on the day he filed his certificate of candidacy, and the cancellation of his certificate of candidacy retroacted to the day he filed it. Thus, Cardino ran unopposed. There was only one qualified candidate for Mayor in the May 2010 elections – Cardino – who received the highest number of votes. Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was **valid at the time of filing** but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.

7. ID.; ID.; ID.; EVEN WITHOUT A PETITION, THE COMELEC IS UNDER A LEGAL DUTY TO CANCEL

THE CERTIFICATE OF CANDIDACY FILED BY AN INELIGIBLE CANDIDATE.— Even without a petition under either Section 12 or Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law. Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to "**[e]nforce and administer all laws** and regulations relative to the conduct of an election." The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the **enforcement and administration of "all laws"** relating to the conduct of elections. To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Despite a prior perpetual special disqualification, Jalosjos was elected and served twice as mayor. The COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating to the conduct of elections if it does not *motu proprio* bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.

BERSAMIN, *J.*, *concurring opinion*:

1. POLITICAL LAW; OMNIBUS ELECTION CODE (OEC); SECTIONS 78 AND 68 PETITIONS ARE TWO DIFFERENT REMEDIES; ALLEGATIONS IN THE

PRESENT PETITION PERTAIN TO SECTION 78.— A Section 78 petition is not to be confused with a Section 12 or Section 68 petition. The two are different remedies, are based on different grounds, and can result in different eventualities. A person who is disqualified under either Section 12 or Section 68 is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered a candidate at all because his status is that of a person who has not filed a CoC. x x x [I]t [is] evident that Cardino's petition contained the essential allegations pertaining to a Section 78 petition, namely: (*a*) Jalosjos made a false representation in his CoC; (*b*) the false representation referred to a material matter that would affect the substantive right of Jalosjos to run in the elections for which he filed his CoC; and (*c*) Jalosjos made the false representation with the intention to deceive the electorate as to his qualification for public office or to deliberately attempt to mislead, misinform, or hide a fact that would otherwise render him ineligible. Worthy of noting is that the specific reliefs prayed for by the petition, *supra*, were not only for the declaration that Jalosjos was "ineligible for the position for which he filed certificate of candidacy" but also for denying "due course to such filing and to cancel the certificate of candidacy." Thereby, Cardino's petition attacked both Jalosjos' qualifications to run as Mayor of Dapitan City and the validity of Jalosjos' CoC based on the latter's assertion of his eligibility despite knowledge of his conviction and despite his failure to serve his sentence. The petition was properly considered to be *in all respects* as a petition to deny due course to or cancel Jalosjos' CoC under Section 78 of the *Omnibus Election Code*.

2. ID.; ID.; A PERSON CONVICTED FOR ROBBERY BY FINAL JUDGMENT IS INELIGIBLE TO RUN FOR ELECTIVE PUBLIC OFFICE; ELABORATED.— [T]he records show that the erstwhile Circuit Criminal Court in Cebu City had convicted Jalosjos of the felony of robbery on April 30, 1970 and had sentenced him to suffer the indeterminate penalty of one year, eight months and 20 days of *prision correccional*, as minimum, to four years, two months and one day of *prision mayor*, as maximum. Although he had appealed, his appeal was turned down on August 9, 1973. In June 1985, or more than 15 years after his conviction by the Circuit Criminal Court,

he filed a petition for probation. Pursuant to Section 40(a) of the LGC, his having been sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment rendered Jalosjos ineligible to run for Mayor of Dapitan City. There is no quibbling about the felony of robbery being an offense involving moral turpitude. As the Court has already settled, "embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude." x x x It is relevant to mention at this juncture that the ineligibility of a candidate based on his conviction by final judgment for a crime involving moral turpitude is also dealt with in Section 12 of the *Omnibus Election Code* x x x Pursuant to Section 12, Jalosjos remained ineligible to run for a public office considering that he had not been granted *plenary* pardon for his criminal offense. The expiration of the five-year period defined in Section 12 counted from his service of sentence did not affect the ineligibility, it being indubitable that he had not even served his sentence at all. It is relevant to clarify, moreover, that the five-year period defined in Section 12 is deemed superseded by the LGC, whose Section 40(a) expressly sets two years after serving sentence as the period of disqualification *in relation to local elective positions*. x x x Regardless of whether the period applicable was five years or two years, Jalosjos was still ineligible to run for any public office in any election by virtue of his having been sentenced to suffer *prision mayor*.

3. ID.; ID.; ID.; EFFECTS OF ACCESSORY PENALTY OF PERPETUAL SPECIAL DISQUALIFICATION.— That sentence perpetually disqualified him from running for any elective office considering that he had not been meanwhile granted any plenary pardon by the Chief Executive. x x x [I]n accordance with the express provisions of the *Revised Penal Code*, the penalty of *prision mayor* imposed on Jalosjos for the robbery conviction carried the accessory penalties of **temporary absolute disqualification** and of **perpetual special disqualification from the right of suffrage.** The effects of the accessory penalty of temporary absolute disqualification included the deprivation during the term of the sentence of the right to vote in any election for any popular elective office or to be elected to such office. **The effects of the accessory**

penalty of perpetual special disqualification from the right of suffrage was to deprive the convict perpetually of the right to vote in any popular election for any public office or to be elected to such office; he was further prohibited from holding any public office perpetually. These accessory penalties would remain even though the convict would be pardoned as to the principal penalty, unless the pardon expressly remitted the accessory penalties.

4. ID.; ID.; ID.; GRANT OF PROBATION DOES NOT RELIEVE THE CONVICT OF ALL THE CONSEQUENCES OF THE SENTENCE IMPOSED.— Probation, by its legal definition, is only "a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer." The grant of probation cannot by itself remove a person's disqualification to be a candidate or to hold any office due to its not being included among the grounds for the removal of the disqualification under Section 12 of the *Omnibus Election Code*[.] x x x [T]he amendment of Presidential Decree No. 968 [Probation Law of 1976] by Presidential Decree No. 1990 has made more explicit that probation only suspends the execution of the sentence under certain conditions set by the trial court[.] x x x For sure, probation or its grant has not been intended to relieve the convict of *all* the consequences of the sentence imposed on his crime involving moral turpitude. Upon his final discharge as a probationer, the convict is restored only to "*all civil rights lost or suspended as a result of his conviction*." This consequence is according to the second paragraph of Section 16 of the *Probation Law of 1976*, which states: "The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted." There is no question that civil rights are distinct and different from political rights, like the right of suffrage or the right to run for a public office. Even assuming that Jalosjos had been validly granted probation despite his having appealed his conviction (considering that the amendment stating that an appeal barred the application for probation took effect only on October 5, 1985 but his application for probation was earlier made in June 1985), his disqualification pursuant to Section

40(a) of the LGC would have still attached simply because the legal effect of a validly-granted probation was only to suspend the execution of sentence, not to obliterate the consequences of the sentence on his political rights.

5. ID.; ID.; ID.; A CONVICT CANNOT CLAIM GOOD FAITH IN REPRESENTING IN HIS COC THAT HE IS ELIGIBLE TO RUN AS MAYOR.— Jalosjos' reliance on the COMELEC Resolution dated August 2, 2004 was definitely not in good faith, but was contrary to every juridical conception of good faith, x x x Jalosjos had knowledge of the circumstances surrounding the finality of his conviction and the revocation of his probation. He never denied and cannot now dispute his failure to comply with the conditions of his probation, for he fully knew that he had never duly reported to Bacolod during the period of his probation. x x x Nor could Jalosjos even feign a lack of awareness of the issuance of the warrant for his arrest following the revocation of his probation by the RTC on March 19, 1987. This is because he filed an Urgent Motion for Reconsideration and to Lift Warrant of Arrest in the RTC upon obtaining the falsified certification issued by Bacolod. The absurdity of his claim of good faith was well-known even to him because of his possession at the time he filed his CoC of all the information material to his conviction and invalid probation. Being presumed to know the law, he knew that his conviction for robbery and his failure to serve his sentence rendered him ineligible to run as Mayor of Dapitan City. As a result, his affirmation of his eligibility in his CoC was truly nothing but an act tainted with bad faith.

6. ID.; ID.; ID.; THE INELIGIBILITY WAS BY ITSELF ADEQUATE TO INVALIDATE THE COC WITHOUT THE NECESSITY OF EXPRESS CANCELLATION; IT WAS BY OPERATION OF MANDATORY PENAL LAW.— [E]ven without the cancellation of his CoC, Jalosjos undeniably possessed a disqualification to run as Mayor of Dapitan City. The fact of his ineligibility was by itself adequate to invalidate his CoC without the necessity of its express cancellation or denial of due course by the COMELEC. Under no circumstance could he have filed a valid CoC. The accessory penalties that inhered to his penalty of *prision mayor* perpetually disqualified him from the right of suffrage as well as the right to be voted

for in any election for public office. The disqualification was by operation of a mandatory penal law. For him to be allowed to ignore the perpetual disqualification would be to sanction his lawlessness, and would permit him to make a mockery of the electoral process that has been so vital to our democracy. He was not entitled to be voted for, leaving all the votes cast for him stray and legally non-existent.

7. ID.; ID.; ID.; ID.; THE REMAINING CANDIDATE SHALL ASSUME THE POSITION OF THE DECLARED INELIGIBLE MAYOR; DOCTRINE OF THE SOVEREIGN WILL, NOT APPLICABLE.— Cardino, the only remaining candidate, was duly elected and should legally assume the position of Mayor of Dapitan City. x x x Although the doctrine of the sovereign will has prevailed several times in the past to prevent the nullification of an election victory of a disqualified candidate, or of one whose CoC was cancelled, the Court should not now be thwarted from enforcing the law in its letter and spirit by any desire to respect the will of the people expressed in an election. The objective of prescribing disqualifications in the election laws as well as in the penal laws is obviously to prevent the convicted criminals and the undeserving from running and being voted for. Unless the Court leads the way to see to the implementation of the unquestionable national policy behind the prescription of disqualifications, there would inevitably come the time when many communities of the country would be electing convicts and misfits. When that time should come, the public trust would be trivialized and the public office degraded. This is now the appropriate occasion, therefore, to apply the law in all its majesty in order to enforce its clear letter and underlying spirit. Thereby, we will prevent the electoral exercise from being subjected to mockery and from being rendered a travesty.

BRION, *J., dissenting opinion*:

1. POLITICAL LAW; OMNIBUS ELECTION CODE (OEC); ELIGIBILITY REQUIREMENTS AND DISQUALIFICATIONS, DISTINGUISHED.— To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for

local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC. When the law allows the **cancellation of a candidate's CoC,** the law considers the cancellation **from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy.** Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate ***and*** his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

2. ID.; ID.; DISTINCTIONS AMONG THE REMEDIES OF CANCELLATION OF COC, DISQUALIFICATION AND *QUO WARRANTO,* EXPLAINED.— ***As to the grounds:*** In the **denial of due course to or cancellation of a CoC**, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office; the governing provisions *are Sections 78 and 69 of the OEC*. In a **disqualification case**, as mentioned above, the grounds are traits, conditions, characteristics or acts of disqualification, individually applicable to a candidate, as provided under Sections 68 and 12 of the OEC; Section 40 of LGC 1991; and Section 8, Article X of the Constitution. As previously discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate's CoC although they may result in disqualification from candidacy whose immediate effect **upon finality before the elections** is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification. In a *quo warranto* petition, the grounds to oust an elected

official from his office are ineligibility and disloyalty to the Republic of the Philippines. This is provided under Section 253 of the OEC and governed by the Rules of Court as to procedures. While *quo warranto* and cancellation share the same ineligibility grounds, **they differ as to the time these grounds are cited.** A cancellation case is brought before the elections, while a *quo warranto* is filed after and may still be filed even if a CoC cancellation case was not filed before elections. x x x ***As to the period for filing:*** The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under **Section 78 of the OEC**, the petition must be filed within twenty-five (25) days from the filing of the CoC. However, if the petition is brought under **Section 69** of the same law, the petition must be filed within five (5) days from the last day of filing the CoC. On the other hand, the period to file a **disqualification case** is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696, while a *quo warranto* petition must be filed within ten (10) days from proclamation. ***As to the effects of a successful suit:*** A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed. After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution. The application of the exception, however, presupposes a valid CoC. Unavoidably, a "candidate" **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC,** to all intents and purposes. Similarly, a successful *quo warranto* suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply. On the other hand, a candidate who was **simply disqualified** is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office; substitution can thus take place under the terms of Section 77 of the OEC.

3. ID.; ID.; ID.; EFFECTS OF A SUCCESSFUL REMEDY ON THE RIGHT OF THE SECOND PLACER IN THE ELECTIONS.— In any of these three remedies, the doctrine of rejection of the second placer applies [.] x x x With the disqualification of the winning candidate and the application

of the doctrine of rejection of the second placer, the **rules on succession** under the law accordingly apply, as provided under Section 44 of LGC 1991. As an **exceptional situation**, however, the candidate with the second highest number of votes (*second placer*) may be validly proclaimed as the winner in the elections should the winning candidate be **disqualified** by final judgment ***before* the elections,** as clearly provided in Section 6 of R.A. No. 6646. The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote. In a **CoC cancellation** proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an *inexistent* "candidate" or for one who is deemed not to be in the ballot. Although legally a misnomer, the "second placer" should be proclaimed the winner as the candidate with the highest number of votes for the contested position. This same consequence should result if the cancellation case becomes final after elections, as the cancellation signifies non-candidacy from the very start, *i.e.*, from before the elections.

4. ID.; ID.; ID.; ID.; CONVICTION FOR A CRIME INVOLVING MORAL TURPITUDE IS A GROUND FOR DISQUALIFICATION AND IS NOT APPROPRIATE FOR CANCELLATION OF COC.— While it is apparent from the undisputed facts that Cardino did indeed file a petition for denial and/or the cancellation of Jalosjos' CoC, it is obvious as well, based on the above discussions, that the ground he cited was **not appropriate for the cancellation of Jalosjos' CoC but for his disqualification**. Conviction for a crime involving moral turpitude is expressly a ground for disqualification under Section 12 of the OEC. **As a ground, it applies only to Jalosjos; it is not a standard of eligibility that applies to all citizens who may be minded to run for a local political position; its non-possession is not a negative qualification that must be asserted in the CoC.** Hence, there

can be no doubt that what Cardino filed was effectively a petition for disqualification. This conclusion, of course, follows the rule that the nature of a petition is determined not by its title or by its prayers, but by the acts alleged as basis for the petition.

5. ID.; ID.; ID.; ID.; ID.; A SECOND PLACER IN THE ELECTION IS NOT GIVEN PREFERENCE TO ASSUME THE POSITION OF THE DISQUALIFIED MAYOR.— Unfortunately for Cardino, the position of a second placer is not given preference, both in law and in jurisprudence with respect to the consequences of election disputes (except with well-defined exceptional circumstances discussed above), after election has taken place. This approach and its consequential results are premised on the general principle that the electorate is supreme; it registers its choice during the election and, after voting, effectively rejects the candidate who comes in as the second placer. Under the rule that a disqualified candidate can still stand as a candidate unless his disqualification has been ruled upon with finality before the elections, Jalosjos validly stood as a candidate in the elections of May 2010 and won, although he was subsequently disqualified. With his disqualification while already sitting as Mayor, the winning vice-mayor, not Cardino as a mere defeated second placer, should rightfully be seated as mayor under Section 44 of LGC 1991 on the law on succession.

REYES, *J., dissenting opinion*:

1. POLITICAL LAW; OMNIBUS ELECTION CODE (OEC); WHERE THE ALLEGATIONS IN THE PETITION AROSE OUT OF A FINAL JUDGMENT OF CONVICTION AGAINST A CANDIDATE, IT MUST BE TREATED AS A PETITION FOR DISQUALIFICATION AND NOT FOR CANCELLATION OF A COC.— A painstaking examination of the petition filed by Cardino with the COMELEC would reveal that while it is designated as a petition to deny due course to or cancel a COC, the ground used to support the same actually partake of a circumstance which is more fittingly used in a petition for disqualification. Section 40(a) of the LGC clearly enumerates a final judgment of conviction for a crime involving moral turpitude as a ground for disqualification.

That Cardino employed the term "material misrepresentation" in his disputations cannot give his petition a semblance of what is properly a petition to cancel a COC. It bears reiterating that a petition to deny due course to or cancel a COC and a petition for disqualification are two separate and distinct actions which may be filed based on grounds pertaining to it. Thus, a petition for cancellation of COC cannot be predicated on a ground which is proper only in a petition for disqualification. The legislature would not have found it wise to provide for two different remedies to challenge the candidacy of an aspiring local servant and even provide for an enumeration of the grounds on which they may be based if they were intended to address the same predicament. The fact that the mentioned remedies were covered by separate provisions of law which relate to distinct set of grounds is a manifestation of the intention to treat them severally. Considering that the core of Cardino's petition in SPA No. 09-076 (DC) is the existence of a final judgment of conviction against Jalosjos, this material allegation is controlling of the characterization of the nature of the petition regardless of the caption used to introduce the same. Cardino's petition must therefore be treated and evaluated as a petition for disqualification and not for cancellation of COC. Well-settled rule is that the caption is not determinative of the nature of the petition. What characterizes the nature of the action or petition are the material allegations therein contained, irrespective of whether the petitioner is entitled to the reliefs prayed for therein.

2. ID.; ID.; ID.; A MERE SECOND PLACER IN THE ELECTION CANNOT ASSUME THE POSITION OF THE DISQUALIFIED MAYOR; THE DULY-ELECTED VICE-MAYOR SHOULD SUCCEED TO THE VACATED OFFICE.— Unlike a judgment on a petition to cancel a COC, the effects of a judgment on a petition for disqualification distinguish whether the same attained finality before or after the elections. If the judgment became final *before* the elections, the effect is identical to that of cancellation of a COC. If, however, the judgment attained finality *after* the elections, the individual is still considered an official candidate and may even be proclaimed winner should he muster the majority votes of the constituency. x x x The instant case falls under the second situation contemplated in Section 6 of R.A. No. 6646.

The petition to disqualify Jalosjos was filed on December 6, 2009 and was resolved by the COMELEC on the very day of elections of May 10, 2010. Thus, on the election day, Jalosjos is still considered an official candidate notwithstanding the issuance of the COMELEC Resolution disqualifying him from holding public office. The pendency of a disqualification case against him or even the issuance of judgment of disqualification against him does not forthwith divest him of the right to participate in the elections as a candidate because the law requires no less than a final judgment. Thus, the votes cast in his name were rightfully counted in his favor and, there being no order suspending his proclamation, the City Board of Canvassers lawfully proclaimed him as the winning candidate. However, upon the finality of the judgment of disqualification against him on August 11, 2010, a permanent vacancy was created in the office of the mayor which must be filled in accordance with Section 44 of the LGC [.] x x x The language of the law is clear, explicit and unequivocal, thus admits no room for interpretation but merely application. Accordingly, when Jalosjos was adjudged to be disqualified, a permanent vacancy was created in the office of the mayor for failure of the elected mayor to qualify for the position. As provided by law, it is the duly-elected vice-mayor of the locality who should succeed to the vacated office.

3. ID.; ID.; DOCTRINE OF REJECTION OF THE SECOND PLACER; CONCEPT.— The doctrine of rejection of the second placer was not conceived to suit the selfish interests of losing candidates or arm them with a weapon to retaliate against the prevailing candidates. The primordial consideration in adhering to this doctrine is not simply to protect the interest of the other qualified candidates joining the electoral race but more than that, to safeguard the will of the people in whom the sovereignty resides. The doctrine ensures that only the candidate who has the people's faith and confidence will be allowed to run the machinery of the government. It is a guarantee that the popular choice will not be compromised, even in the occasion that the prevailing candidate is eventually disqualified, by replacing him with the next-in-rank official who was also elected to office by the authority of the electorate. It is of no moment that, as Cardino surmised, the doctrine of rejection of the second placer dissuades other qualified candidates in

filing a disqualification case against the prevailing candidate for lack of expectation of gain. To justify the abandonment of the doctrine following Cardino's asseveration is to reduce its significance and put premium on the interest of the candidate rather than of the electorate for whose interest the election is being conducted. The doctrine was for the protection of the public and not for any private individual's advantage.

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D E C I S I O N

CARPIO, *J.*:

These are two special civil actions for *certiorari*[1] questioning the resolutions of the Commission on Elections (COMELEC) in SPA No. 09-076 (DC). In G.R. No. 193237, Dominador G. Jalosjos, Jr. (Jalosjos) seeks to annul the 10 May 2010 Resolution[2] of the COMELEC First Division and the 11 August 2010 Resolution[3] of the COMELEC *En Banc*, which both ordered the cancellation of his certificate of candidacy on the ground of false material representation. In G.R. No. 193536, Agapito J. Cardino (Cardino) challenges the 11 August 2010 Resolution of the COMELEC *En Banc*, which applied the rule on succession under the Local Government Code in filling the vacancy in the

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. No. 193237), pp. 40-48; *rollo* (G.R. No. 193536), pp. 29-37. Signed by Presiding Commissioner Rene V. Sarmiento, and Commissioners Armando C. Velasco and Gregorio Y. Larrazabal.

[3] *Rollo* (G.R. No. 193237), pp. 49-56; *rollo* (G.R. No. 193536), pp. 22-28. Signed by Chairman Jose A.R. Melo, and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Gregorio Y. Larrazabal.

Office of the Mayor of Dapitan City, Zamboanga del Norte created by the cancellation of Jalosjos' certificate of candidacy.

The Facts

Both Jalosjos and Cardino were candidates for Mayor of Dapitan City, Zamboanga del Norte in the May 2010 elections. Jalosjos was running for his third term. Cardino filed on 6 December 2009 a petition under Section 78 of the Omnibus Election Code to deny due course and to cancel the certificate of candidacy of Jalosjos. Cardino asserted that Jalosjos made a false material representation in his certificate of candidacy when he declared under oath that he was eligible for the Office of Mayor.

Cardino claimed that long before Jalosjos filed his certificate of candidacy, Jalosjos had already been convicted by final judgment for robbery and sentenced to *prisión mayor* by the Regional Trial Court, Branch 18 (RTC) of Cebu City, in Criminal Case No. CCC-XIV-140-CEBU. Cardino asserted that Jalosjos has not yet served his sentence. Jalosjos admitted his conviction but stated that he had already been granted probation. Cardino countered that the RTC revoked Jalosjos' probation in an Order dated 19 March 1987. Jalosjos refuted Cardino and stated that the RTC issued an Order dated 5 February 2004 declaring that Jalosjos had duly complied with the order of probation. Jalosjos further stated that during the 2004 elections the COMELEC denied a petition for disqualification filed against him on the same grounds.[4]

The COMELEC *En Banc* narrated the circumstances of Jalosjos' criminal record as follows:

> As backgrounder, [Jalosjos] and three (3) others were accused of the crime of robbery on January 22, 1969 in Cebu City. On April 30, 1970, Judge Francisco Ro. Cupin of the then Circuit Criminal Court

[4] *James A. Adasa v. Dominador Jalosjos, Jr.*, SPA No. 04-235. The Resolution of the COMELEC Second Division was promulgated on 2 August 2004, while the Resolution of the COMELEC *En Banc* was promulgated on 16 December 2006. *Rollo* (G.R. No. 193536), pp. 45-46.

of Cebu City found him and his co-accused guilty of robbery and sentenced them to suffer the penalty of *prision correccional* minimum to *prision mayor* maximum. [Jalosjos] appealed this decision to the Court of Appeals but his appeal was dismissed on August 9, 1973. It was only after a lapse of several years or more specifically on June 17, 1985 that [Jalosjos] filed a Petition for Probation before the RTC Branch 18 of Cebu City which was granted by the court. But then, on motion filed by his Probation Officer, [Jalosjos'] probation was revoked by the RTC Cebu City on March 19, 1987 and the corresponding warrant for his arrest was issued. Surprisingly, on December 19, 2003, Parole and Probation Administrator Gregorio F. Bacolod issued a Certification attesting that respondent Jalosjos, Jr., had already fulfilled the terms and conditions of his probation. This Certification was the one used by respondent Jalosjos to secure the dismissal of the disqualification case filed against him by Adasa in 2004, docketed as SPA No. 04-235.

This prompted [Cardino] to call the attention of the Commission on the decision of the Sandiganbayan dated September 29, 2008 finding Gregorio F. Bacolod, former Administrator of the Parole and Probation Administration, guilty of violating Section 3(e) of R.A. 3019 for issuing a falsified Certification on December 19, 2003 attesting to the fact that respondent Jalosjos had fully complied with the terms and conditions of his probation. A portion of the decision of the Sandiganbayan is quoted hereunder:

> The Court finds that the above acts of the accused gave probationer Dominador Jalosjos, [Jr.,] unwarranted benefits and advantage because the subject certification, which was issued by the accused without adequate or official support, was subsequently utilized by the said probationer as basis of the Urgent Motion for Reconsideration and to Lift Warrant of Arrest that he filed with the Regional Trial Court of Cebu City, which prompted the said court to issue the Order dated February 5, 2004 in Crim. Case No. CCC-XIV-140-CEBU, declaring that said probationer has complied with the order of probation and setting aside its Order of January 16, 2004 recalling the warrant or [sic] arrest; and that said Certification was also used by the said probationer and became the basis for the Commission on Elections to deny in its Resolution of August 2, 2004 the petition or [sic] private complainant James Adasa for the disqualification of the probationer from running

for re-election as Mayor of Dapitan City in the National and Local Elections of 2004.[5]

The COMELEC's Rulings

On 10 May 2010, the COMELEC First Division granted Cardino's petition and cancelled Jalosjos' certificate of candidacy. The COMELEC First Division concluded that "Jalosjos has indeed committed material misrepresentation in his certificate of candidacy when he declared, under oath, that he is eligible for the office he seeks to be elected to when in fact he is not by reason of a final judgment in a criminal case, the sentence of which he has not yet served."[6] The COMELEC First Division found that Jalosjos' certificate of compliance of probation was fraudulently issued; thus, Jalosjos has not yet served his sentence. The penalty imposed on Jalosjos was the indeterminate sentence of one year, eight months and twenty days of *prisión correccional* as minimum, to four years, two months and one day of *prisión mayor* as maximum. The COMELEC First Division ruled that Jalosjos "is not eligible by reason of his disqualification as provided for in Section 40(a) of Republic Act No. 7160."[7]

On 11 August 2010, the COMELEC *En Banc* denied Jalosjos' motion for reconsideration. The pertinent portions of the 11 August 2010 Resolution read:

> With the proper revocation of [Jalosjos'] earlier probation and a clear showing that he has not yet served the terms of his sentence, there is simply no basis for [Jalosjos] to claim that his civil as well as political rights have been violated. Having been convicted by final judgment, [Jalosjos] is disqualified to run for an elective position or to hold public office. His proclamation as the elected mayor in the May 10, 2010 election does not deprive the Commission of its authority to resolve the present petition to its finality, and to oust him from the office he now wrongfully holds.

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[5] *Rollo* (G.R. No. 193237), pp. 50-51.

[6] *Id*. at 46; *rollo* (G.R. No. 193536), p. 35.

[7] *Id*. at 47; *id*. at 36.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is denied for utter lack of merit. [Jalosjos] is hereby OUSTED from office and ordered to CEASE and DESIST from occupying and discharging the functions of the Office of the Mayor of Dapitan City, Zamboanga. Let the provisions of the Local Government Code on succession apply.

SO ORDERED.[8]

Jalosjos filed his petition on 25 August 2010, docketed as G.R. No. 193237, while Cardino filed his petition on 17 September 2010, docketed as G.R. No. 193536.

On 22 February 2011, this Court issued a Resolution dismissing G.R. No. 193237.

WHEREFORE, the foregoing premises considered, the Petition for *Certiorari* is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission on Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.[9]

Cardino filed a Manifestation on 17 March 2011 praying that this Court take judicial notice of its resolution in G.R. No. 193237. Jalosjos filed a Motion for Reconsideration[10] on 22 March 2011. On 29 March 2011, this Court resolved[11] to consolidate G.R. No. 193536 with G.R. No. 193237.

Jalosjos then filed a Manifestation on 1 June 2012 which stated that "he has resigned from the position of Mayor of the City of Dapitan effective 30 April 2012, which resignation was accepted by the Provincial Governor of Zamboanga del Norte, Atty. Rolando E. Yebes."[12] Jalosjos' resignation was made "[i]n deference with the provision of the Omnibus Election Code

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[8] *Id*. at 55-56; *id*. at 27-28.

[9] *Rollo* (G.R. No. 193237), p. 360.

[10] *Id*. at 373-393.

[11] *Rollo* (G.R. No. 193536), p. 178.

[12] *Id*. at 215.

in relation to [his] candidacy as Provincial Governor of Zamboanga del Sur in May 2013."[13]

These cases are not rendered moot by Jalosjos' resignation. In resolving Jalosjos' Motion for Reconsideration in G.R. No. 193237 and Cardino's Petition in G.R. No. 193536, we address not only Jalosjos' eligibility to run for public office and the consequences of the cancellation of his certificate of candidacy, but also COMELEC's constitutional duty to enforce and administer all laws relating to the conduct of elections.

The Issues

In G.R. No. 193237, Jalosjos argues that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it (1) ruled that Jalosjos' probation was revoked; (2) ruled that Jalosjos was disqualified to run as candidate for Mayor of Dapitan City, Zamboanga del Norte; and (3) cancelled Jalosjos' certificate of candidacy without making a finding that Jalosjos committed a deliberate misrepresentation as to his qualifications, as Jalosjos relied in good faith upon a previous COMELEC decision declaring him eligible for the same position from which he is now being ousted. Finally, the Resolutions dated 10 May 2010 and 11 August 2010 were issued in violation of the COMELEC Rules of Procedure.

In G.R. No. 193536, Cardino argues that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it added to the dispositive portion of its 11 August 2010 Resolution that the provisions of the Local Government Code on succession should apply.

This Court's Ruling

The **perpetual special disqualification** against Jalosjos arising from his criminal conviction by final judgment is a material fact involving eligibility which is a proper ground for a petition under Section 78 of the Omnibus Election Code. **Jalosjos' certificate of candidacy was void from the start since he was**

[13] *Id*. at 218.

not eligible to run for any public office at the time he filed his certificate of candidacy. Jalosjos was never a candidate at any time, and all votes for Jalosjos were stray votes. As a result of Jalosjos' certificate of candidacy being void *ab initio*, Cardino, as the only qualified candidate, actually garnered the highest number of votes for the position of Mayor.

The dissenting opinions affirm with modification the 10 May 2010 Resolution of the COMELEC First Division and the 11 August 2010 Resolution of the COMELEC *En Banc*. The dissenting opinions erroneously limit the remedy against Jalosjos to disqualification under Section 68 of the Omnibus Election Code and apply the rule on succession under the Local Government Code.

A false statement in a certificate of candidacy that a candidate is eligible to run for public office is a false material representation which is a ground for a petition under Section 78 of the same Code. Sections 74 and 78 read:

Sec. 74. *Contents of certificate of candidacy.*— **The certificate of candidacy shall state that the person filing it** is announcing his candidacy for the office stated therein and that he **is eligible for said office**; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.*— A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person **exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false**. The petition may be

filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis supplied)

Section 74 requires the candidate to state under oath in his certificate of candidacy "**that he is eligible for said office.**" A candidate is eligible if he has **a right to run for the public office**.[14] If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.

A sentence of *prisión mayor* by final judgment is a ground for disqualification under Section 40 of the Local Government Code and under Section 12 of the Omnibus Election Code. It is also a material fact involving the eligibility of a candidate under Sections 74 and 78 of the Omnibus Election Code. Thus, a person can file a petition under Section 40 of the Local Government Code or under either Section 12 or Section 78 of the Omnibus Election Code. The pertinent provisions read:

Section 40, Local Government Code:

Sec. 40. *Disqualifications*. - The following persons are disqualified from running for any elective local position:

(a) **Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence**;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

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[14] The Oxford Dictionary of English (Oxford University Press 2010) defines the word "eligible" as "having a right to do or obtain something."

(e) Fugitives from justice in criminal or non-political cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

Section 12, Omnibus Election Code:

Sec. 12. *Disqualifications*. — Any person who has been declared by competent authority insane or incompetent, or has been **sentenced by final judgment** for subversion, insurrection, rebellion or **for any offense for which he was sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office**, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

Section 68, Omnibus Election Code:

Sec. 68. *Disqualifications*. — Any candidate who, in an action or protest in which he is a party is **declared by final decision by a competent court guilty of**, **or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6**, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Revised Penal Code:

Art. 27. *Reclusion perpetua*. — x x x

Prisión mayor and temporary disqualification. — The duration of the penalties of *prisión mayor* and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case, it shall be that of the principal penalty.

xxx xxx xxx

Art. 30. *Effects of the penalties of perpetual or temporary absolute disqualification*. — The penalties of **perpetual or temporary absolute disqualification** for public office shall produce the following effects:

1. **The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election**.

2. **The deprivation of the right to vote in any election for any popular elective office or to be elected to such office**.

3. **The disqualification for the offices or public employments and for the exercise of any of the rights mentioned**.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

Art. 31. *Effects of the penalties of perpetual or temporary special disqualification*. — The penalties of **perpetual or temporary special disqualification for public office**, profession or calling shall produce the following effects:

1. **The deprivation of the office**, employment, profession or calling affected.

2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.

Art. 32. *Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage*. — The

perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or **to be elected to such office**. **Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification**.

Art. 42. *Prisión mayor — its accessory penalties*. — **The penalty of *prisión mayor* shall carry with it that of temporary absolute disqualification** and that of **perpetual special disqualification** from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphasis supplied)

The penalty of *prisión mayor* automatically carries with it, by operation of law,[15] **the accessory penalties of temporary absolute disqualification and perpetual special disqualification**. Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*." The duration of the temporary absolute disqualification is the same as that of the principal penalty. On the other hand, under Article 32 of the Revised Penal Code **perpetual special disqualification** means that "**the offender shall not be permitted to hold any public office during the period of his disqualification,**" ***which is perpetually.*** Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. **A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.**

In *Lacuna v. Abes*,[16] the Court, speaking through Justice J.B.L. Reyes, explained the import of the accessory penalty of **perpetual special disqualification:**

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[15] *People v. Silvallana*, 61 Phil. 636 (1935).

[16] 133 Phil. 770, 773-774 (1968).

On the first defense of respondent-appellee Abes, it must be remembered that appellee's conviction of a crime penalized with *prisión mayor* which carried the accessory penalties of temporary absolute disqualification and perpetual special disqualification from the right of suffrage (Article 42, Revised Penal Code); and Section 99 of the Revised Election Code disqualifies a person from voting if he had been sentenced by final judgment to suffer one year or more of imprisonment.

The accessory penalty of temporary absolute disqualification disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence (Article 27, paragraph 3, & Article 30, Revised Penal Code) that, in the case of Abes, would have expired on 13 October 1961.

But this does not hold true with respect to the other accessory penalty of perpetual special disqualification for the exercise of the right of suffrage. This accessory penalty deprives the convict of the right to vote *or to be elected to or hold public office perpetually*, as distinguished from temporary special disqualification, which lasts during the term of the sentence. Article 32, Revised Penal Code, provides:

> Art. 32. *Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of disqualification.

The word "perpetually" and the phrase "during the term of the sentence" should be applied distributively to their respective antecedents; thus, the word "perpetually" refers to the perpetual kind of special disqualification, while the phrase "during the term of the sentence" refers to the temporary special disqualification. The duration between the perpetual and the temporary (both special) are necessarily different because the provision, instead of merging their durations into one period, states that such duration is "according to the nature of said penalty" — which means according to whether

the penalty is the perpetual or the temporary special disqualification. (Emphasis supplied)

Clearly, *Lacuna* instructs that the accessory penalty of perpetual special disqualification **"deprives the convict of the right to vote *or to be elected to or hold public office perpetually.*"**

The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final. The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not. The last sentence of Article 32 states that "the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification." Once the judgment of conviction becomes final, it is immediately executory. Any public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and **the convict becomes ineligible to run for any elective public office perpetually**. ***In the case of Jalosjos, he became ineligible perpetually to hold, or to run for, any elective public office from the time his judgment of conviction became final.***

Perpetual special disqualification is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an ineligibility, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath. As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for public office. As this Court held in *Fermin v. Commission on Elections*,[17] the false material representation may refer to "**qualifications or eligibility.**" One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that "he is eligible to run for (public) office," **as expressly required under Section 74**, then

[17] G.R. Nos. 179695 and 182369, 18 December 2008, 574 SCRA 782.

he clearly makes a **false material representation** that is a ground for a petition under Section 78. As this Court explained in *Fermin*:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, **which may relate to the qualifications required of the public office he/she is running for**. **It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on *qualifications or eligibility* for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate**. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.[18] (Emphasis supplied)

Conviction for robbery by final judgment with the penalty of *prisión mayor*, to which perpetual special disqualification attaches by operation of law, is not a ground for a petition under Section 68 because **robbery is not one of the offenses enumerated in Section 68**. Insofar as crimes are concerned, **Section 68 refers only to election offenses under the Omnibus Election Code and not to crimes under the Revised Penal Code**. For ready reference, we quote again Section 68 of the Omnibus Election Code:

> Sec. 68. *Disqualifications*. — Any candidate who, in an action or protest in which he is a party is declared by final decision by a competent court guilty of, or found by the Commission of having **(a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess**

[18] *Id.* at 792-794.

of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphasis supplied)

There is absolutely nothing in the language of Section 68 that will justify including the crime of robbery as one of the offenses enumerated in this Section. **All the offenses enumerated in Section 68 refer to offenses under the Omnibus Election Code**. The dissenting opinion of Justice Reyes gravely errs when it holds that Jalosjos' conviction for the crime of robbery under the Revised Penal Code is a ground for "**a petition for disqualification under Section 68 of the OEC and not for cancellation of COC under Section 78 thereof**." This Court has already ruled that offenses punished in laws other than in the Omnibus Election Code cannot be a ground for a petition under Section 68. In *Codilla, Sr. v. de Venecia*,[19] the Court declared:

> [T]he jurisdiction of the COMELEC to disqualify candidates is **limited to those enumerated in Section 68 of the Omnibus Election Code**. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. (Emphasis supplied)

A candidate for mayor during the 2010 local elections certifies under oath four statements: (1) a statement that the candidate is a natural born or naturalized Filipino citizen; (2) a statement that the candidate is not a permanent resident of, or immigrant to, a foreign country; (3) **a statement that the candidate is eligible for the office he seeks election**; and (4) a statement of

[19] 442 Phil. 139, 177-178 (2002).

the candidate's allegiance to the Constitution of the Republic of the Philippines.[20]

We now ask: **Did Jalosjos make a false statement of a material fact in his certificate of candidacy when he stated under oath that he was eligible to run for mayor?** The COMELEC and the dissenting opinions all found that Jalosjos was not eligible to run for public office. The COMELEC concluded that Jalosjos made a false material representation that is a ground for a petition under Section 78. The dissenting opinion of Justice Reyes, however, concluded that the ineligibility of Jalosjos is a disqualification which is a ground for a petition under Section 68 and not under Section 78. The dissenting opinion of Justice Brion concluded that the ineligibility of Jalosjos is a disqualification that is not a ground under Section 78 without, however, saying under what specific provision of law a petition against Jalosjos can be filed to cancel his certificate of candidacy.

What is indisputably clear is that the false material representation of Jalosjos is a ground for a petition under Section 78. However, since the false material representation arises from a crime penalized by *prisión mayor*, a petition under Section 12 of the Omnibus Election Code or Section 40 of the Local Government Code can also be properly filed. The petitioner has a choice whether to anchor his petition on Section 12 or Section 78 of the Omnibus Election Code, or on Section 40 of the Local Government Code. The law expressly provides multiple remedies and the choice of which remedy to adopt belongs to the petitioner.

The COMELEC properly cancelled Jalosjos' certificate of candidacy. A void certificate of candidacy on the ground of ineligibility that existed at the time of the filing of the certificate of candidacy can never give rise to a valid candidacy, and much

[20] I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto. I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities. I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion.

less to valid votes.[21] Jalosjos' certificate of candidacy was cancelled because he was ineligible from the start to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a valid candidate from the very beginning, his certificate of candidacy being void *ab initio*. Jalosjos' ineligibility existed on the day he filed his certificate of candidacy, and the cancellation of his certificate of candidacy retroacted to the day he filed it. Thus, Cardino ran unopposed. There was only one qualified candidate for Mayor in the May 2010 elections – Cardino – who received the highest number of votes.

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible[22] should be limited to situations where the certificate of candidacy of the first-placer was **valid at the time of filing** but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes.[23] If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This

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[21] *Bautista v. Commission on Elections,* 359 Phil. 1, 16 (1998). See *Miranda v. Abaya*, 370 Phil. 642 (1999); *Gador v. Commission on Elections*, 184 Phil. 395 (1980).

[22] *Aquino v. Commission on Elections,* 318 Phil. 467 (1995); *Labo, Jr. v. Commission on Elections,* 257 Phil. 1 (1989).

[23] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, 24 April 2007, 522 SCRA 23.

is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.

Even without a petition under either Section 12 or Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to "**[e]nforce and administer all laws** and regulations relative to the conduct of an election."[24] The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the **enforcement and administration of "all laws"** relating to the conduct of elections.

To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Despite a prior perpetual special disqualification, Jalosjos was elected and served twice as mayor. The COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating

[24] CONSTITUTION, Art. IX-C, Sec. 2(1).

to the conduct of elections if it does not *motu proprio* bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.

WHEREFORE, the Motion for Reconsideration in G.R. No. 193237 is **DENIED**, and the Petition in G.R. No. 193536 is **GRANTED.** The Resolutions dated 10 May 2010 and 11 August 2010 of the COMELEC First Division and the COMELEC *En Banc*, respectively, in SPA No. 09-076 (DC), are **AFFIRMED** with the **MODIFICATION** that Agapito J. Cardino ran unopposed in the May 2010 elections and thus received the highest number of votes for Mayor. The COMELEC *En Banc* is **DIRECTED** to constitute a Special City Board of Canvassers to proclaim Agapito J. Cardino as the duly elected Mayor of Dapitan City, Zamboanga del Norte.

Let copies of this Decision be furnished the Secretaries of the Department of Justice and the Department of Interior and Local Government so they can cause the arrest of, and enforce the jail sentence on, Dominador G. Jalosjos, Jr. due to his conviction for the crime of robbery in a final judgment issued by the Regional Trial Court (Branch 18) of Cebu City in Criminal Case No. CCC-XIV-140-CEBU.

SO ORDERED.

Sereno, C.J., del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

Bersamin, J., see concurring opinion.

Velasco, Jr., J., joins the dissent of J. B. Reyes.

Brion and *Reyes, JJ.*, see dissenting opinions.

Leonardo-de Castro and *Peralta, JJ.*, no part due to prior participation in a related case.

CONCURRING OPINION

BERSAMIN, *J.*:

The all-important concern here is the effect of the conviction for robbery by final judgment of and the probation allegedly granted to Dominador G. Jalosjos, petitioner in G.R. No. 193237, on his candidacy for the position of Mayor of Dapitan City; and the determination of the rightful person to assume the contested elective position upon the ineligibility of Jalosjos.

I easily CONCUR with the insightful opinion delivered for the Majority by our esteemed colleague, Senior Associate Justice Carpio. As I see it, these consolidated cases furnish to the Court the appropriate occasion to look again into the candidacy of a clearly ineligible candidate garnering the majority of the votes cast in an election and being proclaimed as the winning candidate to the detriment of the valid candidacy of his rival who has all the qualifications and suffers none of the disqualifications. The ineligible candidate thereby mocks the sanctity of the ballot and reduces the electoral exercise into an expensive joke.

G.R. No. 193237 is a special civil action for *certiorari* brought by Jalosjos to assail the Resolution dated August 11, 2010,[1] whereby the Commission on Elections (COMELEC) *En Banc* affirmed the Resolution dated May 10, 2010[2] issued by the COMELEC First Division in SPC No. 09-076 (DC). Both Resolutions declared Jalosjos ineligible to run as Mayor of Dapitan City, Zamboanga Del Norte in the May 10, 2010 national and local elections pursuant to Section 40(*a*) of *The Local Government Code* (LGC), *viz*:

> Section 40. *Disqualifications*.— The following persons are disqualified from running for any elective local position:
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> (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more

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[1] *Rollo*, G.R. No. 193237, pp. 49-56.

[2] *Id.* at 40-48.

of imprisonment, within two (2) years after serving sentence; (b) Those removed from office as a result of an administrative case;

xxx xxx xxx

Additionally, the COMELEC cancelled Jalosjos' certificate of candidacy (CoC) on the ground of material misrepresentation made therein.

Jalosjos charges the COMELEC *En Banc* with committing grave abuse of discretion when it ruled that he was disqualified to run as Mayor of Dapitan City in view of the revocation of his probation; and when it cancelled his CoC without finding that he had deliberately misrepresented his qualifications to run as Mayor.

G.R. No. 193536 is a special civil action for *certiorari* commenced by Agapito J. Cardino, the only other candidate against Jalosjos, in order to set aside the COMELEC *En Banc*'s Resolution dated August 11, 2010,[3] to the extent that the Resolution directed the application of the rule of succession as provided in the LGC. Cardino challenges the COMELEC *En Banc*'s application of the rule of succession under the LGC, contending that he should be considered elected as Mayor upon the cancellation of Jalosjos' CoC because he had been the only *bona fide* candidate for the position of Mayor of Dapitan City.[4] Cardino insists that the cancellation of Jalosjos' CoC retroacted to the date of its filing, thereby reducing him into a non-candidate.[5]

The special civil actions were consolidated on March 29, 2011.[6]

Antecedents

The antecedents are narrated in the Resolution the Court has promulgated on February 22, 2011 in G.R. No. 193237, to wit:

[3] *Id.* at 49-56.

[4] *Rollo,* G.R. No. 193536, p. 9.

[5] *Id.*

[6] *Id.* at 177.

On December 6, 2009, private respondent Agapito J. Cardino filed a Petition to Deny Due Course to and Cancel Certificate of Candidacy of petitioner before respondent Comelec. Petitioner and private respondent were both candidates for Mayor of Dapitan City, Zamboanga del Norte during the 2010 Elections. Private respondent alleged that petitioner misrepresented in his CoC that he was eligible to run for Mayor, when, in fact, he was not, since he had been convicted by final judgment of robbery, a crime involving moral turpitude, and he has failed to serve a single day of his sentence.

The final judgment for robbery stems from the following factual antecedents:

On April 30, 1970, the then Circuit Criminal Court (now Regional Trial Court [RTC]) of Cebu City convicted petitioner of the crime of robbery and sentenced him to suffer the penalty of one (1) year, eight (8) months, and twenty (20) days of *prision correccional*, as minimum, to four (4) years, two (2) months, and one (1) day of *prision mayor*, as maximum. Petitioner appealed his conviction to the Court of Appeals (CA). He later abandoned the appeal, which was thus dismissed on August 9, 1973. Sometime in June 1985, petitioner filed a petition for probation.

On July 9, 1985, Gregorio F. Bacolod (Bacolod), who was then the Supervising Probation Officer of the Parole and Probation Office, recommended to the RTC the grant of petitioner's application for probation. On the same day, the RTC issued an Order granting the probation for a period of one year subject to the terms and conditions stated therein.

However, on August 8, 1986, Bacolod filed a Motion for Revocation of the probation on the ground that petitioner failed to report to him, in violation of the condition of the probation. Accordingly, the RTC issued an Order dated March 19, 1987, revoking the probation and ordering the issuance of a warrant of arrest. A warrant of arrest was issued but remained unserved.

More than 16 years later, or on December 19, 2003, petitioner secured a Certification from the Central Office of the Parole and Probation Administration (PPA), which was signed by Bacolod, now Administrator of the PPA, attesting that petitioner had fulfilled the terms and conditions of his probation.

At this time, the prosecution also decided to stir the case. It filed a motion for the issuance of an *alias* warrant of arrest. The RTC

granted the motion on January 16, 2004 and issued an Order for the Issuance of an *Alias* Warrant of Arrest against petitioner.

On January 23, 2004, Bacolod submitted to the RTC a Termination Report stating that petitioner had fulfilled the terms and conditions of his probation and, hence, his case should be deemed terminated. On the same day, petitioner filed an Urgent Motion to Reconsider its January 16, 2004 Order and to Lift the Warrant of Arrest.

On January 29, 2004, James A. Adasa (Adasa), petitioner's opponent for the mayoralty position during the 2004 Elections, filed a Petition for Disqualification against petitioner, based on Section 40(a) of Republic Act (R.A.) No. 7160, the *Local Government Code of 1991*, on the ground that the latter has been convicted of robbery and failed to serve his sentence. Adasa later amended his petition to include Section 40(e) of the same law, claiming that petitioner is also a "fugitive from justice."

Meanwhile, acting on petitioner's urgent motion, the RTC issued an Order dated February 5, 2004, declaring that petitioner had duly complied with the order of probation, setting aside its January 16, 2004 Order, and recalling the warrant of arrest.

Thus, in resolving Adasa's petition, the Comelec Investigating Officer cited the February 5, 2004 RTC Order and recommended that petitioner be declared qualified to run for Mayor. In the Resolution dated August 2, 2004, the Comelec-Second Division adopted the recommendation of the Investigating Officer and denied the petition for disqualification. It held that petitioner has amply proven that he had complied with the requirements of his probation as shown by the Certification from the PPA dated December 19, 2003, which was the basis of the February 5, 2004 RTC Order.

Adasa filed a motion for reconsideration, which the Comelec *En Banc* denied on December 13, 2006.

Adasa then filed a petition for *certiorari* with the Supreme Court (G.R. No. 176285). In a Resolution dated June 3, 2008, the Court dismissed the petition for being moot and academic, the three-year term of office having expired.

In a related incident, Bacolod, who issued the Certification dated December 19, 2003 to petitioner, was charged with violation of Section 3(e) of R.A. No. 3019 and falsification of public document under the Revised Penal Code for issuing said Certification. On

September 29, 2008, the Sandiganbayan rendered a decision finding Bacolod guilty as charged. It held that the Certification he issued was definitely false because petitioner did not actually fulfill the conditions of his probation as shown in the RTC Order dated March 19, 1987, which states that the probation was being revoked. Hence, at the time the Certification was issued, there was no longer a probation order to be fulfilled by petitioner.

On May 10, 2010, the elections were held, and petitioner won as Mayor of Dapitan City.

On the same day, the Comelec-First Division issued a resolution granting the Petition to Deny Due Course and cancelling petitioner's CoC. The Comelec noted that the dismissal of Adasa's petition for disqualification hinged on the presumption of regularity in the issuance of the PPA Certification dated December 19, 2003, declaring that petitioner had complied with the requirements of his probation. It opined that, with the decision of the Sandiganbayan convicting Bacolod, it would now appear that the December 19, 2003 Certification was fraudulently issued and that petitioner had not actually served his sentence; thus, the ruling on Adasa's petition is "left with no leg to stand on."

Petitioner moved for reconsideration. The Comelec *En Banc* denied the motion in a resolution dated August 11, 2010. The Comelec ordered him to cease and desist from occupying and discharging the functions of the Office of the Mayor of Dapitan City.[7]

Through the Resolution promulgated on February 22, 2011,[8] the Court dismissed G.R. No. 193237, disposing:

WHEREFORE, the foregoing premises considered, the Petition for *Certiorari* is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission on Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.

On March 22, 2011, Jalosjos moved for the reconsideration of the February 22, 2011 Resolution,[9] raising the same issues he had averred in his petition.

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[7] *Rollo,* G.R. No. 193237, pp. 355-358.

[8] *Id.* at 355-360.

[9] *Id.* at 373-391.

On June 1, 2012, however, Jalosjos filed a manifestation dated May 30, 2012, informing the Court that he had meanwhile tendered his resignation as Mayor of Dapitan City effective April 30, 2012; that his resignation had been accepted by Governor Rolando E. Yebes of Zamboanga del Norte; and that Vice Mayor Patri Bajamunde-Chan had taken her oath of office as the new Mayor of Dapitan City.

Disposition

I vote to affirm the disqualification of Jalosjos as a candidate for Mayor of Dapitan City; and to sustain the Resolution of the COMELEC *En Banc* cancelling his CoC.

I agree with the Majority that the rule of succession provided by the LGC does not apply to determine who should now sit as Mayor of Dapitan City. Thus, I hold that Cardino, the only other candidate with a valid CoC for Mayor of Dapitan City in the May 10, 2010 elections, had the legal right to assume the position of City Mayor.

Let me specify the reasons for this humble concurrence.

1.
Cardino's petition in SPA Case No. 09-076 (DC) was a petition to deny due course to or cancel a CoC under Section 78 of the *Omnibus Election Code*

The COMELEC *En Banc* correctly held that the petition of Cardino in SPA Case No. 09-076 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the *Omnibus Election Code*.

In *Salcedo II v. Commission on Elections*,[10] the Court pointed out that there are two remedies available to challenge the qualifications of a candidate, namely:

(1) *Before the election*, pursuant to Section 78 of the *Omnibus Election Code*, to wit:

[10] G.R. No. 135886, August 16, 1999, 312 SCRA 447.

Section 78. *Petition to deny due course or to cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material misrepresentation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

and □

(2) *After the election*, pursuant to Section 253 of the *Omnibus Election Code*, *viz*:

Section 253. *Petition for quo warranto*. - Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission within ten days after the proclamation of the results of the election.

The Court has explained that the only difference between the two remedies is that, under Section 78, the qualifications for elective office are misrepresented in the CoC, and the proceedings must be initiated prior to the elections, while under Section 253, a petition for *quo warranto* may be brought within ten days after the proclamation of the election results on either of two grounds, to wit: (*a*) ineligibility; or (*b*) disloyalty to the Republic of the Philippines. A candidate is ineligible under Section 253 if he is disqualified to be elected to office; and he is disqualified if he lacks any of the qualifications for elective office.[11]

In describing the nature of a Section 78 petition, the Court said in *Fermin v. Commission on Elections*:[12]

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications*

[11] *Id.* at 457.

[12] G.R. Nos. 179695 & 182369, December 18, 2008, 574 SCRA 782.

but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is **eligible** for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office**. **If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.** Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.[13]

Clearly, the only instance where a petition assailing the qualifications of a candidate for elective office can be filed *prior to* the elections is when the petition is filed under Section 78.[14]

A Section 78 petition is not to be confused with a Section 12 or Section 68 petition. The two are different remedies, are based on different grounds, and can result in different eventualities.[15] A person who is disqualified under either Section 12[16] or

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[13] *Id.*, pp. 792-794; emphases are part of the original text.

[14] *Gonzales v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 777.

[15] *Fermin v. Commission on Elections, supra*, note 12, p. 794.

[16] Section 12. *Disqualifications*. - Any person who has been declared by competent authority insane or incompetent, or **has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude,** shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

This disqualification to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

Section 68[17] is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered a candidate at all because his status is that of a person who has not filed a CoC.[18]

To ascertain whether Cardino's petition against Jaloslos was a petition under Section 78, on one hand, or under Section 12 or Section 68, on the other hand, it is necessary to look at its averments and relief prayed for, *viz*:

1. Petitioner is of legal age, Filipino citizen, married, able to read and write, a registered voter of Precinct No. 0019A, and is and has been a resident of Dapitan City, continuously since birth up to the present;

2. Petitioner duly filed his certificate of candidacy for the position of City Mayor of Dapitan for the election on May 10, 2010, with the Office of the Commission on Election, Dapitan City, on December 1, 2009, which accepted and acknowledged the same, a copy of which is hereto attached as Annex A;

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[17] Section 68. *Disqualifications*. □ Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[18] *Fermin v. Commission on Elections, supra*, note 12, at pp. 794-796, to wit:

x x x [A] petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material

3. Respondent is also of legal age, a resident of Dapitan City, a registered voter of Precinct No. 0187B, likewise filed his certificate of candidacy for the same position with the Office of the Comelec, Dapitan City, as that for which petitioner duly filed a certificate of candidacy, for the May 10, 2010 national and local elections on December 1, 2009, a certified true copy of said COC is hereto attached as Annex B;

4. Respondent's certificate of candidacy under oath contains material misrepresentation, when he declared under oath, that respondent is eligible for the office he seeks to be elected, [par. 16, COC for Mayor], considering that he is not eligible for the position for which he filed a certificate of candidacy because respondent was convicted by final judgment by the Regional Trial Court of Cebu City in Crim. Case No. CCC-XIV-140-Cebu for Robbery, an offense involving moral turpitude and he was sentenced to suffer the penalty of "one [1] year, eight [8] Months and Twenty [20] Days of *prision correccional*, as minimum, to Four [4] years, Two [2] months and One [1] day of *prision mayor* as maximum, a certified true [copy] of which decision is hereto attached as Annex C;

5. Respondent failed to serve even a single day of his sentence. The position requires that a candidate be eligible and/or qualified to aspire for the position as required under Section 74 of the Omnibus Election Code;

6. This petition is being filed within the reglementary period of within five days following the last day for the filing of certificate of candidacy.

WHEREFORE, it is most respectfully prayed of this Honorable Commission:

1. Declaring respondent, Dominador G. Jalosjos, Jr. ineligible for the position for which he filed certificate of candidacy and **to deny due course to such filing and to cancel the**

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representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

> **certificate of candidacy [Annex B];** x x x[19] (Emphasis supplied)

The foregoing make it evident that Cardino's petition contained the essential allegations pertaining to a Section 78 petition, namely: (*a*) Jalosjos made a false representation in his CoC; (*b*) the false representation referred to a material matter that would affect the substantive right of Jalosjos to run in the elections for which he filed his CoC; and (*c*) Jalosjos made the false representation with the intention to deceive the electorate as to his qualification for public office or to deliberately attempt to mislead, misinform, or hide a fact that would otherwise render him ineligible.[20]

Worthy of noting is that the specific reliefs prayed for by the petition, *supra*, were not only for the declaration that Jalosjos was "ineligible for the position for which he filed certificate of candidacy" but also for denying "due course to such filing and to cancel the certificate of candidacy." Thereby, Cardino's petition attacked both Jalosjos' qualifications to run as Mayor of Dapitan City and the validity of Jalosjos' CoC based on the latter's assertion of his eligibility despite knowledge of his conviction and despite his failure to serve his sentence. The petition was properly considered to be *in all respects* as a petition to deny due course to or cancel Jalosjos' CoC under Section 78 of the *Omnibus Election Code*.

2.

Jalosjos materially misrepresented his eligibility as a candidate for Mayor of Dapitan City; hence, the COMELEC properly cancelled his CoC

The denial of due course to or the cancellation of the CoC under Section 78 of the *Omnibus Election Code* involves a finding not only that a person lacked the qualifications but also that he

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[19] *Rollo*, G.R. No. 193237, pp. 58-59.

[20] See *Fermin v. Commission on Elections*, *supra*, note 12; *Salcedo II v. Commission on Elections*, *supra*, note 10.

made a material representation that was false.[21] In *Mitra v. Commission on Elections*,[22] the Court added that there must also be a deliberate attempt to mislead, thus:

> The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.[23]

A petition for the denial of due course to or cancellation of a CoC that is short of the requirements should not be granted.

Based on the antecedents narrated herein, I consider to be warranted the COMELEC *En Banc*'s conclusion to the effect that, *firstly*, his conviction for robbery absolutely disqualified Jalosjos from running as Mayor of Dapitan City, and, *secondly*, Jalosjos deliberately misrepresented his eligibility when he filed his CoC.

First of all, the records show that the erstwhile Circuit Criminal Court in Cebu City had convicted Jalosjos of the felony of robbery

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[21] Section 78. *Petition to deny due course to or cancel a certificate of candidacy*. □ A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[22] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

[23] *Id.* at 769.

on April 30, 1970 and had sentenced him to suffer the indeterminate penalty of one year, eight months and 20 days of *prision correccional*, as minimum, to four years, two months and one day of *prision mayor*, as maximum. Although he had appealed, his appeal was turned down on August 9, 1973. In June 1985, or more than 15 years after his conviction by the Circuit Criminal Court, he filed a petition for probation.

Pursuant to Section 40(a) of the LGC,[24] his having been sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment rendered Jalosjos ineligible to run for Mayor of Dapitan City. There is no quibbling about the felony of robbery being an offense involving moral turpitude. As the Court has already settled, "embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude."[25]

Anent moral turpitude for purposes of the election laws, the Court has stated in *Teves v. Commission on Elections*:[26]

> Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.
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[24] Section 40. *Disqualifications.* - The following persons are disqualified from running for any elective local position:

(a) **Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence**; (b) Those removed from office as a result of an administrative case;

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[25] *Republic v. Marcos*, G.R. Nos. 130371 & 130855, August 4, 2009, 595 SCRA 43, 63; see also *De Jesus-Paras v. Vailoces*, A.C. No. 439, April 12, 1961, 1 SCRA 954, 956.

[26] G.R. No. 180363, April 28, 2009, 587 SCRA 1.

Thus, in *Dela Torre v. Commission on Elections*, the Court clarified that:

> Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine." In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in "*Zari v. Flores*," to wit:
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> > "It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited."[27]

It is relevant to mention at this juncture that the ineligibility of a candidate based on his conviction by final judgment for a crime involving moral turpitude is also dealt with in Section 12 of the *Omnibus Election Code*, which specifically states: –

> Section 12. *Disqualifications.* – Any person who has been declared by competent authority insane or incompetent, or **has been sentenced by final judgment** for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or **for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.**
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> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or **after the expiration of a period of five years from his service of sentence**, unless within the same period he again becomes disqualified. (Emphasis supplied.)

Pursuant to Section 12, Jalosjos remained ineligible to run for a public office considering that he had not been granted

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[27] *Id.* at 12-13.

plenary pardon for his criminal offense. The expiration of the five-year period defined in Section 12 counted from his service of sentence did not affect the ineligibility, it being indubitable that he had not even served his sentence at all.

It is relevant to clarify, moreover, that the five-year period defined in Section 12 is deemed superseded by the LGC, whose Section 40(a) expressly sets two years after serving sentence as the period of disqualification *in relation to local elective positions*. To reconcile the incompatibility between Section 12 and Section 40(a), the Court has discoursed in *Magno v. Commission on Elections*:[28]

> It should be noted that the Omnibus Election Code (BP 881) was approved on December 3, 1985 while the Local Government Code (RA 7160) took effect on January 1, 1992. It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. *Legis posteriores priores contrarias abrogant*. In enacting the later law, the legislature is presumed to have knowledge of the older law and intended to change it. Furthermore, the repealing clause of Section 534 of RA 7160 or the Local Government Code states that:
>
> > (f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any provisions of this Code are hereby repealed or modified accordingly.
>
> In accordance therewith, Section 40 of RA 7160 is deemed to have repealed Section 12 of BP 881. Furthermore, Article 7 of the Civil Code provides that laws are repealed only by subsequent ones, and not the other way around. When a subsequent law entirely encompasses the subject matter of the former enactment, the latter is deemed repealed.
>
> **In *David vs. COMELEC*, we declared that RA 7160 is a codified set of laws that specifically applies to local government units. Section 40 thereof specially and definitively provides for disqualifications of candidates for elective *local positions*. It is**

[28] G.R. No. 147904, October 4, 2002, 390 SCRA 495.

applicable to them only. On the other hand, Section 12 of BP 881 speaks of disqualifications of candidates for *any public office*. It deals with the *election of all public officers*. Thus, Section 40 of RA 7160, insofar as it governs the disqualifications of candidates for local positions, assumes the nature of a special law which ought to prevail.

The intent of the legislature to reduce the disqualification period of candidates for local positions from five to two years is evident. The cardinal rule in the interpretation of all laws is to ascertain and give effect to the intent of the law. The reduction of the disqualification period from five to two years is the manifest intent. (Bold emphases supplied)[29]

Regardless of whether the period applicable was five years or two years, Jalosjos was still ineligible to run for any public office in any election by virtue of his having been sentenced to suffer *prision mayor*. That sentence perpetually disqualified him from running for any elective office considering that he had not been meanwhile granted any plenary pardon by the Chief Executive.

Indeed, in accordance with the express provisions of the *Revised Penal Code*, the penalty of *prision mayor* imposed on Jalosjos for the robbery conviction carried the accessory penalties of **temporary absolute disqualification** and of **perpetual special disqualification from the right of suffrage.** The effects of the accessory penalty of temporary absolute disqualification included the deprivation during the term of the sentence of the right to vote in any election for any popular elective office or to be elected to such office.[30] **The effects of the accessory penalty**

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[29] *Id.* at 500-501.

[30] Article 30 of the *Revised Penal Code* gives the effects of the accessory penalties of perpetual or temporary absolute disqualification, to wit:

Article 30. *Effects of the penalties of perpetual or temporary absolute disqualification.* — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.

of perpetual special disqualification from the right of suffrage was to deprive the convict perpetually of the right to vote in any popular election for any public office or to be elected to such office; he was further prohibited from holding any public office perpetually.[31] These accessory penalties would remain even though the convict would be pardoned as to the principal penalty, unless the pardon expressly remitted the accessory penalties.[32]

Secondly, Jalosjos had no legal and factual bases to insist that he *became* eligible to run as Mayor of Dapitan City because he had been declared under the RTC order dated February 5, 2004 to have duly complied with the order of his probation. His insistence has no merit whatsoever.

Probation, by its legal definition, is only "a disposition under which a defendant, after conviction and sentence, is released

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2. **The deprivation of the right to vote in any election for any popular office or to be elected to such office.**

3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

[31] Article 32 of the *Revised Penal Code* expressly declares:

Article 32. *Effect of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* — **The perpetual** or temporary **special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually** or during the term of the sentence, according to the nature of said penalty, **of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.**

[32] Article 42 of the *Revised Penal Code* reads:

Article 42. *Prision mayor; Its accessory penalties.* — The penalty of *prision mayor* shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

subject to conditions imposed by the court and to the supervision of a probation officer."[33] The grant of probation cannot by itself remove a person's disqualification to be a candidate or to hold any office due to its not being included among the grounds for the removal of the disqualification under Section 12 of the *Omnibus Election Code*, *supra*. Although the original text of Section 4 of Presidential Decree No. 968 (*Probation Law of 1976*) stated that:

> xxx [a]n application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal.

the amendment of Presidential Decree No. 968 by Presidential Decree No. 1990[34] has made more explicit that probation only suspends the execution of the sentence under certain conditions set by the trial court, *viz*:

> Section 4. *Grant of Probation.* — Subject to the provisions of this Decree, **the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best**; Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.
>
> Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.
>
> An order granting or denying probation shall not be appealable.

For sure, probation or its grant has not been intended to relieve the convict of *all* the consequences of the sentence imposed on

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[33] Section 3(a), Presidential Decree No. 968.

[34] Approved on October 5, 1985.

his crime involving moral turpitude. Upon his final discharge as a probationer, the convict is restored only to "*all civil rights lost or suspended as a result of his conviction.*" This consequence is according to the second paragraph of Section 16 of the *Probation Law of 1976*, which states: "The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted." There is no question that civil rights are distinct and different from political rights, like the right of suffrage or the right to run for a public office.

Even assuming that Jalosjos had been validly granted probation despite his having appealed his conviction (considering that the amendment stating that an appeal barred the application for probation took effect only on October 5, 1985 but his application for probation was earlier made in June 1985), his disqualification pursuant to Section 40(a) of the LGC would have still attached simply because the legal effect of a validly-granted probation was only to suspend the execution of sentence,[35] not to obliterate the consequences of the sentence on his political rights.

In reality, Jalosjos could not even legitimately and sincerely rely on his supposed final discharge from probation. He was fully aware that he did not at all satisfy the conditions of his probation,[36] contrary to what Section 10 and Section 16 of the Probation Law definitely required, to wit:

Section 10. *Conditions of Probation*. — Every probation order issued by the court shall contain conditions requiring that the probationer shall:

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[35] Section 4, Presidential Decree No. 968, states:

Section 4. *Grant of Probation*. — Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

[36] *Rollo*, G.R. No. 193237, pp. 159-160.

(a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order;

(b) report to the probation officer at least once a month at such time and place as specified by said officer. x x x

Section 16. *Termination of Probation*. — After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.

The final discharge of the probationer shall operate to restore to him all civil rights lost or suspend as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.

The probationer and the probation officer shall each be furnished with a copy of such order.

The records indicate that the RTC revoked the order of probation on March 19, 1987 upon a motion filed by one Gregorio Bacolod, the Supervising Probation Officer who had recommended the approval of the application for probation. The revocation was premised on Jalosjos' failure to report to Bacolod in violation of the conditions of his probation. Following the revocation, the RTC issued a warrant for the arrest of Jalosjos, but the warrant has remained unserved until this date. With the revocation of his probation and in the absence of an order of final discharge, Jalosjos was still legally bound to serve the sentence for robbery.

I point out for emphasis that the February 5, 2004 order of the RTC declaring that Jalosjos had duly complied with the order of probation deserved no consideration for the following reasons, namely: (*a*) the certification attesting that Jalosjos had fulfilled the terms and conditions of his probation was secured by and issued to him only on December 19, 2003, more than 16 years from the issuance of the RTC order revoking his probation; (*b*) the certification was issued by Bacolod, the same Supervising Probation Officer who had moved for the revocation of the

probation; and (*c*) the Sandiganbayan later on found the certification to have been falsified by Bacolod considering that at the time of its issuance there was no longer a probation order to be fulfilled by Jalosjos.[37]

And, thirdly, Jalosjos argues that he acted in good faith in representing in his CoC that he was qualified to run as Mayor of Dapitan City,[38] having relied on the previous ruling of the COMELEC adjudging him eligible to run and to be elected as Mayor of Dapitan City;[39] and that it cannot then be said that he deliberately attempted to mislead or to deceive the electorate as to his eligibility.

The argument is devoid of merit.

The COMELEC Resolution dated August 2, 2004, on which Jalosjos has anchored his claim of good faith, was rendered on the basis of the RTC order dated February 5, 2004 that had declared Jalosjos to have sufficiently complied with the conditions of his probation based on the certification dated December 19, 2003. As earlier emphasized, however, the issuance of the certification dated December 19, 2003 that became the basis for the RTC order dated February 5, 2004 proved to be highly irregular, and culminated in the Sandiganbayan convicting Bacolod of falsification in relation to his issuance of the certification.

Clearly, Jalosjos' reliance on the COMELEC Resolution dated August 2, 2004 was definitely not in good faith, but was contrary to every juridical conception of good faith, which, according to *Heirs of the Late Joaquin Limense v. Vda. De Ramos*,[40] is —

> xxx an intangible and abstract quality with no technical meaning or statutory definition; and it encompasses, among other things, an

[37] On that basis, the Sandiganbayan convicted Bacolod of two crimes, one, for a violation of Section 3(e) of Republic Act No. 3019, and, two, for falsification of public document under the *Revised Penal Code.*

[38] *Id.* at 28.

[39] *Id.* at 27-28.

[40] G.R. No. 152319, October 28, 2009, 604 SCRA 599.

honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. **It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another**.[41]

In contrast, Jalosjos had knowledge of the circumstances surrounding the finality of his conviction and the revocation of his probation. He never denied and cannot now dispute his failure to comply with the conditions of his probation, for he fully knew that he had never duly reported to Bacolod during the period of his probation. The following findings rendered by the Sandiganbayan in its Decision dated September 29, 2008 convicting Bacolod of falsification of a public document and violation of Republic Act No. 3019 sustained the fact that Jalosjos had been unable to fulfil the terms of his probation: –

> xxx [T]he subject Certification of the accused [Bacolod] attesting that *"as per records"* Mr. Jalosjos *"has fulfilled the terms and conditions of his probation and his case is deemed terminated,"* is nevertheless false because **the PPA Central Office had no records of an order of final discharge issued by the court to support the facts narrated in the subject certification that Mr. Jalosjos has fulfilled the terms and conditions of his probation and that his case is deemed terminated.**
>
> Besides, the accused failed to submit any oral or documentary evidence to establish that at the time he issued the subject Certification on December 19, 2003, Mr. Jalosjos has already fulfilled the terms and conditions of his probation. His belated submission on January 23, 2004 of a termination report dated January 12, 2004 does not cure or remedy the falsity of the facts narrated in the subject certification. Rather, it strengthens the theory of the prosecution that **at the time the accused issued the subject Certification on December 19, 2003, probationer Jalosjos had not yet fulfilled the terms and conditions of his probation because, if it were so,**

[41] *Id.* at 612; emphasis is supplied.

his submission of the said termination report would no longer be necessary. Since the PPA Central Office had no record of a court order of final discharge of the probationer from probation, then he should have been truthful and certified to that effect.[42]

Nor could Jalosjos even feign a lack of awareness of the issuance of the warrant for his arrest following the revocation of his probation by the RTC on March 19, 1987. This is because he filed an Urgent Motion for Reconsideration and to Lift Warrant of Arrest in the RTC upon obtaining the falsified certification issued by Bacolod.[43] The absurdity of his claim of good faith was well-known even to him because of his possession at the time he filed his CoC of all the information material to his conviction and invalid probation. Being presumed to know the law, he knew that his conviction for robbery and his failure to serve his sentence rendered him ineligible to run as Mayor of Dapitan City. As a result, his affirmation of his eligibility in his CoC was truly nothing but an act tainted with bad faith.

3.
Jalosjos did not file a valid CoC for the May 10, 2010 elections; not being an official candidate, votes cast in his favor are considered stray

The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the *Omnibus Election Code*, to wit:

Section 73. *Certificate of candidacy* — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

In turn, Section 74 of the *Omnibus Election Code* specifies the contents of a CoC, *viz*:

Section 74. *Contents of certificate of candidacy.*—**The certificate of candidacy shall state that the person filing it is announcing**

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[42] *Rollo,* G.R. No. 193237, pp. 159-160.

[43] *Id.* at 153.

his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x (Emphasis supplied)

A CoC, according to *Sinaca v. Mula*,[44] "is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated."

Accordingly, a person's declaration of his intention to run for public office and his declaration that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the declarant an official candidate.

In *Bautista v. Commission on Elections*,[45] the Court stated that a cancelled CoC does not give rise to a valid candidacy. A person without a valid CoC cannot be considered a candidate in much the same way as any person who has not filed any CoC cannot at all be a candidate.[46] Hence, the cancellation of

[44] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.

[45] G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493.

[46] *Miranda v. Abaya,* G.R. No. 136351, July 28, 1999, 311 SCRA 617, 624.

Jalosjos' CoC rendered him a non-candidate in the May 10, 2010 elections.

But, even without the cancellation of his CoC, Jalosjos undeniably possessed a disqualification to run as Mayor of Dapitan City. The fact of his ineligibility was by itself adequate to invalidate his CoC without the necessity of its express cancellation or denial of due course by the COMELEC. Under no circumstance could he have filed a valid CoC. The accessory penalties that inhered to his penalty of *prision mayor* perpetually disqualified him from the right of suffrage as well as the right to be voted for in any election for public office. The disqualification was by operation of a mandatory penal law. For him to be allowed to ignore the perpetual disqualification would be to sanction his lawlessness, and would permit him to make a mockery of the electoral process that has been so vital to our democracy. He was not entitled to be voted for, leaving all the votes cast for him stray and legally non-existent.

In contrast, Cardino, the only remaining candidate, was duly elected and should legally assume the position of Mayor of Dapitan City. According to the Court in *Santos v. Commission on Elections*:[47]

> Anent petitioner's contention that his disqualification does not *ipso facto* warrant the proclamation of private respondent, We find the same untenable and without legal basis since votes cast for a disqualified candidate fall within the category of invalid non-existent votes because a disqualified candidate is no candidate at all in the eyes of the law. Section 155 of the Election Code provides —
>
> > "Any vote cast in favor of a candidate who has been disqualified shall be considered as stray and *shall not be counted* but it shall not invalidate the ballot." (Italics supplied)
>
> Considering that all the votes garnered by the petitioner are stray votes and therefore should not be counted, We find no error, much less any grave abuse of discretion on the part of the Comelec, in proclaiming private respondent Ricardo J. Rufino the duly elected

[47] G.R. No. 58512, July 23, 1985, 137 SCRA 740.

Mayor of Taytay, Rizal, he having obtained the highest number of votes as appearing and certified in the canvass of votes submitted by the Municipal Board of Canvassers petitioner having been legally disqualified. Such a proclamation finds legal support from the case of Ticzon vs. Comelec 103 SCRA 671, wherein disqualified candidate Ticzon likewise questioned the legality of the Resolution of the Comelec which not only disqualified him but further proclaimed Dizon, the only candidate left for the disputed position, and this Court upheld the proclamation of Cesar Dizon as Mayor of San Pablo City.[48]

Although the doctrine of the sovereign will has prevailed several times in the past to prevent the nullification of an election victory of a disqualified candidate, or of one whose CoC was cancelled, the Court should not now be thwarted from enforcing the law in its letter and spirit by any desire to respect the will of the people expressed in an election. The objective of prescribing disqualifications in the election laws as well as in the penal laws is obviously to prevent the convicted criminals and the undeserving from running and being voted for. Unless the Court leads the way to see to the implementation of the unquestionable national policy behind the prescription of disqualifications, there would inevitably come the time when many communities of the country would be electing convicts and misfits. When that time should come, the public trust would be trivialized and the public office degraded. This is now the appropriate occasion, therefore, to apply the law in all its majesty in order to enforce its clear letter and underlying spirit. Thereby, we will prevent the electoral exercise from being subjected to mockery and from being rendered a travesty.

In closing, I consider to be appropriate and fitting the Court's following pronouncement in *Velasco v. Commission on Elections*:[49]

x x x [W]e have ruled in the past that a candidate's victory in the election may be considered a sufficient basis to rule in favor of

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[48] *Id*. at 749.

[49] G.R. No. 180051, December 24, 2008, 575 SCRA 590.

the candidate sought to be disqualified if the main issue involves defects in the candidate's certificate of candidacy. We said that *while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the people*. We so ruled in *Quizon v. COMELEC* and *Saya-ang v. COMELEC.*

The present case perhaps presents the proper time and opportunity to fine-tune our above ruling. We say this with the realization that a blanket and unqualified reading and application of this ruling can be fraught with dangerous significance for the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information to make an informed choice about a candidate's eligibility and fitness for office.

The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptive of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.

In the process, the rule of law suffers; the clear and unequivocal legal command, framed by a Congress representing the national will, is rendered inutile because the people of a given locality has decided to vote a candidate into office despite his or her lack of the qualifications Congress has determined to be necessary.

In the present case, Velasco is not only going around the law by his claim that he is registered voter when he is not, as has been determined by a court in a final judgment. Equally important is that he has made a material misrepresentation *under oath in his COC* regarding his qualification. For these violations, he must pay

the ultimate price – the nullification of his election victory. He may also have to account in a criminal court for making a false statement under oath, but this is a matter for the proper authorities to decide upon.

We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects *beyond matters of form* and that involve *material misrepresentations* cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a *material COC misrepresentation under oath* is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.[50]

ACCORDINGLY, I **JOIN** the Majority in granting the petition in G.R. No. 193536; in dismissing the petition in G.R. No. 193237 for lack of merit; and in affirming the COMELEC *En Banc* Resolution dated February 22, 2011 subject to the modification that Agapito J. Cardino be proclaimed as the duly elected Mayor of Dapitan City, Zamboanga during the May 10, 2010 national and local elections, and thus entitled to assume the office of Mayor of Dapitan City.

DISSENTING OPINION

BRION, *J.*:

Dominador G. Jalosjos, Jr. and Agapito Cardino were rivals in the mayoralty race in Dapitan City, Zamboanga del Norte in the May 2010 elections.

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[50] *Id.* at 614-615.

Before election day, Cardino filed with the Commission on Elections (*COMELEC*) a *Petition to Deny Due Course and/or Cancel the Certificate of Candidacy* against Jalosjos, alleging that the latter made a material misrepresentation in his Certificate of Candidacy (*CoC*) when he declared that he was eligible for the position of mayor when, in fact, he was disqualified under Section 40 of the Local Government Code for having been previously convicted by a final judgment for a crime (robbery) involving moral turpitude.

In his defense, Jalosjos admitted his previous conviction but argued that he had been admitted to probation, which allegedly restored him to all his political rights. Cardino rebutted Jalosjos' defense, citing a court order revoking the grant of probation for Jalosjos' failure to comply with the terms and conditions of the grant of probation.

On the very day of the election, the **COMELEC resolved to grant Cardino's petition and ordered the cancellation of Jalosjos' CoC.** The COMELEC ruled that the rules on succession would then apply. Both Cardino and Jalosjos came to the Court for redress.

On February 22, 2011, the Court denied Jalosjos' petition, prompting Jalosjos to move for reconsideration. During the pendency of his motion, Jalosjos manifested that he had already tendered his resignation from his office and that the same was duly accepted by the governor of the province of Zamboanga del Norte.

I dissent from the majority's (i) position that the present case involves a cancellation of a certificate of candidacy (*CoC*) rather than a case of disqualification and (ii) conclusion that Cardino, the "second placer" in the 2010 elections for the mayoralty post of Dapitan City, Zamboanga del Norte, should be the rightful Mayor. I submit that while Cardino intended to **cancel Jalosjos' CoC**, his petition alleged acts constituting **disqualification** as its ground. Thus, the case should be resolved under the rules of disqualification, not from the point of a cancellation of a CoC.

I point out in this Dissenting Opinion, as I did in the cases of *Mayor Barbara Ruby C. Talaga v. Commission on Elections, et al.*[1] and *Efren Racel Aratea v. Commission on Elections, et al.*,[2] that this case is best resolved through an analytical approach that starts from a consideration of the nature of a CoC; the distinctions between eligibility or lack of it and disqualification; the effects of cancellation and disqualification; and the applicable remedies.

The CoC and the Qualifications for its Filing.

As I discussed in *Talaga* and *Aratea*, a basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*,[3] the Court described the nature of a CoC as follows –

> A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Both the 1973 and 1987 Constitutions left to Congress the task of providing the qualifications of ***local elective officials***. Congress undertook this task by enacting Batas Pambasa Bilang (*B.P. Blg.*) 337 (*Local Government Code or LGC*), B.P. Blg. 881 (*Omnibus Election Code or OEC*) and, later, Republic Act (*R.A.*) No. 7160 (*Local Government Code of 1991 or LGC 1991*).[4]

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[1] G.R. Nos. 196804 and 197015.

[2] G.R. No. 195229.

[3] 373 Phil. 896, 908 (1999).

[4] Prior to these laws, the applicable laws were the Revised Administrative Code of 1917, R.A. No. 2264 (An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments); and B.P. Blg. 52 (An Act Governing the Election of Local Government Officials).

Under Section 79 of the OEC, a political aspirant legally becomes a "candidate" only upon the due filing of his sworn CoC.[5] In fact, Section 73 of the OEC makes the filing of the CoC a condition *sine qua non* for a person to "be eligible for any elective public office"[6] – *i.e.*, to be validly voted for in the elections. Section 76 of the OEC makes it a "ministerial duty" for a COMELEC official "to receive and acknowledge receipt of the certificate of candidacy"[7] filed.

C*OMELEC* Resolution No. 8678 provides what a CoC must contain or state:[8]

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[5] See, however, Section 15 of R.A. No. 8436, as amended. *Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009, 605 SCRA 574, 581-586, citing *Lanot v. COMELEC*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

[6] Section 73 of the OEC reads:

Section 73. *Certificate of candidacy.* — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them.

However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. [italics supplied]

Section 13 of R.A. No. 9369, however, adds that "[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: *Provided*, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period[.]" (italics supplied)

[7] See *Cipriano v. Commission on Elections*, 479 Phil. 677, 689 (2004).

[8] The statutory basis is Section 74 of the OEC which provides:

Section 2. *Contents of certificate of candidacy.* - The certificate of candidacy shall be under oath and shall state that the person filing it is announcing his candidacy for the office and constituency stated therein; that he is eligible for said office, his age, sex, civil status, place and date of birth, his citizenship, whether natural-born or naturalized; the registered political party to which he belongs; if married, the full name of the spouse; his legal residence, giving the exact address, the precinct number, *barangay*, city or municipality and province where he is registered voter; his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the

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Section 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. [italics supplied]

From the point of view of the common citizen who wants to run for a local elective office, the above recital contains all the requirements that he must satisfy; it contains the basic and essential requirements applicable **to all citizens to qualify for candidacy** for a local elective office. These are their formal terms of entry to local politics. A citizen must not only possess all these requirements; he must positively represent in his CoC application that he possesses them. Any falsity on these requirements constitutes a material misrepresentation that can lead to the cancellation of the CoC. On this point, Section 78 of the OEC provides:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by [any] person **exclusively** on the ground that any **material representation contained therein as required under Section 74** hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. [italics, emphases and underscores ours]

A necessarily related provision is Section 39 of LGC 1991 which states:

Sec. 39. *Qualifications*. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sanggunian bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

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(c) Candidates for the position of Mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day. [italics ours]

Notably, Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative requirement refers to the representation that the would-be candidate is ***not*** a permanent resident nor an immigrant in another country. This requirement, however, is in fact simply part of the positive requirement of residency in the locality for which the CoC is filed and, in this sense, is not strictly a negative requirement. Neither does Section 74 require any statement that the would-be candidate does not possess any ground for disqualification specifically enumerated by law, as disqualification is a matter that the OEC and LGC 1991 separately deal with, as discussed below.

With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding "that **the importance of a valid certificate of candidacy rests at the very core of the electoral process.**"[9]

Pertinent laws[10] provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring "equal access to opportunities for public service,"[11] bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.[12]

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[9] *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

[10] Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of OEC.

[11] 1987 Constitution, Article II, Section 26.

[12] See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

The Concept of Disqualification vis-a-vis Remedy of Cancellation; and Effects of Disqualification.

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules.[13] It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens (Section 74 of the OEC) may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him ***as an individual, separately from the general qualifications that must exist for a citizen to run for a local public office***.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.[14]

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions**;** (v) campaigning outside the campaign

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[13] *Merriam-Webster's 11th Collegiate Dictionary*, p. 655.

[14] If at all, only two grounds for disqualification under the Local Government Code ***may*** as well be considered for the cancellation of a CoC, *viz.*: those with dual citizenship and permanent residence in a foreign country, or those who have acquired the right to reside abroad and continue to avail of the same right after January 1, 1992. It may be argued that these two disqualifying grounds likewise go into the eligibility requirement of a candidate, as stated under oath by a candidate in his CoC.

period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

a. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

b. Those removed from office as a result of an administrative case;

c. Those convicted by final judgment for violating the oath of allegiance to the Republic;

d. Those with dual citizenship;

e. Fugitives from justice in criminal or non-political cases here or abroad;

f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

g. The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of "disqualification" is that under Section 68 of the OEC, **it refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the **cancellation of a candidate's CoC**, the law considers the cancellation **from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy**. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate ***and*** his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

Distinctions among (i) denying due course to or cancellation of a CoC, (ii) disqualification, and (iii) quo warranto

The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and on the application of disqualification. The remedies available are essentially: the **cancellation of a CoC**, **disqualification from candidacy or from holding office**, and ***quo warranto***, which are distinct remedies with varying applicability and effects. For ease of presentation and understanding, their availability, grounds and effects are topically discussed below.

As to the grounds:

In the **denial of due course to or cancellation of a CoC**, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office;[15] the governing provisions are *Sections 78 and 69 of the OEC*.[16]

In a **disqualification case**, as mentioned above, the grounds are traits, conditions, characteristics or acts of disqualification,[17] individually applicable to a candidate, as provided under Sections 68 and 12 of the OEC; Section 40 of LGC 1991; and Section 8, Article X of the Constitution. As previously

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[15] *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-794.

[16] See Section 7 of R.A. No. 6646.

[17] Sections 68 and 12 of the OEC cover these acts: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) over spending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate's CoC although they may result in disqualification from candidacy whose immediate effect **upon finality before the elections** is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification.

In a *quo warranto* petition, the grounds to oust an elected official from his office are ineligibility and disloyalty to the Republic of the Philippines. This is provided under Section 253 of the OEC and governed by the Rules of Court as to procedures. While *quo warranto* and cancellation share the same ineligibility grounds, **they differ as to the time these grounds are cited.** A cancellation case is brought before the elections, while a *quo warranto* is filed after and may still be filed even if a CoC cancellation case was not filed before elections.

> The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under Section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under Section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.[18]

Note that the question of what would constitute acts of disqualification – under Sections 68 and 12 of the OEC and Section 40 of LGC 1991 – is best resolved by directly referring to the provisions involved. The approach is not as straight forward in a petition to deny due course to or cancel a CoC and also to a *quo warranto* petition, which similarly covers the ineligibility of a candidate/elected official. In *Salcedo II v. COMELEC*,[19] we ruled that –

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[18] *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1999), citing *Aznar v. Commission on Elections*, 185 SCRA 703 (1990).

[19] *Supra*, at 386-389.

[I]n order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the **false representation** mentioned therein pertain to a **material matter** for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.

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Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to **qualifications for elective office**. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. [emphases ours, citation omitted]

Thus, in addition to the failure to satisfy or comply with the eligibility requirements, a material misrepresentation must be present in a cancellation of CoC situation. The law apparently does not allow material divergence from the listed requirements to qualify for candidacy and enforces its edict by requiring positive representation of compliance under oath. Significantly, where disqualification is involved, the mere existence of a ground appears sufficient and a material representation assumes no relevance.

As to the period for filing:

The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under **Section 78 of the OEC**, the petition must be filed within twenty-five (25) days from the filing of the CoC.[20] However, if the petition is brought under **Section 69** of the

[20] *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

same law, the petition must be filed within five (5) days from the last day of filing the CoC.[21]

On the other hand, the period to file a **disqualification case** is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696,[22] while a *quo warranto* petition must be filed within ten (10) days from proclamation.[23]

As to the effects of a successful suit:

A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed.[24] After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution. The application of the exception, however, presupposes a valid CoC. Unavoidably, a "candidate" **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC**, to all intents and purposes.[25] Similarly, a successful *quo warranto*

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[21] Section 5(a) of R.A. No. 6646.

[22] Section 4(B) of COMELEC Resolution No. 8696 reads:

SEC. 4. Procedure in filing petitions. - For purposes of the preceding sections, the following procedure shall be observed:

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B. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF OUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation[.]

[23] Section 253 of the OEC.

[24] Section 15 of R.A. No. 9369.

[25] *Miranda v. Abaya*, *supra* note 9, at 658-660.

suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

On the other hand, a candidate who was **simply disqualified** is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office; substitution can thus take place under the terms of Section 77 of the OEC.[26]

As to the effects of a successful suit on the right of the second placer in the elections:

In any of these three remedies, the doctrine of rejection of the second placer applies for the simple reason that –

> To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.[27]

With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the **rules on succession** under the law accordingly apply, as provided under Section 44 of LGC 1991.

As an **exceptional situation**, however, the candidate with the second highest number of votes (*second placer*) may be validly proclaimed as the winner in the elections should the winning candidate be **disqualified** by final judgment ***before* the elections**, as clearly provided in Section 6 of R.A. No. 6646.[28]

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[26] Section 77 of the OEC expressly allows substitution of a candidate who is "disqualified for any cause."

[27] *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 424.

[28] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 43-47; Section 6 of R.A. No. 6646.

The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote.[29]

In a **CoC cancellation** proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an *inexistent* "candidate" or for one who is deemed not to be in the ballot. Although legally a misnomer, the "second placer" should be proclaimed the winner as the candidate with the highest number of votes for the contested position. This same consequence should result if the cancellation case becomes final after elections, as the cancellation signifies non-candidacy from the very start, *i.e.*, from before the elections.

Application of Above Rulings and Principles to the Case.

While it is apparent from the undisputed facts that Cardino did indeed file a petition for denial and/or the cancellation of Jalosjos' CoC, it is obvious as well, based on the above discussions, that the ground he cited was **not appropriate for the cancellation of Jalosjos' CoC but for his disqualification.** Conviction for a crime involving moral turpitude is expressly a ground for disqualification under Section 12 of the OEC. **As a ground, it applies only to Jalosjos; it is not a standard of eligibility that applies to all citizens who may be minded to run for a local political position; its non-possession is not a negative qualification that must be asserted in the CoC.** Hence, there can be no doubt that what Cardino filed was effectively a petition for disqualification. This conclusion, of course, follows the rule that the nature of a petition is determined not by its

[29] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

title or by its prayers, but by the acts alleged as basis for the petition.

Unfortunately for Cardino, the position of a second placer is not given preference, both in law and in jurisprudence with respect to the consequences of election disputes (except with well-defined exceptional circumstances discussed above), after election has taken place.[30] This approach and its consequential results are premised on the general principle that the electorate is supreme; it registers its choice during the election and, after voting, effectively rejects the candidate who comes in as the second placer. Under the rule that a disqualified candidate can still stand as a candidate unless his disqualification has been ruled upon with finality before the elections,[31] Jalosjos validly stood as a candidate in the elections of May 2010 and won, although he was subsequently disqualified. With his disqualification while already sitting as Mayor, the winning vice-mayor, not Cardino as a mere defeated second placer, should rightfully be seated as mayor under Section 44 of LGC 1991 on the law on succession.

DISSENTING OPINION

REYES, *J.*:

With all due respect, I dissent from the majority opinion.

Subject of this case are two (2) consolidated Petitions for *Certiorari* under Rule 65 of the Rules of Court. In G.R. No. 193237, petitioner Dominador G. Jalosjos, Jr. (Jalosjos) seeks to annul and set aside the Resolutions dated May 10, 2010[1] and August 11, 2010[2] issued by the Commission on Elections (COMELEC), which respectively ordered for the cancellation of his Certificate of Candidacy (COC) and denied his Motion for Reconsideration.

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[30] See: discussions at pp. 14-15.

[31] Section 6 of R.A. No. 6646.

[1] G.R. No. 193237 *rollo*, pp. 40-48.

[2] *Id.* at 49-56.

In G.R. No. 193536, petitioner Agapito J. Cardino (Cardino) likewise assails the Resolution dated August 11, 2010, particularly the dispositive portion thereof which contained the directive to apply the provision of the Local Government Code (LGC) on succession in filling the vacated office of the mayor.

Jalosjos attributes grave abuse of discretion on the COMELEC *en banc* in (1) ruling that the grant of his probation was revoked, hence, he is disqualified to run as Mayor of Dapitan City, Zamboanga Del Norte, (2) cancelling his COC without a finding that he committed a deliberate misrepresentation as to his qualifications, considering that he merely relied in good faith upon a previous decision of the COMELEC wherein he was declared eligible to run for public office, and (3) issuing the Resolutions dated May 10, 2010 and August 11, 2010 in violation of the COMELEC Rules of Procedure.

On February 22, 2011, this Court issued a Resolution[3] dismissing G.R. No. 193237, the dispositive portion of which reads:

> **WHEREFORE**, the foregoing premises considered, the Petition for *Certiorari* is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission in (sic) Elections in SPA Case No. 09-076 (DC) are hereby **AFFIRMED**.[4]

This Court ruled that Jalosjos could not have qualified to run for any public office as the grant of his probation was revoked by the RTC, as early as March 19, 1987 and that he could not rely on the Certification dated December 19, 2003 issued by former Parole and Probation Administrator Gregorio F. Bacolod to assert his eligibility. We ratiocinated:

> It must be remembered that by the time Bacolod submitted his Termination Report on January 23, 2004, there was no longer a *probation* to speak of, the same having been revoked more than 16 years earlier. Under the Probation Law of 1976, the order of revocation

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[3] *Id.* at 355-360.

[4] *Id.* at 360.

is not appealable. There is no showing that the RTC ever issued a subsequent order suspending the execution of petitioner's sentence and granting him probation again. In fact, the RTC issued an *alias* warrant of arrest on January 17, 2004 pursuant to the March 19, 1987 Order of revocation.

Thus, the same order revoking the grant of probation was valid and subsisting at the time that petitioner supposedly completed his probation. Petitioner could not have validly complied with the conditions of his probation and there would have been no basis for any probation officer to accept petitioner's compliance with a non-existent probation order.

This, plus the cloud of doubt created by Bacolod's conviction for falsification of the certification relied upon by petitioner, the Court cannot now rely on the presumption of regularity in the issuance of said certification in order for us to conclude that petitioner has in fact completed his probation. Considering that petitioner likewise has not served the sentence of his conviction for the crime of robbery, he is disqualified to run for and hold his current position as Mayor of Dapitan City.[5] (Citation omitted)

Undeterred, Jalosjos filed a Motion for Reconsideration[6] on March 22, 2011, raising the same issues stated in his petition. Subsequently, he filed a Manifestation dated May 30, 2012, informing this Court that he had already tendered his resignation from his position as Mayor of Dapitan City, Zamboanga del Norte and that the same was accepted by the Governor of the province, Atty. Rolando E. Yebes.

I will deliberate on the Motion for Reconsideration filed by Jalosjos in G.R. No. 193237 despite his resignation from office, in conjunction with the merits of G.R. No. 193536, with which it shares identical factual background.

The allegations in the petition filed by Cardino in SPA No. 09-076 (DC) bespeak of its characterization as one for disqualification.

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[5] *Id.* at 359-360.

[6] *Id.* at 373-393.

It is well to remember that G.R. Nos. 193237 and 193536 stemmed from the *Petition to Deny Due Course and to Cancel Certificate of Candidacy of Respondent* filed by Cardino against Jalosjos, docketed as SPA No. 09-076 (DC). In the said petition, Cardino alleged:

> 3. Respondent [Jalosjos] is also of legal age, a resident of Dapitan City, a registered voter of Precinct No. 0187B, likewise filed his certificate of candidacy for the same position with the Office of the Comelec, Dapitan City, as that for which petitioner duly filed a certificate of candidacy, for the May 10, 2010 national and local elections on December 1, 2009, a certified true copy of said COC is hereto attached as **Annex B**;
>
> 4. Respondent's [Jalosjos] certificate of candidacy under oath contains material misrepresentation, when he declared under oath, that respondent [Jalosjos] is eligible for the office he seeks to be elected, [par. 16, COC for Mayor], considering that he is not eligible for the position for which he filed a certificate of candidacy because respondent was convicted by final judgment by the Regional Trial Court of Cebu City in Crim. Case No. CCC-XIV-140-Cebu for Robbery, an offense involving moral turpitude and he was sentenced to suffer the penalty of "one [1] year, eight [8] Months and Twenty [20] days of *prision correccional*, as minimum, to Four [4] years, Two [2] months and One [1] day of *prision mayor* as maximum,["] a certified true (sic) of which decision is hereto attached as **Annex C**.
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> 5. Respondent [Jalosjos] failed to serve even a single day of his sentence. The position requires that a candidate be eligible and/or qualified to aspire for the position as required under Section 74 of the Omnibus Election Code[.][7]

On the basis of the foregoing allegations, Cardino prayed (1) that Jalosjos be declared ineligible for the position for which he filed a COC or that his COC be cancelled or denied due course, (2) that the Board of Election Inspectors of Dapitan City be directed to exclude all the votes cast in Jalosjos' name, (3) that the City Board of Canvassers be ordered to suspend or

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[7] *Id.* at 57-58.

hold in abeyance Jalosjos' proclamation as the winning candidate, and (4) that Jalosjos be held liable for damages.[8]

Subsequently, the COMELEC First Division issued its Resolution dated May 10, 2010, granting Cardino's petition and cancelling Jalosjos' COC. The COMELEC First Division ratiocinated that Jalosjos "is not eligible by reason of his disqualification as provided for in Section 40(a) of Republic Act (R.A.) No. 7160."[9]

Jalosjos promptly filed his Motion for Reconsideration but the COMELEC *en banc* denied the same in its Resolution dated August 11, 2010. Introductory to the *ratio decidendi* of its ruling, the COMELEC *en banc* stated:

> It is long settled that for [a] material representation to serve as ground for the cancellation of a candidate's certificate of candidacy, it must refer to his qualifications for elective office. Sections 39 and 40 of the Local Government Code or Republic Act No. 7160 prescribes the qualifications and disqualifications for elective municipal officials, x x x[.][10]

Thereafter, the COMELEC *en banc* correlated Sections 39 and 40 of the LGC and proceeded to conclude that since Jalosjos was convicted by final judgment for the crime of robbery, he is disqualified to run for any elective position or to hold office.

I fully agree with the COMELEC's ruling that Jalosjos cannot run for any public office by reason of possession of a ground for disqualification. However, the COMELEC laid the predicate of said conclusion on a muddled discussion of the nature of the petition filed by Cardino and the effects of a judgment on the same on the status of candidacy.

Verily, a candidate may be prevented from participating in the electoral race either because he is ineligible or he suffers from any of the grounds for disqualification. *Ineligibility* refers

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[8] *Id.* at 59.

[9] *Id.* at 47.

[10] *Id.* at 53.

to the lack of the qualifications prescribed in Sections 3[11] and 6[12] of Article VI, and Sections 2[13] and 3[14] of Article VII of the 1987 Constitution for senatorial, congressional, presidential and vice-presidential candidates, or under Section 39[15] of the LGC for local elective candidates. On the other hand, *disqualification* pertains to the commission of acts which the law perceives as unbecoming of a local servant, or to a circumstance, status or

[11] Art. VI, Sec. 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

[12] Art. VI, Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

[13] Art. VII, Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

[14] Art. VII, Sec. 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He maybe removed from office in the same manner as the President. x x x.

[15] Sec. 39. ***Qualifications***. - (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice-governor, or member of the *sangguniang panlalawigan*, or mayor, vice-mayor or member of the *sangguniang panlungsod* of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

condition rendering said candidate unfit for public service. To question the eligibility of a candidate before the elections, the remedy is to file a petition to deny due course or cancel the COC under Section 78 of the Omnibus Election Code (OEC). If, on the other hand, any ground for disqualification exists, resort can be made to the filing of a petition for disqualification against the candidate thought to be unqualified for public service under Section 68 of the same Code.

Pertinently, Section 78 of OEC states:

> Sec. 78. ***Petition to deny due course to or cancel a certificate of candidacy***. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

To be clear, it is not the mere ineligibility or lack of qualification which warrants the filing of a petition to deny due course or cancel the COC but the material representation of his qualifications. *Material misrepresentation* as a ground to deny due course or cancel a COC refers to the falsity of a statement required to be entered therein, as enumerated in Section 74 of the OEC,[16] which reads:

(d) Candidates for the position of member of the *sangguniang panlungsod* or *sangguniang bayan* must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of *punong barangay* or member of the *sangguniang barangay* must be at least eighteen (18) years of age on election day.

(f) Candidates for the *sangguniang kabataan* must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

[16] *Justimbaste v. Commission on Elections*, G.R. No. 179413, November 28, 2008, 572 SCRA 736, 740.

Sec. 74. ***Contents of certificate of candidacy***. — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Succinctly, the material misrepresentation contemplated by Section 78 of the OEC refers to *qualifications* for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his COC are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.[17]

Aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible. In other words, it must be with an intention to deceive the electorate as to one's qualification for public office.[18]

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[17] *Salcedo II v. COMELEC*, 371 Phil. 377, 389 (1999).

[18] *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776, citing *Salcedo II v. Commission on Elections*, *supra* note 37, at 390, citing *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, *Abella v. Larrazabal*, 259 Phil. 992 (1989), *Aquino v. Commission on Elections*, 318 Phil. 467 (1995), *Labo, Jr. v. Commission on Elections*, G.R. No. 105111, July 3,

On the other hand, a petition for disqualification may be filed if the candidate committed any of the acts considered as an election offense stated in Section 68 of the OEC which reads:

Sec. 68. ***Disqualifications***. – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having[:] (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The same petition may be filed on the ground of possession of a status or condition which makes the candidate incapable of assuming the stern demands of public service or which places him in serious contradiction with his oath of office, as enumerated in Section 12 of the OEC and Section 40 of the LGC:

Section 12 of the OEC

Sec. 12. ***Disqualifications***. **–** Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that

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1992, 211 SCRA 297, *Frivaldo v. COMELEC*, 327 Phil. 521 1996), *Republic v. De la Rosa*, G.R. No. 104654, June 6, 1994, 232 SCRA 785.

said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

Section 40 of the LGC

Sec. 40. ***Disqualifications***. **–** The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or non[-]political cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

The petition filed by Cardino in SPA No. 09-076 (DC) is a confusion of the remedies of petition to deny due course or cancel a COC and petition for disqualification. It must be remembered that while both remedies aim to prevent a candidate from participating in the elections, they are separate and distinct from one another. They are embraced by distinct provisions of law, which provide for their respective prescriptive periods and particular sets of grounds. Further, each remedy entails diverging effects on the status of candidacy of the concerned candidate thus subsuming one remedy within the coverage of the other is a dangerous feat.

In *Fermin v. Commission on Elections*,[19] we had the occasion to ponder on the substantial differences between the two remedies, thus:

[19] G.R. No. 179695, December 18, 2008, 574 SCRA 782.

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for*. It is noted that the candidate states in his/her CoC that he/she is **eligible** for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate**. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the wining candidate.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. **They are different remedies, based on different grounds, and resulting in different eventualities**. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.

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To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied

due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.[20] (Citations omitted)

It is beyond dispute that Jalosjos cannot run for public office because of a prior conviction for a crime involving moral turpitude. While he was granted probation, his failure to comply with the terms and conditions of this privilege resulted to the revocation of the same on March 19, 1987. It bears reiterating that probation is not a right of an accused but a mere privilege, an act of grace and clemency or immunity conferred by the state, which may be granted to a seemingly deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense for which he was convicted.[21] As a mere discretionary grant, he must pay full obedience to the terms and conditions appertaining thereto or run the risk of the State revoking this privilege. In *Soriano v. Court of Appeals*,[22] this Court underscored the import of the terms and conditions of probation, to wit:

[T]hese conditions are not whims of the trial court but are requirements laid down by statute. They are among the conditions that the trial court is empowered to impose and the petitioner, as probationer, is required to follow. Only by satisfying these conditions may the purposes of probation be fulfilled. These include promoting the correction and rehabilitation of an offender by providing him with individualized treatment, and providing an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence. Failure to comply will result in the revocation of the order granting probation, pursuant to the Probation Law:

> Sec. 11. *Effectivity of Probation Order*. — A probation order shall take effect upon its issuance, at which time the court shall inform the offender of the consequences thereof and explain that *upon his failure to comply with any of the conditions prescribed* in the said order or his commission of

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[20] *Id.* at 792-796.

[21] *Santos v. Court of Appeals*, 377 Phil. 642, 652 (1999), citing *Francisco v. CA*, 313 Phil. 241, 254 (1995).

[22] 363 Phil. 573 (1999).

another offense, *he shall serve the penalty imposed for the offense under which he was placed on probation.*

Probation is not an absolute right. It is a mere privilege whose grant rests upon the discretion of the trial court. Its grant is subject to certain terms and conditions that may be imposed by the trial court. Having the power to grant probation, it follows that the trial court also has the power to order its revocation in a proper case and under appropriate circumstances.[23] (Citations omitted)

On the ground of Jalosjos' failure to comply with the terms and conditions of his probation, the RTC revoked said grant and ordered for the issuance of an *alias* warrant of arrest against him. Stripped of the privilege, he becomes an ordinary convict who is imposed with restraints in the exercise of his civil and political rights. Specifically, under Section 40(a) of the LGC, he is disqualified to run for any local elective office. His disqualification cannot be defeated by bare allegation that he was earlier granted probation as this does not perfunctorily obliterate the fact of conviction and the corresponding accessory penalties.

Further, in *Baclayon v. Hon. Mutia*,[24] we emphasized that an order placing defendant on "probation" is not a "sentence" but is rather a suspension of the imposition of sentence. It is not a final judgment but is rather an "interlocutory judgment" in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of the probation are complied with, or by a final judgment of sentence if the conditions are violated.[25] With the revocation of the grant of Jalosjos' probation, the temporary suspension of his sentence is lifted and all the ensuing disqualifications regain full effect.

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[23] *Id.* at 583-584.

[24] 214 Phil. 126 (1984).

[25] *Id.* at 132, citing *Commonwealth ex rel. Paige vs. Smith*, 198 A. 812, 813, 815, l30 Pa. Super. 536.

Remarkably, Cardino's challenge to Jalosjos' candidacy was not based squarely on the fact that there is a final judgment of conviction for robbery against him but on the ground that he made a material misrepresentation in his COC by declaring that he is eligible to run for public office when there is an existing circumstance which renders his candidacy unacceptable. Based on the designation of his petition in SPA No. 09-076 (DC), Cardino intends to file a petition to cancel the COC of Jalosjos, an action which is governed by Section 74, in relation with Section 78 of the OEC. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC's cancellation or the withholding of due course.[26] Essentially, the details required to be stated in the COC are the personal circumstances of the candidate, *i.e.*, name/stage name, age, civil status, citizenship and residency, which serve as basis of his eligibility to become a candidate taking into consideration the standards set under the law. The manifest intent of the law in imposing these qualifications is to confine the right to participate in the elections to local residents who have reached the age when they can seriously reckon the gravity of the responsibility they wish to take on and who, at the same time, are heavily acquainted with the actual state and urgent demands of the community.

A painstaking examination of the petition filed by Cardino with the COMELEC would reveal that while it is designated as a petition to deny due course to or cancel a COC, the ground used to support the same actually partake of a circumstance which is more fittingly used in a petition for disqualification. Section 40(a) of the LGC clearly enumerates a final judgment of conviction for a crime involving moral turpitude as a ground for disqualification. That Cardino employed the term "material misrepresentation" in his disputations cannot give his petition a semblance of what is properly a petition to cancel a COC. It bears reiterating that a petition to deny due course to or cancel

[26] *Velasco v. Commission on Elections*, G.R. No. 180051, December 24, 2008, 575 SCRA 590, 602.

a COC and a petition for disqualification are two separate and distinct actions which may be filed based on grounds pertaining to it. Thus, a petition for cancellation of COC cannot be predicated on a ground which is proper only in a petition for disqualification. The legislature would not have found it wise to provide for two different remedies to challenge the candidacy of an aspiring local servant and even provide for an enumeration of the grounds on which they may be based if they were intended to address the same predicament. The fact that the mentioned remedies were covered by separate provisions of law which relate to distinct set of grounds is a manifestation of the intention to treat them severally.

Considering that the core of Cardino's petition in SPA No. 09-076 (DC) is the existence of a final judgment of conviction against Jalosjos, this material allegation is controlling of the characterization of the nature of the petition regardless of the caption used to introduce the same. Cardino's petition must therefore be treated and evaluated as a petition for disqualification and not for cancellation of COC. Well-settled rule is that the caption is not determinative of the nature of the petition. What characterizes the nature of the action or petition are the material allegations therein contained, irrespective of whether the petitioner is entitled to the reliefs prayed for therein.[27]

In order to conform with existing laws and established jurisprudence, the Resolution dated February 22, 2011 of this Court in G.R. No. 193237 must accordingly be modified to reflect the foregoing clarification on the nature of Cardino's petition in SPA No. 09-076 (DC) and the ensuing consequences of the judgment on the same.

Turning to G.R. No. 193536, it is Cardino's contention that with the cancellation of Jalosjos' COC, he should succeed to the office of the mayor of Dapitan City, Zamboanga del Norte as he was the only remaining qualified candidate for said position. He posits that the cancellation of Jalosjos' COC retroacted to

[27] *Guiang v. Co*, 479 Phil. 473, 480 (2004), citing *Ty v. Court of Appeals*, 408 Phil. 792 (2001).

the date of its filing and rendered the latter a non-candidate as if he never filed one at all. Consequently, all the votes cast in his favor are considered stray and his proclamation as winning candidate did not produce any legal effect.

Further, Cardino imputes grave abuse of discretion on the part of the COMELEC for stating in the dispositive portion of its Resolution dated August 11, 2010 that the provisions on succession in the LGC will apply in filling the post vacated by Jalosjos. To begin with, he argues that Section 44 of the LGC applies only when a permanent vacancy occurs in the office of the mayor. A permanent vacancy contemplates a situation whereby the disqualified mayor was duly elected to the position and lawfully assumed the office before he vacated the same for any legal cause. It does not embrace cancellation of COC since this eventuality has the effect of rendering the individual a non-candidate, who cannot be voted for and much less, be proclaimed winner in the elections.[28]

Cardino's disputations fail to persuade.

Cardino as a mere second placer cannot be proclaimed mayor of Dapitan City, Zamboanga del Norte.

Truly, a judgment on a petition to cancel a COC impinges on the very eligibility of an individual to qualify as a candidate and that its ultimate effect is to render the person a non-candidate as if he never filed a COC at all. The votes in favor of the candidate whose COC was cancelled are considered stray even if he happens to be the one who gathered the majority of the votes. In such case, the candidate receiving the second highest number of votes may be proclaimed the winner as he is technically considered the one who received the highest number of votes. Further, the judgment on a petition to cancel a COC does not distinguish whether the same attained finality before or after the elections since the consequences retroact to the date of filing of the COC. Regardless of the point in time when the cancellation

[28] G.R. No. 193536 *rollo*, pp. 11-12.

of the COC was adjudged, the effect is nevertheless the same: the person is stripped of his status as an official candidate.

Cardino's disputations could have been tenable if the petition he filed in SPA No. 09-076 (DC) is a petition to cancel a COC. However, the pertinent allegations of his petition bespeak of the fact that the same is actually a petition for disqualification, the effect of which is covered by Section 6 of R.A. No. 6646, which repealed Section 72 of the OEC, to wit:

> Sec. 6. ***Effect of Disqualification Case.*** – Any candidate who has been *declared by final judgment* to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Italics ours)

Unlike a judgment on a petition to cancel a COC, the effects of a judgment on a petition for disqualification distinguish whether the same attained finality before or after the elections. If the judgment became final *before* the elections, the effect is identical to that of cancellation of a COC. If, however, the judgment attained finality *after* the elections, the individual is still considered an official candidate and may even be proclaimed winner should he muster the majority votes of the constituency.

In *Cayat v. Commission on Elections*,[29] we cogitated on the import of Section 6 of R.A. No. 6646, to wit:

> Section 6 of the Electoral Reforms Law of 1987 covers **two situations**. The first is when the disqualification becomes final **before** the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final **after** the elections, which is the situation covered in the second sentence of Section 6.

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[29] G.R. No. 163776, April 24, 2007, 522 SCRA 23.

The present case falls under the **first situation**. Section 6 of the Electoral Reforms Law governing the first situation is categorical: **a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted**. The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 votes cast in Cayat's favor are stray. **Cayat was never a candidate in the 10 May 2004 elections**. Palileng's proclamation is proper because he was the sole and only candidate, second to none.[30] (Emphasis supplied)

The instant case falls under the second situation contemplated in Section 6 of R.A. No. 6646. The petition to disqualify Jalosjos was filed on December 6, 2009 and was resolved by the COMELEC on the very day of elections of May 10, 2010. Thus, on the election day, Jalosjos is still considered an official candidate notwithstanding the issuance of the COMELEC Resolution disqualifying him from holding public office. The pendency of a disqualification case against him or even the issuance of judgment of disqualification against him does not forthwith divest him of the right to participate in the elections as a candidate because the law requires no less than a final judgment. Thus, the votes cast in his name were rightfully counted in his favor and, there being no order suspending his proclamation, the City Board of Canvassers lawfully proclaimed him as the winning candidate. However, upon the finality of the judgment of disqualification against him on August 11, 2010, a permanent vacancy was created in the office of the mayor which must be filled in accordance with Section 44 of the LGC, which states:

Sec. 44. ***Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice-Mayor***. – If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

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For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns,

[30] *Id.* at 45.

or is otherwise permanently incapacitated to discharge the functions of his office.

The language of the law is clear, explicit and unequivocal, thus admits no room for interpretation but merely application.[31] Accordingly, when Jalosjos was adjudged to be disqualified, a permanent vacancy was created in the office of the mayor for failure of the elected mayor to qualify for the position. As provided by law, it is the duly-elected vice-mayor of the locality who should succeed to the vacated office.

Following the foregoing ratiocination, Cardino's contention that he should be proclaimed mayor of Dapitan City, Zamboanga del Norte lacks legal basis. That he was the one who received the second highest number of votes does not entitle him to any right or preference to succeeding the vacated post. Unmistakably, he did not have the mandate of the voting populace and this must not be defeated by substituting him, a losing candidate, in place of the disqualified candidate who received the majority votes. In *Benito v. Commission on Elections*,[32] we held:

> In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving him the highest number of votes cast in the election for that office, no one can be declared elected in his place.
>
> The fact that the candidate who obtained the highest number of votes dies, or is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. For to allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.[33] (Citations omitted)

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[31] *Sunga v. COMELEC*, 351 Phil. 310, 327 (1998).

[32] 235 SCRA 436 (1994).

[33] *Id.* at 441-442.

Further, in *Kare v. Commission on Elections*,[34] we further deliberated on the reason behind the doctrine of rejection of the second placer. We enunciated:

> Theoretically, the second placer could receive just one vote. In such a case, it would be absurd to proclaim the totally repudiated candidate as the voters' choice. Moreover, there are instances in which the votes received by the second placer may not be considered numerically insignificant. In such situations, if the equation changes because of the disqualification of an ineligible candidate, voters' preferences would nonetheless be so volatile and unpredictable that the results for qualified candidates would not be self-evident. The absence of the apparent though ineligible winner among the choices could lead to a shifting of votes to candidates other than the second placer. Where an "ineligible" candidate has garnered either a majority or a plurality of the votes, by no mathematical formulation can the runner-up in the election be construed to have obtained the majority or the plurality of votes cast.[35] (Citations omitted)

In other words, a second placer cannot bank on a mere supposition that he could have won the elections had the winning candidate, who was eventually adjudged disqualified, been excluded in the roster of official candidates. It is erroneous to assume that the sovereign will could have opted for the candidate who received the second highest number of votes had they known of the disqualification of the winning candidate early on. For in such event, they could have cast their votes in favor of another candidate, not necessarily the one who received the second highest number of votes.

Finally, Cardino impugns the wisdom of the doctrine of rejection of second placer which was first enunciated in *Topacio v. Paredes*[36] on the ground that the doctrine effectively discourages qualified candidates for the same position for which the disqualified candidate was elected, in initiating a disqualification

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[34] G.R. No. 157526, April 28, 2004, 428 SCRA 264.

[35] *Id.* at 274-275.

[36] 23 Phil. 238 (1912).

case because the prospect of being proclaimed to the position is nil.[37]

The doctrine of rejection of the second placer was not conceived to suit the selfish interests of losing candidates or arm them with a weapon to retaliate against the prevailing candidates. The primordial consideration in adhering to this doctrine is not simply to protect the interest of the other qualified candidates joining the electoral race but more than that, to safeguard the will of the people in whom the sovereignty resides. The doctrine ensures that only the candidate who has the people's faith and confidence will be allowed to run the machinery of the government. It is a guarantee that the popular choice will not be compromised, even in the occasion that the prevailing candidate is eventually disqualified, by replacing him with the next-in-rank official who was also elected to office by the authority of the electorate.

It is of no moment that, as Cardino surmised, the doctrine of rejection of the second placer dissuades other qualified candidates in filing a disqualification case against the prevailing candidate for lack of expectation of gain. To justify the abandonment of the doctrine following Cardino's asseveration is to reduce its significance and put premium on the interest of the candidate rather than of the electorate for whose interest the election is being conducted. The doctrine was for the protection of the public and not for any private individual's advantage. Thus, the right to file a petition for disqualification is not exclusive to the opposing candidate but may also be pursued by any citizen of voting age, or duly registered political party, organization or coalition of political parties,[38] who are minded to do so.

In ruling therefore that the provisions of the LGC shall apply in determining the rightful successor to the office of the mayor of Dapitan City, Zamboanga del Norte, the COMELEC did not commit any grave abuse of discretion. The application of the provisions of the LGC is the necessary consequence of Jalosjos' disqualification.

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[37] G.R. No. 193536 *rollo*, pp. 12-15.

[38] The 1993 COMELEC Rules of Procedure, Rule 25, Section 1.

In view of the foregoing disquisitions, I respectfully vote to:

(1) **DISMISS** G.R. No. 193536 for lack of merit.

(2) **MODIFY** the Resolution dated February 22, 2011 of this Court in G.R. No. 193237. The Resolutions dated May 10, 2010 and August 11, 2010 of the COMELEC in SPA No. 09-076 (DC) should be **AFFIRMED with MODIFICATION** in that Dominador G. Jalosjos, Jr. should be declared disqualified to run as Mayor of Dapitan City, Zamboanga del Norte and the provisions of the Local Government Code on succession be applied in filling the vacated office.

EN BANC

[G.R. No. 195229. October 9, 2012]

EFREN RACEL ARATEA, *petitioner, vs.* **COMMISSION ON ELECTIONS and ESTELA D. ANTIPOLO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; ELECTION OFFENSES DO NOT INCLUDE VIOLATION OF THE THREE-TERM LIMIT RULE OR CONVICTION BY FINAL JUDGMENT OF THE CRIME OF FALSIFICATION UNDER THE REVISED PENAL CODE.— A petition for disqualification under Section 68 clearly refers to "the commission of prohibited acts and possession of a permanent resident status in a foreign country." **All the offenses mentioned in Section 68 refer to election offenses under the Omnibus Election Code, not to violations of other**

penal laws. There is absolutely nothing in the language of Section 68 that would justify including violation of the three-term limit rule, or conviction by final judgment of the crime of falsification under the Revised Penal Code, as one of the grounds or offenses covered under Section 68. In *Codilla, Sr. v. de Venecia,* this Court ruled: [T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. x x x Clearly, the violation by Lonzanida of the three-term limit rule, or his conviction by final judgment of the crime of falsification under the Revised Penal Code, does not constitute a ground for a petition under Section 68.

2. ID.; ID.; ID.; CERTIFICATE OF CANDIDACY; FALSE MATERIAL REPRESENTATION, WHEN COMMITTED; PRESENT IN CASE AT BAR.— Section 78 of the Omnibus Election Code states that a certificate of candidacy may be denied or cancelled when there is **false material representation of the contents of the certificate of candidacy**. x x x Section 74 of the Omnibus Election Code details **the contents of the certificate of candidacy**: x x x A candidate for mayor in the 2010 local elections was thus required to provide 12 items of information in the certificate of candidacy: x x x The candidate also certifies four statements: a statement that the candidate is a natural born or naturalized Filipino citizen; a statement that the candidate is not a permanent resident of, or immigrant to, a foreign country; **a statement that the candidate is eligible for the office he seeks election**; and a statement of the candidate's allegiance to the Constitution of the Republic of the Philippines. The certificate of candidacy should also be **under oath**, and filed within the period prescribed by law. The conviction of Lonzanida by final judgment, with the penalty of *prisión mayor*, **disqualifies him perpetually from holding any public office, or from being elected to any public office**. **This perpetual disqualification took effect upon the finality of the judgment of conviction, before Lonzanida filed his certificate of candidacy**. x x x Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. **A person suffering from these ineligibilities is ineligible**

to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run. x x x As this Court held in *Fermin v.Commission on Elections*, the false material representation may refer to "**qualifications or eligibility.**" One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that "he is eligible to run for (public) office," **as expressly required under Section 74**, then he clearly makes a **false material representation** that is a ground for a petition under Section 78.

3. ID.; ID.; ID.; ID.; EFFECT OF PERPETUAL SPECIAL DISQUALIFICATION UPON ELIGIBILITY TO RUN FOR PUBLIC OFFICE, EXPLAINED; APPLICATION IN CASE AT BAR.— The penalty of *prisión mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and **perpetual special disqualification.** Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*." The duration of temporary absolute disqualification is the same as that of the principal penalty of *prisión mayor*. On the other hand, under Article 32 of the Revised Penal Code, **perpetual special disqualification** means that "**the offender shall not be permitted to hold any public office during the period of his disqualification,**" ***which is perpetually.*** In *Lacuna v. Abes (Lacuna)* explained the import of the accessory penalty of ***perpetual special disqualification.*** Clearly, *Lacuna* instructs that the accessory penalty of perpetual special disqualification "**deprives the convict of the right to vote *or to be elected to or hold public office perpetually.***" **The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final.** The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not. The last sentence of Article 32 states that "the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification." Once the judgment of conviction becomes final, it is immediately executory. Any

public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and **the convict becomes ineligible to run for any elective public office perpetually**. ***In the case of Lonzanida, he became ineligible perpetually to hold, or to run for, any elective public office from the time the judgment of conviction against him became final. The judgment of conviction was promulgated on 20 July 2009 and became final on 23 October 2009, before Lonzanida filed his certificate of candidacy on 1 December 2009.*** **Perpetual special disqualification** is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an **ineligibility**, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath in his certificate of candidacy.

4. ID.; ID.; ID.; ID.; THREE-TERM LIMIT RULE AS A GROUND FOR INELIGIBILITY; DEFINED AND CONSTRUED.— Section 74 requires the candidate to certify that he is **eligible for the public office** he seeks election. Thus, Section 74 states that "**the certificate of candidacy shall state that the person filing x x x is eligible for said office.**" The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate's freedom of choice, is found both in the Constitution and the law. After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is **ineligible**. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.

5. ID.; ID.; ID.; ID.; WHEN VOID *AB INITIO*, A CANCELLED CERTIFICATE OF CANDIDACY CANNOT GIVE RISE TO A VALID CANDIDACY; APPLICATION IN CASE AT BAR.— A cancelled certificate of candidacy void *ab initio* cannot give rise to a valid candidacy, and much less to valid votes. x x x Lonzanida's certificate of candidacy was cancelled because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after

the elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void *ab initio*. There was only one qualified candidate for Mayor in the May 2010 elections – Antipolo, who therefore received the highest number of votes.

6. ID.; ID.; ID.; THE COMMISSION ON ELECTIONS (COMELEC) IS UNDER A LEGAL DUTY TO CANCEL THE CERTIFICATE OF CANDIDACY OF ANYONE SUFFERING FROM PERPETUAL SPECIAL DISQUALIFICATION TO RUN FOR PUBLIC OFFICE BY VIRTUE OF A FINAL JUDGMENT OF CONVICTION; SUSTAINED.— Even without a petition under Section 78 of the Omnibus Election Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is judicial notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law. Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to "**enforce** and administer **all** laws and regulations relative to the conduct of an election." The disqualification of a convict to run for elective public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the **enforcement and administration** of "all the laws" relating to the conduct of elections.

BRION, *J., dissenting opinion*:

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; NATURE THEREOF EXPLAINED.— A basic rule and one that cannot

be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*, the Court described the nature of a CoC as follows – A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated. x x x With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding "that **the importance of a valid certificate of candidacy rests at the very core of the electoral process.**" Pertinent laws provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring "equal access to opportunities for public service," bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.

2. ID.; ID.; ID.; CONCEPT OF DISQUALIFICATION; EXPLAINED; GROUNDS, CITED.— To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules. It is in these senses that the term is understood in our election laws. Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens (Section 74 of the OEC) may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him ***as an individual***, ***separately from the general qualifications that must exist for a citizen to run for a local public office***. Notably, **the breach of the three-term limit** is a trait or condition that can possibly apply *only* to those who have previously served for three consecutive terms in the same position sought immediately prior to the

present elections. In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC. x x x Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC. x x x Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected. A unique feature of "disqualification" is that under Section 68 of the OEC, **it refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

3. ID.; ID.; ID.; ELIGIBILITY REQUIREMENTS AND DISQUALIFICATION, DISTINGUISHED. – To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC. When the law allows the **cancellation of a candidate's CoC**, the law considers the cancellation **from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy**. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate ***and*** his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies

only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

4. ID.; ID.; ID.; LACK OF ELIGIBILITY AND DISQUALIFICATION; REMEDIES AVAILABLE.— The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and on the application of disqualification. The remedies available are essentially: the **cancellation of a CoC**, **disqualification from candidacy or from holding office**, and **quo warranto**, which are distinct remedies with varying applicability and effects.

5. ID.; ID.; ID.; ID.; ID.; DISTINCTIONS AS TO GROUNDS. — In the **denial of due course to or cancellation of a CoC**, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office; the governing provisions are *Sections 78 and 69 of the OEC*. In a **disqualification case**, the grounds are traits, conditions, characteristics or acts of disqualification, individually applicable to a candidate, as provided under Sections 68 and 12 of B.P. Blg. 881; Section 40 of LGC 1991; and, Section 8, Article X of the Constitution. x x x In a *quo warranto* petition, the grounds to oust an elected official from his office are ineligibility and disloyalty to the Republic of the Philippines. This is provided under Section 253 of the OEC and governed by the Rules of Court as to procedures. While *quo warranto* and cancellation share the same ineligibility grounds, **they differ as to the time these grounds are cited.** A cancellation case is brought before the elections, while a *quo warranto* is filed after and may still be filed even if a CoC cancellation case was not filed before elections.

6. ID.; ID.; ID.; ID.; ID.; DISTINCTIONS AS TO THE PERIOD FOR FILING.— The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under **Section 78 of the OEC**, the petition must be filed within twenty-five (25) days from

the filing of the CoC. However, if the petition is brought under **Section 69** of the same law, the petition must be filed within five (5) days from the last day of filing the CoC. On the other hand, the period to file a **disqualification case** is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696. **The three-term limit disqualification, because of its unique characteristics, does not strictly follow this time limitation and is discussed at length below**. At the very least, it should follow the temporal limitations of a *quo warranto* petition which must be filed within ten (10) days from proclamation. The constitutional nature of the violation, however, argues against the application of this time requirement; the *rationale* for the rule and the role of the Constitution in the country's legal order dictate that a petition should be allowed while a consecutive fourth-termer is in office.

7. ID.; ID.; ID.; ID.; ID.; DISTINCTIONS AS TO THE EFFECT OF SUCCESSFUL SUIT.— A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed. After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution. The application of the exception, however, presupposes a valid CoC. Unavoidably, a "candidate" **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC**, to all intents and purposes. Similarly, a successful *quo warranto* suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply. On the other hand, a candidate who was **simply disqualified** is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office; substitution can thus take place under the terms of Section 77 of the OEC. **However, a three-term candidate with a valid and subsisting CoC cannot be substituted *if* the basis of the substitution is his disqualification on account of his three-term limitation. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election where the three-term official emerged as winner**. As in a *quo warranto*, any substitution is too late at this point.

8. ID.; ID.; ID.; DOCTRINE OF REJECTION OF THE SECOND PLACER; WHEN NOT APPLICABLE.— With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the **rules on succession** under the law accordingly apply**.** As an **exceptional situation**, however, the candidate with the second highest number of votes (*second placer*) may be validly proclaimed as the winner in the elections should the winning candidate be **disqualified** by final judgment ***before* the elections**, as clearly provided in Section 6 of R.A. No. 6646. The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote. In a **CoC cancellation** proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an *inexistent* "candidate" or for one who is deemed not to be in the ballot. Although legally a misnomer, the "second placer" should be proclaimed the winner as the candidate with the highest number of votes for the contested position. This same consequence should result if the cancellation case becomes final after elections, as the cancellation signifies non-candidacy from the very start, *i.e.*, from before the elections.

9. ID.; LOCAL GOVERNMENT; THREE-TERM LIMIT RULE; THE RULE IS A BAR AGAINST A FOURTH CONSECUTIVE TERM AND IS EFFECTIVELY A DISQUALIFICATION AGAINST SUCH SERVICE RATHER THAN AN ELIGIBILITY REQUIREMENT.— The three-term limit rule is a creation of Section 8, Article X of the Constitution. This provision fixes the maximum limit an elective local official can consecutively serve in office, and at the same time gives the command, in no uncertain terms, that *no such official shall serve for more than three consecutive terms.* Thus, a three-term local official is **barred from serving a fourth and subsequent consecutive terms**. x x x The wording of Section 8, Article X of the Constitution, however, does not

justify this requirement as Section 8 simply sets a limit on the number of consecutive terms an official can serve. It does not refer to elections, much less does it bar a three-termer's candidacy. As previously discussed, Section 74 of the OEC does not expressly require a candidate to assert the *non-possession* of any disqualifying trait or condition, much less of a candidate's observance of the three-term limit rule. xxx That the prohibited fourth consecutive term can only take place after a three-term local official wins his fourth term signifies too that the prohibition (and the resulting disqualification) only takes place after elections. This circumstance, to my mind, supports the view that the three-term limit rule does not at all involve itself with the matter of candidacy; it only regulates service beyond the limits the Constitution has set. **Indeed, it is a big extrapolative leap for a prohibition that applies after election, to hark back and affect the initial election process for the filing of CoCs**. Thus, on the whole, I submit that the legally sound view is ***not*** to bar a three-termer's candidacy for a fourth term if the three-term limit rule is the only reason for the bar. In these lights, the three-term limit rule – as a bar against a fourth consecutive term – is effectively a disqualification against such service rather than an eligibility requirement.

REYES, *J., dissenting opinion*:

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; TWO REMEDIES TO PREVENT A CANDIDATE FROM JOINING THE ELECTORAL RACE; DISTINGUISHED.— It bears emphasizing that while both remedies [petition for disqualification and petition to deny due course or cancel a COC] aim to prevent a candidate from joining the electoral race, they are separate and distinct from each other. One remedy must not be confused with the other lest the consequences of a judgment for one be imposed for a judgment on the other to the prejudice of the parties. They are governed by separate provisions of law, which provide for different sets of grounds, varying prescriptive periods and consequences. As to governing law, a petition to cancel the COC of a candidate is filed under Section 78 of the OEC. x x x In order to justify the cancellation of COC, it is essential

that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court concluded that this refers to qualifications for elective office. It contemplates statements regarding age, residence and citizenship or non-possession of natural-born Filipino status. Furthermore, aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. In other words, it must be made with an intention to deceive the electorate as to one's qualification for public office. On the other hand, a petition for disqualification may be filed under Section 68 of the OEC. x x x The same petition may also be filed pursuant to Section 12 of the OEC and Section 40 of the LGC which provide for other grounds for disqualification to run for public office. x x x Disqualification proceedings are initiated for the purpose of barring an individual from becoming a candidate or from continuing as a candidate for public office. In other words, the objective is to eliminate a candidate from the race either from the start or during its progress. On the other hand, proceedings for the cancellation of COC seek a declaration of ineligibility, that is, the lack of qualifications prescribed in the Constitution or the statutes for holding public office and the purpose of the proceedings for declaration of ineligibility is to remove the incumbent from office.

2. ID.; ID.; ID.; ID.; GROUNDS, EXPLAINED; NUMBER OF TERMS SERVED, NOT INCLUDED.— The ground for filing a petition for cancellation of COC is basically a misrepresentation of the details required to be stated in the COC which, in Lonzanida's case, pertain to the basic qualifications for candidates for local elective positions provided under Section 39 of the LGC. x x x On the other hand, the grounds for disqualification refer to acts committed by an aspiring local servant, or to a circumstance, status or condition which renders him unfit for public service. Contrary to the effect of Section 39 of the LGC, possession of any of the grounds for disqualification results to the forfeiture of the right of a

candidate to participate in the elections. Thus, while a person may possess the core eligibilities required under Section 39, he may still be prevented from running for a local elective post if he has any of the disqualifications stated in Section 40. The rationale behind prescribing these disqualifications is to limit the right to hold public office to those who are fit to exercise the privilege in order to preserve the purity of the elections. x x x Thus, the statement in the COC which contains a declaration by the candidate that he is "eligible to the office he seeks to be elected to" must be strictly construed to refer only to the details pertaining to his qualifications, *i.e.*, age, citizenship or residency, among others, which the law requires him to state in his COC which he must even swear under oath to possess. Considering that the number of terms for which a local candidate had served is not required to be stated in the COC, it cannot be a ground for a petition to cancel a COC.

3. ID.; ID.; ID.; JUDGMENT OF DISQUALIFICATION; THE STATUS OF THE CANDIDATE WILL DEPEND ON WHETHER THE FINALITY TOOK EFFECT BEFORE OR AFTER THE DAY OF ELECTIONS; CLARIFIED.— Anent the effect of a judgment of disqualification, Section 72 of the OEC is clear. The foregoing provision was reiterated in Section 6 of R.A. No. 6646, pertaining to "The Electoral Reforms Law of 1987." It can be gathered from the foregoing that a judgment of disqualification against a candidate comes into full effect only upon attaining finality. Before that period, the candidate facing a disqualification case may still be voted for and even be proclaimed winner. After the judgment of disqualification has become final and executory, the effect on the status of his candidacy will depend on whether the finality took effect before or after the day of elections. If the judgment became final before the elections, he may no longer be considered a candidate and the votes cast in his favor are considered stray. On the other hand, if the judgment lapsed into finality after the elections, he is still considered a candidate and the votes cast in his name during the elections shall be counted in his favor. Without a final judgment, a candidate facing disqualification may still be proclaimed the winner and assume the position for which he was voted for. In the absence of an order suspending proclamation, the winning candidate who is sought to be disqualified is entitled to be proclaimed as a

matter of law. This is clear from Section 6 of R.A. No. 6646 which provides that the proclamation of the candidate sought to be disqualified is suspended only if there is an order of the COMELEC suspending proclamation. The mere pendency of a disqualification case against a candidate, and a winning candidate at that, does not justify the suspension of his proclamation after winning in the election. To hold otherwise would unduly encourage the filing of baseless and malicious petitions for disqualification if only to effect the suspension of the proclamation of the winning candidate, not only to his damage and prejudice but also to the defeat of the sovereign will of the electorate, and for the undue benefit of undeserving third parties.

4. ID.; ID.; ID.; ID.; WHEN A CANDIDATE RECEIVING THE SECOND HIGHEST NUMBER OF VOTES MAY BE PROCLAIMED WINNER; NOT APPLICABLE IN CASE AT BAR.— It bears emphasizing that in terms of effect, a judgment on a petition to cancel a COC touches the very eligibility of a person to qualify as a candidate such that an order for cancellation of his COC renders him a non-candidate as if he never filed a COC at all. The ripple effect is that all votes cast in his favor shall be considered stray. Thus, the candidate receiving the second highest number of votes may be proclaimed the winner as he is technically considered the candidate who received the highest number of votes. Further, it is of no consequence if the judgment on the petition to cancel COC became final before or after the elections since the consequences of the same retroact to the date of filing of the COC. On the other hand, the breadth of the effect a judgment on a petition for disqualification is relatively less extensive. *First*, the effect of a judgment thereon is limited to preventing a candidate from continuing his participation in the electoral race or, if already proclaimed, to unseat from public office. *Second*, the judgment takes effect only upon finality which can occur either before or after the elections. If the judgment became final before the elections, the effect is similar to the cancellation of a COC. However, if the judgment became final after the elections, he is still considered an official candidate and may even be proclaimed winner should he receive the highest number of votes in the elections. In the event that he is finally ousted out of office, Section 44 of the LGC will govern the

succession into the vacated office. Relating the foregoing principle to the instant case, Lonzanida is still considered an official candidate in the May 2010 elections notwithstanding the pendency of the disqualification case against him. The mere pendency of a disqualification case against him is not sufficient to deprive him of the right to be voted for because the law requires no less than a final judgment of disqualification. Consequently, the COMELEC should not have ordered for the proclamation of Antipolo as Mayor of San Antonio, Zambales. It is well-settled that the disqualification of the winning candidate does not give the candidate who garnered the second highest number of votes the right to be proclaimed to the vacated post.

5. ID.; ID.; ID.; AS A RULE, IN THE EVENT THAT A FINAL JUDGMENT OF DISQUALIFICATION IS RENDERED THE SECOND PLACER IN THE ELECTIONS DOES NOT ASSUME THE POST VACATED BY THE WINNING CANDIDATE; EXCEPTION, NOT PRESENT IN CASE AT BAR.— Apparently, in its Resolution dated February 2, 2011, the COMELEC submits to the general rule that the second placer in the elections does not assume the post vacated by the winning candidate in the event that a final judgment of disqualification is rendered against the latter. However, it posits that the notoriety of Lonzanida's disqualification and ineligibility to hold public office distinguishes the instant case from the throng of related cases upholding the doctrine. It anchored its ruling in the pronouncement we made in *Labo, Jr. v. Commission on Elections.* x x x The exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but nonetheless cast their votes in favor of the ineligible candidate. These assumptions however do not obtain in the present case. The COMELEC's asseveration that the electorate of San Antonio, Zambales was fully aware of Lonzanida's disqualification is purely speculative and conjectural. No evidence was ever presented to prove the character of Lonzanida's disqualification particularly the fact that the voting populace was "fully aware in fact and in law" of Lonzanida's alleged disqualification as to "bring such

awareness within the realm of notoriety," in other words, that the voters intentionally wasted their ballots knowing that, in spite of their voting for him, he was ineligible. Therefore, it is an error for the COMELEC to apply the exception in *Labo* when the operative facts upon which its application depends are wanting.

APPEARANCES OF COUNSEL

Yulo & Bello Law Offices and *Atienza Madrid & Formento* for petiotioner.

The Solicitor General for public respondent.

George Erwin M. Garcia for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a special civil action for *certiorari*[1] seeking to review and nullify the Resolution[2] dated 2 February 2011 and the Order[3] dated 12 January 2011 of the Commission on Elections (COMELEC) *En Banc* in *Dra. Sigrid S. Rodolfo v. Romeo D. Lonzanida,* docketed as SPA No. 09-158 (DC). The petition asserts that the COMELEC issued the Resolution and Order with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[1] Under Rule 64 in relation to Rule 65 of the 1997 Ru!es of Civil Procedure.

[2] *Rollo,* pp. 34-39. Signed by Chairman Sixto S. Brillantes, Jr. (no part), and Commissioners Rene V. Sarmiento (with dissenting opinion), Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco (with dissenting opinion), Eiias R. Yusoph, and Gregorio Y. Larrazabal.

[3] *ld.* at 32-33. Signed by Chairman Jose A.R. Melo, and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Elias R. Yusoph, Armando C. Velasco, and Gregorio Y. Larrazabal.

The Facts

Romeo D. Lonzanida (Lonzanida) and Estela D. Antipolo (Antipolo) were candidates for Mayor of San Antonio, Zambales in the May 2010 National and Local Elections. Lonzanida filed his certificate of candidacy on 1 December 2009.[4] On 8 December 2009, Dra. Sigrid S. Rodolfo (Rodolfo) filed a petition under Section 78 of the Omnibus Election Code to disqualify Lonzanida and to deny due course or to cancel Lonzanida's certificate of candidacy on the ground that Lonzanida was elected, and had served, as mayor of San Antonio, Zambales for four (4) consecutive terms immediately prior to the term for the May 2010 elections. Rodolfo asserted that Lonzanida made a false material representation in his certificate of candidacy when Lonzanida certified under oath that he was eligible for the office he sought election. Section 8, Article X of the 1987 Constitution[5] and Section 43(b) of the Local Government Code[6] both prohibit a local elective official from being elected and serving for more than three consecutive terms for the same position.

The COMELEC Second Division rendered a Resolution[7] on 18 February 2010 cancelling Lonzanida's certificate of candidacy. Pertinent portions of the 18 February 2010 Resolution read:

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[4] *Id.* at 65.

[5] Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[6] Sec. 43. *Term of Office.* x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

xxx xxx xxx

[7] *Rollo*, pp. 49-59. Penned by Commissioner Elias R. Yusoph, with Presiding Commissioner Nicodemo T. Ferrer and Commissioner Lucenito N. Tagle, concurring.

Respondent Lonzanida never denied having held the office of mayor of San Antonio, Zambales for more than nine consecutive years. Instead he raised arguments to forestall or dismiss the petition on the grounds other than the main issue itself. We find such arguments as wanting. Respondent Lonzanida, for holding the office of mayor for more than three consecutive terms, went against the three-term limit rule; therefore, he could not be allowed to run anew in the 2010 elections. It is time to infuse new blood in the political arena of San Antonio.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Certificate of Candidacy of Respondent Romeo D. Lonzanida for the position of mayor in the municipality of San Antonio, Zambales is hereby CANCELLED. His name is hereby ordered STRICKEN OFF the list of Official Candidates for the position of Mayor of San Antonio, Zambales in May 10, 2010 elections.

SO ORDERED.[8]

Lonzanida's motion for reconsideration before the COMELEC *En Banc* remained pending during the May 2010 elections. Lonzanida and Efren Racel Aratea (Aratea) garnered the highest number of votes and were respectively proclaimed Mayor and Vice-Mayor.

Aratea took his oath of office as Acting Mayor before Regional Trial Court (RTC) Judge Raymond C. Viray of Branch 75, Olongapo City on 5 July 2010.[9] On the same date, Aratea wrote the Department of Interior and Local Government (DILG) and requested for an opinion on whether, as Vice-Mayor, he was legally required to assume the Office of the Mayor in view of Lonzanida's disqualification. DILG Legal Opinion No. 117, S. 2010[10] stated that Lonzanida was disqualified to hold office by reason of his criminal conviction. As a consequence of Lonzanida's disqualification, the Office of the Mayor was deemed permanently vacant. Thus, Aratea should assume the Office of the Mayor in an acting capacity without prejudice to the

[8] *Id.* at 58.

[9] *Id.* at 96.

[10] *Id.* at 94-95. Penned by Undersecretary Austere A. Panadero.

COMELEC's resolution of Lonzanida's motion for reconsideration. In another letter dated 6 August 2010, Aratea requested the DILG to allow him to take the oath of office as Mayor of San Antonio, Zambales. In his response dated 24 August 2010, then Secretary Jesse M. Robredo allowed Aratea to take an oath of office as "the permanent Municipal Mayor of San Antonio, Zambales without prejudice however to the outcome of the cases pending before the [COMELEC]."[11]

On 11 August 2010, the COMELEC *En Banc* issued a Resolution[12] disqualifying Lonzanida from running for Mayor in the May 2010 elections. The COMELEC *En Banc's* resolution was based on two grounds: *first*, Lonzanida had been elected and had served as Mayor for more than three consecutive terms without interruption; and*second*, Lonzanida had been convicted by final judgment of ten (10) counts of falsification under the Revised Penal Code. Lonzanida was sentenced for each count of falsification to imprisonment of four (4) years and one (1) day of *prisión correccional* as minimum, to eight (8) years and one (1) day of *prisión mayor* as maximum. The judgment of conviction became final on 23 October 2009 in the Decision of this Court in *Lonzanida v. People*,[13]before Lonzanida filed his certificate of candidacy on 1 December 2009. Pertinent portions of the 11 August 2010 Resolution read:

> Prescinding from the foregoing premises, Lonzanida, for having served as Mayor of San Antonio, Zambales for more than three (3) consecutive terms and for having been convicted by a final judgment of a crime punishable by more than one (1) year of imprisonment, is clearly disqualified to run for the same position in the May 2010 Elections.
>
> WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby DENIED.

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[11] *Id.* at 97.

[12] *Id.* at 60-67. Penned by Commissioner Armando C. Velasco, with Chairman Jose A. R. Melo and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Elias R. Yusoph, and Gregorio Y. Larrazabal, concurring.

[13] G.R. Nos. 160243-52, 20 July 2009, 593 SCRA 273.

SO ORDERED.[14]

On 25 August 2010, Antipolo filed a Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention.[15]She claimed her right to be proclaimed as Mayor of San Antonio, Zambales because Lonzanida ceased to be a candidate when the COMELEC Second Division, through its 18 February 2010 Resolution, ordered the cancellation of his certificate of candidacy and the striking out of his name from the list of official candidates for the position of Mayor of San Antonio, Zambales in the May 2010 elections.

In his Comment filed on 26 January 2011, Aratea asserted that Antipolo, as the candidate who received the second highest number of votes, could not be proclaimed as the winning candidate. Since Lonzanida's disqualification was not yet final during election day, the votes cast in his favor could not be declared stray. Lonzanida's subsequent disqualification resulted in a permanent vacancy in the Office of Mayor, and Aratea, as the duly-elected Vice-Mayor, was mandated by Section 44[16] of the Local Government Code to succeed as Mayor.

The COMELEC's Rulings

The COMELEC *En Banc* issued an Order dated 12 January 2011, stating:

> Acting on the "Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention" filed by Estela D. Antipolo (Antipolo) and pursuant to the power of this Commission to suspend its Rules or any portion thereof in the interest of justice, this Commission hereby RESOLVES to:
>
> 1. GRANT the aforesaid Motion;

[14] *Rollo*, p. 66.

[15] *Id.* at 68-74.

[16] Sec. 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor*. – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vicegovernor or vice-mayor concerned shall become the governor or mayor. x x x.

2. ADMIT the Petition-in-Intervention filed by Antipolo;

3. REQUIRE the Respondent, ROMEO DUMLAO LONZANIDA, as well as EFREN RACEL ARATEA, proclaimed Vice-Mayor of San Antonio, Zambales, to file their respective Comments on the Petition-in- Intervention within a non-extendible period of five (5) days from receipt thereof;

4. SET the above-mentioned Petition-in-Intervention for hearing on January 26, 2011 at 10:00 a.m. COMELEC Session Hall, 8th Floor, Palacio del Gobernador, Intramuros, Manila.

WHEREFORE, furnish copies hereof the parties for their information and compliance.

SO ORDERED.[17]

In its Resolution dated 2 February 2011, the COMELEC *En Banc* no longer considered Lonzanida's qualification as an issue: "It is beyond cavil that Lonzanida is not eligible to hold and discharge the functions of the Office of the Mayor of San Antonio, Zambales. The sole issue to be resolved at this juncture is how to fill the vacancy resulting from Lonzanida's disqualification."[18] The Resolution further stated:

We cannot sustain the submission of Oppositor Aratea that Intervenor Antipolo could never be proclaimed as the duly elected Mayor of Antipolo [sic] for being a second placer in the elections. The teachings in the cases of *Codilla vs. De Venecia and Nazareno* and *Domino vs. COMELEC, et al.*, while they remain sound jurisprudence find no application in the case at bar. What sets this case apart from the cited jurisprudence is that the notoriety of Lonzanida's disqualification and ineligibility to hold public office is established both in fact and in law on election day itself. Hence, Lonzanida's name, as already ordered by the Commission on February 18, 2010 should have been stricken off from the list of official candidates for Mayor of San Antonio, Zambales.

WHEREFORE, in view of the foregoing, the Commission hereby:

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[17] *Rollo*, pp. 32-33.

[18] *Id.* at 36.

1. Declares NULL and VOID the proclamation of respondent ROMEO D. LONZANIDA;

2. GRANTS the Petition for Intervention of Estela D. Antipolo;

3. Orders the immediate CONSTITUTION of a Special Municipal Board of Canvassers to PROCLAIM Intervenor Estela D. Antipolo as the duly elected Mayor of San Antonio, Zambales;

4. Orders Vice-Mayor Efren Racel Aratea to cease and desist from discharging the functions of the Office of the Mayor, and to cause a peaceful turn-over of the said office to Antipolo upon her proclamation; and

5. Orders the Office of the Executive Director as well as the Regional Election Director of Region III to cause the implementation of this Resolution and disseminate it to the Department of Interior and Local Government.

SO ORDERED.[19]

Aratea filed the present petition on 9 February 2011.

The Issues

The manner of filling up the permanent vacancy in the Office of the Mayor of San Antonio, Zambales is dependent upon the determination of Lonzanida's removal. Whether Lonzanida was disqualified under Section 68 of the Omnibus Election Code, or made a false material representation under Section 78 of the same Code **that resulted in his certificate of candidacy being void *ab initio***, is determinative of whether Aratea or Antipolo is the rightful occupant to the Office of the Mayor of San Antonio, Zambales.

The dissenting opinions reverse the COMELEC's 2 February 2011 Resolution and 12 January 2011 Order. They hold that Aratea, the duly elected Vice-Mayor of San Antonio, Zambales, should be declared Mayor pursuant to the Local Government Code's rule on succession.

The dissenting opinions make three grave errors: *first*, they ignore prevailing jurisprudence that a false representation in

[19] *Id.* at 37-38. Citations omitted.

the certificate of candidacy as to eligibility in the number of terms elected and served is a material fact that is a ground for a petition to cancel a certificate of candidacy under Section 78; *second*, they ignore that a false representation as to eligibility to run for public office due to the fact that the candidate suffers from perpetual *special disqualification* is a material fact that is a ground for a petition to cancel a certificate of candidacy under Section 78; and *third*, they resort to a strained statutory construction to conclude that the violation of the three-term limit rule cannot be a ground for cancellation of a certificate of candidacy under Section 78, even when it is clear and plain that violation of the three-term limit rule is an ineligibility affecting the qualification of a candidate to elective office.

The dissenting opinions tread on dangerous ground when they assert that a candidate's eligibility to the office he seeks election must be strictly construed to refer **only** to the details, *i.e.*, age, citizenship, or residency, among others, which the law requires him to state in his COC, and which he must swear under oath to possess. The dissenting opinions choose to view a false certification of a candidate's eligibility on the three-term limit rule not as a ground for false material representation under Section 78 but as a ground for disqualification under Section 68 of the same Code. This is clearly contrary to well-established jurisprudence.

The Court's Ruling

We hold that Antipolo, the alleged "second placer," should be proclaimed Mayor because Lonzanida's certificate of candidacy was void *ab initio*. In short, Lonzanida was never a candidate at all. All votes for Lonzanida were stray votes. Thus, Antipolo, the only qualified candidate, actually garnered the highest number of votes for the position of Mayor.

Qualifications and Disqualifications

Section 65 of the Omnibus Election Code points to the Local Government Code for the qualifications of elective local officials. Paragraphs (a) and (c) of Section 39 and Section 40 of the Local Government Code provide in pertinent part:

Sec. 39. *Qualifications.*— (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city or province x x x; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

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(c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

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Sec. 40. *Disqualifications*. - The following persons are disqualified from running for any elective local position:

(a) **Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence**;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or non-political cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded. (Emphasis supplied)

Section 12 of the Omnibus Election Code provides:

Sec. 12. *Disqualification*. — Any person who has been declared by competent authority insane or incompetent, or has been **sentenced by final judgment** for subversion, insurrection, rebellion or **for any offense for which he was sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude**, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified. (Emphasis supplied)

The grounds for disqualification for a petition under Section 68 of the Omnibus Election Code are specifically enumerated:

Sec. 68. *Disqualifications*.— Any candidate who, in an action or protest in which he is a party is declared by final decision by a competent court guilty of, or found by the Commission of having **(a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6**, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphasis supplied)

A petition for disqualification under Section 68 clearly refers to "the commission of prohibited acts and possession of a permanent resident status in a foreign country."[20] **All the offenses mentioned in Section 68 refer to election offenses under the Omnibus Election Code, not to violations of other penal laws**. There is absolutely nothing in the language of Section 68 that would justify including violation of the three-term limit rule, or conviction by final judgment of the crime of falsification under the Revised Penal Code, as one of the grounds or offenses

[20] *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, 18 December 2008, 574 SCRA 782, 794-795.

covered under Section 68. In *Codilla, Sr. v. de Venecia,*[21] this Court ruled:

> [T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature.
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> xxx xxx xxx

Clearly, the violation by Lonzanida of the three-term limit rule, or his conviction by final judgment of the crime of falsification under the Revised Penal Code, does not constitute a ground for a petition under Section 68.

False Material Representation

Section 78 of the Omnibus Election Code states that a certificate of candidacy may be denied or cancelled when there is **false material representation of the contents of the certificate of candidacy**:

> Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.*— A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person **exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false**. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis supplied)

Section 74 of the Omnibus Election Code details **the contents of the certificate of candidacy**:

> Sec. 74. *Contents of certificate of candidacy.* **The certificate of candidacy shall state that the person filing it** is announcing his candidacy for the office stated therein and that he **is eligible for said office**; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he

[21] 442 Phil. 139, 177-178 (2002).

belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

xxx xxx xxx (Emphasis supplied)

A candidate for mayor in the 2010 local elections was thus required to provide 12 items of information in the certificate of candidacy:[22] name; nickname or stage name; gender; age; place of birth; political party that nominated the candidate; civil status; residence/address; profession or occupation; post office address for election purposes; locality of which the candidate is a registered voter; and period of residence in the Philippines before 10 May 2010. The candidate also certifies four statements: a statement that the candidate is a natural born or naturalized Filipino citizen; a statement that the candidate is not a permanent resident of, or immigrant to, a foreign country; **a statement that the candidate is eligible for the office he seeks election**; and a statement of the candidate's allegiance to the Constitution of the Republic of the Philippines.[23] The certificate of candidacy should also be **under oath**, and filed within the period prescribed by law.

The conviction of Lonzanida by final judgment, with the penalty of *prisión mayor*, **disqualifies him perpetually from holding any public office, or from being elected to any public office**. **This perpetual disqualification took effect upon the finality**

[22] http://www.comelec.gov.ph/downloadables/COC%202010/forms_filling_candidacy/mayor.pdf (accessed 21 March 2012).

[23] I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto. I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities. I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion.

of the judgment of conviction, before Lonzanida filed his certificate of candidacy. The pertinent provisions of the Revised Penal Code are as follows:

Art. 27. *Reclusion perpetua*. — x x x

Prisión mayor and temporary disqualification. — **The duration of the penalties of *prisión mayor* and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case, it shall be that of the principal penalty**.

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Art. 30. *Effects of the penalties of perpetual or temporary absolute disqualification*. — The penalties of **perpetual or temporary absolute disqualification** for public office shall produce the following effects:

1. **The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election**.

2. **The deprivation of the right to vote in any election for any popular elective office or to be elected to such office**.

3. **The disqualification for the offices or public employments and for the exercise of any of the rights mentioned**.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

Art. 31. *Effects of the penalties of perpetual or temporary special disqualification*. — The penalties of **perpetual or temporary special disqualification for public office**, profession or calling shall produce the following effects:

1. **The deprivation of the office**, employment, profession or calling affected.

2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.

Art. 32. *Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage*. — The **perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence**, according to the nature of said penalty, of the right to vote in any popular election for any public office or **to be elected to such office**.**Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification**.

Art. 42. *Prisión mayor — Its accessory penalties*. — The penalty of prision mayor shall carry with it that of **temporary absolute disqualification** and that of **perpetual special disqualification** from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphasis supplied)

The penalty of *prisión mayor* automatically carries with it, by operation of law,[24] the accessory penalties of temporary absolute disqualification and **perpetual special disqualification.** Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*." The duration of temporary absolute disqualification is the same as that of the principal penalty of *prisión mayor*. On the other hand, under Article 32 of the Revised Penal Code, **perpetual special disqualification** means that "**the offender shall not be permitted to hold any public office during the period of his disqualification,**" ***which is perpetually.*** Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. **A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.**

In *Lacuna v. Abes* (*Lacuna*),[25] the Court, speaking through Justice J.B.L. Reyes, explained the import of the accessory penalty of **perpetual special disqualification:**

[24] *People v. Silvallana,* 61 Phil. 636 (1935).

[25] 133 Phil. 770, 773-774 (1968).

On the first defense of respondent-appellee Abes, it must be remembered that appellee's conviction of a crime penalized with *prision mayor* which carried the accessory penalties of temporary absolute disqualification and perpetual special disqualification from the right of suffrage (Article 42, Revised Penal Code); and Section 99 of the Revised Election Code disqualifies a person from voting if he had been sentenced by final judgment to suffer one year or more of imprisonment.

The accessory penalty of temporary absolute disqualification disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence (Article 27, paragraph 3, & Article 30, Revised Penal Code) that, in the case of Abes, would have expired on 13 October 1961.

But this does not hold true with respect to the other accessory penalty of perpetual special disqualification for the exercise of the right of suffrage. This accessory penalty deprives the convict of the right to vote *or to be elected to or hold public office perpetually*, as distinguished from temporary special disqualification, which lasts during the term of the sentence. Article 32, Revised Penal Code, provides:

> Art. 32. *Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage*. — The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of disqualification.

The word "perpetually" and the phrase "during the term of the sentence" should be applied distributively to their respective antecedents; thus, the word "perpetually" refers to the perpetual kind of special disqualification, while the phrase "during the term of the sentence" refers to the temporary special disqualification. The duration between the perpetual and the temporary (both special) are necessarily different because the provision, instead of merging their durations into one period, states that such duration is "according to the nature of said penalty" — which means according to whether the penalty is the perpetual or the temporary special disqualification. (Emphasis supplied)

Clearly, *Lacuna* instructs that the accessory penalty of perpetual special disqualification "**deprives the convict of the right to vote *or to be elected to or hold public office perpetually.***"

The accessory penalty of perpetual special disqualification takes effect immediately once the judgment of conviction becomes final. The effectivity of this accessory penalty does not depend on the duration of the principal penalty, or on whether the convict serves his jail sentence or not. The last sentence of Article 32 states that "the offender shall not be permitted to hold any public office during the period of his [perpetual special] disqualification." Once the judgment of conviction becomes final, it is immediately executory. Any public office that the convict may be holding at the time of his conviction becomes vacant upon finality of the judgment, and **the convict becomes ineligible to run for any elective public office perpetually**. ***In the case of Lonzanida, he became ineligible perpetually to hold, or to run for, any elective public office from the time the judgment of conviction against him became final. The judgment of conviction was promulgated on 20 July 2009 and became final on 23 October 2009, before Lonzanida filed his certificate of candidacy on 1 December 2009*** .[26]

Perpetual special disqualification is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an **ineligibility**, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath in his certificate of candidacy. As this Court held in *Fermin v. Commission on Elections*,[27] the false material representation may refer to "**qualifications or eligibility.**" One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that "he is eligible to run for (public) office," **as expressly required under Section 74**, then he clearly makes a **false material representation**

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[26] *Rollo*, p. 66.

[27] *Supra* note 20.

that is a ground for a petition under Section 78. As this Court explained in *Fermin*:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, **which may relate to the qualifications required of the public office he/she is running for**. **It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on *qualifications or eligibility* for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate**. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.[28] (Emphasis supplied)

Latasa, Rivera and Ong:
The Three-Term Limit Rule as a Ground for Ineligibility

Section 74 requires the candidate to certify that he is **eligible for the public office** he seeks election. Thus, Section 74 states that "**the certificate of candidacy shall state that the person filing x x x is eligible for said office.**" The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate's freedom of choice,[29] is found both in the Constitution[30] and the law.[31] After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next

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[28] *Id.* at 792-794.

[29] See *Borja, Jr. v. Commission on Elections*, 356 Phil. 467 (1998).

[30] Text provided in note 1.

[31] Text provided in note 2.

regular election[32] because he is **ineligible**. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible"[33] means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.

In *Latasa v. Commission on Elections*,[34] petitioner Arsenio Latasa was elected mayor of the Municipality of Digos, Davao del Sur in 1992, 1995, and 1998. The Municipality of Digos was converted into the City of Digos during Latasa's third term. Latasa filed his certificate of candidacy for city mayor for the 2001 elections. Romeo Sunga, Latasa's opponent, filed before the COMELEC a "petition to deny due course, cancel certificate of candidacy and/or disqualification" under Section 78 on the ground that Latasa falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City. Latasa argued that he did not make any false representation. In his certificate of candidacy, Latasa inserted a footnote after the phrase "I am eligible" and indicated "*Having served three (3) term[s] as municipal mayor and now running for the first time as city mayor." The COMELEC First Division cancelled Latasa's certificate of candidacy for violation of the three-term limit rule but not for false material representation. This Court affirmed the COMELEC *En Banc's* denial of Latasa's motion for reconsideration.

We cancelled Marino Morales' certificate of candidacy in *Rivera III v. Commission on Elections* (*Rivera*).[35] We held that Morales exceeded the maximum three-term limit, having been elected and served as Mayor of Mabalacat for four consecutive terms (1995 to 1998, 1998 to 2001, 2001 to 2004, and 2004 to 2007). We declared him ineligible as a candidate for the same

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[32] See *Socrates v. Commission on Elections*, 440 Phil. 106 (2002).

[33] The Oxford Dictionary of English (Oxford University Press 2010) defines the word "eligible" as "having a right to do or obtain something."

[34] 463 Phil. 296 (2003).

[35] G.R. Nos. 167591 and 170577, 9 May 2007, 523 SCRA 41.

position for the 2007 to 2010 term. Although we did not explicitly rule that Morales' violation of the three-term limit rule constituted false material representation, we nonetheless granted the petition to cancel Morales' certificate of candidacy under Section 78. We also affirmed the cancellation of Francis Ong's certificate of candidacy in *Ong v. Alegre*,[36] where the "petition to disqualify, deny due course and cancel" Ong's certificate of candidacy under Section 78 was predicated on the violation of the three-term limit rule.

Loong, Fermin and Munder:
When Possession of a Disqualifying Condition
is Not a Ground for a Petition for Disqualification

It is obvious from a reading of the laws and jurisprudence that there is an overlap in the grounds for eligibility and ineligibility *vis-à-vis* qualifications and disqualifications. For example, a candidate may represent that he is a resident of a particular Philippine locality[37] when he is actually a permanent resident of another country.[38] In cases of such overlap, the petitioner should not be constrained in his choice of remedy when the Omnibus Election Code explicitly makes available multiple remedies.[39] Section 78 allows the filing of a petition to deny due course or to cancel a certificate of candidacy before the election, while Section 253 allows the filing of a petition for *quo warranto* after the election. Despite the overlap of the grounds, one should not confuse a petition for disqualification using grounds enumerated in Section 68 with a petition to deny

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[36] 515 Phil. 442 (2006).

[37] Under Section 39 of the Local Government Code, one of the "**qualifications**" for a local elective office is being "a resident therein for at least one (1) year immediately preceding the day of the election."

[38] Under Section 68 of the Omnibus Election Code, one of the "**disqualifications**" for a candidate is being "a permanent resident of or an immigrant to a foreign country."

[39] See discussion on the proceedings provided by the Omnibus Election Code in dealing with the qualifications of a candidate in *Salcedo II v. COMELEC*, 371 Phil. 377 (1999). See also *Aznar v. Commission on Elections*, 264 Phil. 307 (1990).

due course or to cancel a certificate of candidacy under Section 78.

The distinction between a petition under Section 68 and a petition under Section 78 was discussed in *Loong v. Commission on Elections*[40] with respect to the applicable prescriptive period. Respondent Nur Hussein Ututalum filed a petition under Section 78 to disqualify petitioner Benjamin Loong for the office of Regional Vice-Governor of the Autonomous Government of Muslim Mindanao for false representation as to his age. The petition was filed 16 days after the election, and clearly beyond the prescribed 25 day period from the last day of filing certificates of candidacy. This Court ruled that Ututalum's petition was one based on false representation under Section 78, and not for disqualification under Section 68. Hence, the 25-day prescriptive period provided in Section 78 should be strictly applied. We recognized the possible gap in the law:

> It is true that the discovery of false representation as to material facts required to be stated in a certificate of candidacy, under Section 74 of the Code, may be made only after the lapse of the 25-day period prescribed by Section 78 of the Code, through no fault of the person who discovers such misrepresentations and who would want the disqualification of the candidate committing the misrepresentations. It would seem, therefore, that there could indeed be a gap between the time of the discovery of the misrepresentation, (when the discovery is made after the 25-day period under Sec. 78 of the Code has lapsed) and the time when the proclamation of the results of the election is made. During this so-called "gap" the would-be petitioner (who would seek the disqualification of the candidate) is left with nothing to do except to wait for the proclamation of the results, so that he could avail of a remedy against the misrepresenting candidate, that is, by filing a petition for *quo warranto* against him. Respondent Commission sees this "gap" in what it calls a procedural gap which, according to it, is unnecessary and should be remedied.
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> At the same time, it can not be denied that it is the purpose and intent of the legislative branch of the government to fix a definite time within which petitions of protests related to eligibility of

[40] G.R. No. 93986, 22 December 1992, 216 SCRA 760.

candidates for elective offices must be filed, as seen in Sections 78 and 253 of the Code. Respondent Commission may have seen the need to remedy this so-called "procedural gap", but it is not for it to prescribe what the law does not provide, its function not being legislative. The question of whether the time to file these petitions or protests is too short or ineffective is one for the Legislature to decide and remedy.[41]

In *Fermin v. Commission on Elections*,[42] the issue of a candidate's possession of the required one-year residency requirement was raised in a petition for disqualification under Section 68 instead of a petition to deny due course or to cancel a certificate of candidacy under Section 78. Despite the question of the one-year residency being a proper ground under Section 78, Dilangalen, the petitioner before the COMELEC in *Fermin*, relied on Section 5(C)(1) and 5(C)(3)(a)(4) of COMELEC Resolution No. 7800[43] and filed the petition under Section 68.

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[41] *Id.* at 768-769.

[42] *Supra* note 20.

[43] Sec. 5. Procedure in filing petitions.—For purposes of the preceding section, the following procedure shall be observed:

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C. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SEC. 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

1) A verified petition to disqualify a candidate pursuant to Sec. 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.

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3) The petition to disqualify a candidate for lack of qualification or possessing some grounds for disqualification, shall be filed in ten (10) legible copies with the concerned office mentioned in Sec. 3 hereof, personally or through a duly authorized representative by any person of voting age, or duly registered political party, organization or coalition of political parties on the grounds that any candidate does not possess all the qualifications of a candidate as provided for by the constitution or by existing law, or who possesses some grounds for disqualification.

In *Fermin*, we ruled that "a COMELEC rule or resolution cannot supplant or vary legislative enactments that **distinguish the grounds for disqualification from those of ineligibility**, and the appropriate proceedings to raise the said grounds."[44] A petition for disqualification can only be premised on a ground specified in Section 12 or 68 of the Omnibus Election Code or Section 40 of the Local Government Code. Thus, a petition questioning a candidate's possession of the required one-year residency requirement, as distinguished from permanent residency or immigrant status in a foreign country, should be filed under Section 78, and a petition under Section 68 is the wrong remedy.

In *Munder v. Commission on Elections*,[45] petitioner Alfais Munder filed a certificate of candidacy for Mayor of Bubong, Lanao del Sur on 26 November 2009. Respondent Atty. Tago Sarip filed a petition for Munder's disqualification on 13 April 2010. Sarip claimed that Munder misrepresented that he was a registered voter of Bubong, Lanao del Sur, and that he was eligible to register as a voter in 2003 even though he was not yet 18 years of age at the time of the voter's registration. Moreover, Munder's certificate of candidacy was not accomplished in full as he failed to indicate his precinct and did not affix his thumb-mark. The COMELEC Second Division dismissed Sarip's petition and declared that his grounds are not grounds for disqualification under Section 68 but for denial

3.a. Disqualification under existing election laws:

1. For not being a citizen of the Philippines;

2. For being a permanent resident of or an immigrant to a foreign country;

3. For lack of the required age;

4. For lack of residence;

5. For not being a registered voter;

6. For not being able to read and write;

7. In case of a party-list nominee, for not being a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days immediately preceding the day of the election.

[44] *Supra* note 20 at 798.

[45] G.R. Nos. 194076 and 194160, 19 October 2011, 659 SCRA 256.

or cancellation of Munder's certificate of candidacy under Section 78. Sarip's petition was filed out of time as he had only 25 days after the filing of Munder's certificate of candidacy, or until 21 December 2009, within which to file his petition.

The COMELEC En Banc, however, disqualified Munder. In reversing the COMELEC Second Division, the COMELEC *En Banc* did not rule on the propriety of Sarip's remedy but focused on the question of whether Munder was a registered voter of Bubong, Lanao del Sur. This Court reinstated the COMELEC Second Division's resolution. This Court ruled that the ground raised in the petition, lack of registration as voter in the locality where he was running as a candidate, is inappropriate for a petition for disqualification. We further declared that with our ruling in *Fermin*, we had already rejected the claim that lack of substantive qualifications of a candidate is a ground for a petition for disqualification under Section 68. The only substantive qualification the absence of which is a ground for a petition under Section 68 is the candidate's permanent residency or immigrant status in a foreign country.

The dissenting opinions place the violation of the three-term limit rule as a disqualification under Section 68 as the violation allegedly is "a status, circumstance or condition which bars him from running for public office despite the possession of all the qualifications under Section 39 of the [Local Government Code]." In so holding the dissenting opinions write in the law what is not found in the law. Section 68 is explicit as to the proper grounds for disqualification under said Section. The grounds for filing a petition for disqualification under Section 68 are specifically enumerated in said Section. However, contrary to the specific enumeration in Section 68 and contrary to prevailing jurisprudence, the dissenting opinions add to the enumerated grounds the violation of the three-term limit rule and falsification under the Revised Penal Code, which are obviously not found in the enumeration in Section 68.

The dissenting opinions equate Lonzanida's possession of a disqualifying condition (violation of the three-term limit rule) with the grounds for disqualification under Section 68.

Section 68 is explicit as to the proper grounds for disqualification: the commission of specific prohibited acts under the Omnibus Election Code and possession of a permanent residency or immigrant status in a foreign country. Any other false representation regarding a material fact should be filed under Section 78, specifically under the candidate's certification of his eligibility. In rejecting a violation of the three-term limit as a condition for eligibility, the dissenting opinions resort to judicial legislation, ignoring the *verba legis* doctrine and well-established jurisprudence on this very issue.

In a certificate of candidacy, the candidate is asked to certify under oath his eligibility, and thus qualification, to the office he seeks election. Even though the certificate of candidacy does not specifically ask the candidate for the number of terms elected and served in an elective position, such fact is material in determining a candidate's eligibility, and thus qualification for the office. Election to and service of the same local elective position for three consecutive terms renders a candidate ineligible from running for the same position in the succeeding elections. Lonzanida misrepresented his eligibility because he knew full well that he had been elected, and had served, as mayor of San Antonio, Zambales for more than three consecutive terms yet he still certified that he was eligible to run for mayor for the next succeeding term. Thus, Lonzanida's representation that he was eligible for the office that he sought election constitutes false material representation as to his qualification or eligibility for the office.

Legal Duty of COMELEC
to Enforce Perpetual Special Disqualification

Even without a petition under Section 78 of the Omnibus Election Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is judicial notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification

is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to "**enforce** and administer **all** laws and regulations relative to the conduct of an election."[46] The disqualification of a convict to run for elective public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the **enforcement and administration** of "all the laws" relating to the conduct of elections.

Effect of a Void Certificate of Candidacy

A cancelled certificate of candidacy void *ab initio* cannot give rise to a valid candidacy, and much less to valid votes.[47] We quote from the COMELEC's 2 February 2011 Resolution with approval:

> As early as February 18, 2010, the Commission speaking through the Second Division had already ordered the cancellation of Lonzanida's certificate of candidacy, and had stricken off his name in the list of official candidates for the mayoralty post of San Antonio, Zambales. Thereafter, the Commission *En Banc* in its resolution dated August 11, 2010 unanimously affirmed the resolution disqualifying Lonzanida. Our findings were likewise sustained by the Supreme Court no less. The disqualification of Lonzanida is not simply anchored on one ground. On the contrary, it was emphasized in our *En Banc* resolution that Lonzanida's disqualification is two-pronged: first, he violated the constitutional fiat on the three-term limit; and second, as early as December 1, 2009, he is known to have been convicted by final judgment for ten (10) counts of

[46] Section 2(1), Article IX-C, 1987 Constitution.

[47] *Bautista v. Commission on Elections*, 359 Phil. 1, 16 (1998). See *Miranda v. Abaya*, 370 Phil. 642 (1999);*Gador v. Commission on Elections*, 184 Phil. 395 (1980).

Falsification under Article 171 of the Revised Penal Code. In other words, on election day, respondent Lonzanida's disqualification is notoriously known in fact and in law. *Ergo, since respondent Lonzanida was* ***never a candidate*** *for the position of Mayor [of] San Antonio, Zambales, the votes cast for him should be considered stray votes*. Consequently, Intervenor Antipolo, who remains as the sole qualified candidate for the mayoralty post and obtained the highest number of votes, should now be proclaimed as the duly elected Mayor of San Antonio, Zambales.[48] (Boldfacing and underscoring in the original; italicization supplied)

Lonzanida's certificate of candidacy was cancelled because he was ineligible or not qualified to run for Mayor. Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a candidate from the very beginning, his certificate of candidacy being void *ab initio.* There was only one qualified candidate for Mayor in the May 201 0 elections - Anti polo, who therefore received the highest number of votes.

WHEREFORE, the petition is **DISMISSED.** The Resolution dated 2 February 2011 and the Order dated 12 January 2011 of the COMELEC *En Banc* in SPA No. 09-158 (DC) are **AFFIRMED.** The COMELEC *En Banc* is **DIRECTED** to constitute a Special Municipal Board of Canvassers to proclaim Estela D. Antipolo as the duly elected Mayor of San Antonio, Zambales. Petitioner Efren Racel Aratea is **ORDERED** to cease and desist from discharging the functions of the Office of the Mayor of San Antonio, Zambales.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., joins the dissent of *J.* B. Reyes.

Brion and *Reyes, JJ.,* see dissenting position.

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[48] *Rollo,* p. 37.

DISSENTING OPINION

BRION, *J.*:

I dissent from the majority's (i) ruling that the violation of the three-term limit rule is a ground for cancellation of a certificate of candidacy (CoC) and (ii) conclusion that private respondent Estela D. Anti polo, the "second placer" in the 2010 elections for the mayoralty post in San Antonio, Zambales, should be seated as Mayor.

Romeo D. Lonzanida and Antipolo were among the four (4) candidates for the mayoralty position in San Antonio, Zambales in the May 10, 2010 elections. On December 8, 2009, Dr. Sigfrid S. Rodolfo filed a *Petition to Disqualify/Deny Due Course or to Cancel CoC* against Lonzanida with the Commission on Elections *(COMELEC).* The core of the petition against Lonzanida was his purported misrepresentation in his CoC by stating that he was eligible to run as mayor of San Antonio, Zambales, when in fact, he had already served for three consecutive terms.[1]

On February 18, 2010, the COMELEC 2nd Division issued a Resolution **cancelling Lonzanida's CoC and striking out his name from the official list of candidates for mayor** on the ground that he had already served for three consecutive terms.[2]

Lonzanida moved for the reconsideration of the ruling, which motion under the Rules of the COMELEC was elevated to the COMELEC *en banc.* The motion was not resolved before elections and on May 10, 2010, Lonzanida received the highest number of votes for the mayoralty post, while petitioner Efren Racel Aratea won the vice mayoralty position; they were duly proclaimed winners.[3]

Due to the COMELEC Resolution canceling Lonzanida's CoC, Aratea wrote to the Department of the Interior and Local

[1] *Rollo*. p. 35

[2] *Id.* at 49-59.

[3] *Id.* at 93.

Government (*DILG*) to inquire whether, by law, he should assume the position of mayor, in view of the permanent vacancy created by the COMELEC 2nd Division's ruling. The DILG favorably acted on Aratea's request, and on July 5, 2010, he took his oath of office as mayor of San Antonio, Zambales.[4]

On August 11, 2010, the COMELEC *en banc* affirmed Lonzanida's disqualification to run for another term. Apart from this ground, the COMELEC *en banc* also noted that Lonzanida was disqualified to run under Section 40 of the Local Government Code for having been convicted by final judgment for ten counts of falsification.[5]

On August 25, 2010, Antipolo filed a motion for leave to intervene, on the claim that she had a legal interest in the case as she was the only remaining qualified candidate for the position. She argued that she had the right to be proclaimed as the mayor considering that Lonzanida ceased to be a candidate when the COMELEC 2nd Division ordered the cancellation of his CoC and the striking out of his name from the official list of candidates for the May 10, 2010 elections.[6]

On January 12, 2011, the COMELEC *en banc* issued an Order granting Antipolo's motion for leave to intervene. In its February 2, 2012 Resolution, the COMELEC *en banc* granted Antipolo's petition in intervention; declared null and void Lonzanida's proclamation; ordered the constitution of a special Municipal Board of Canvassers to proclaim Antipolo as the duly elected Mayor; and ordered Aratea to cease and desist from discharging the functions of Mayor of San Antonio, Zambales. This gave rise to the present petition.

The Issues

The issues for the Court's resolution are as follows:

(1) What is the nature of the petition filed by Dr. Rodolfo before the COMELEC;

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[4] *Id.* at 96-97.

[5] *Id.* at 64-66.

[6] *Id.* at 71-72.

(2) Did the COMELEC correctly dispose the case in accordance with the nature of the petition filed;

(3) Who should be proclaimed as Mayor of San Antonio, Zambales – the "second placer" or the duly elected Vice-Mayor?

I submit that the violation of the three-term limit rule cannot be a ground for the cancellation of a CoC. It is an appropriate ground for disqualification; thus, Dr. Rodolfo should be deemed to have filed a petition for disqualification, not a petition for the cancellation of Lonzanida's CoC. The COMELEC's cancellation of Lonzanida's CoC was therefore erroneous.

I reach this conclusion by using an approach that starts from a consideration of the nature of the CoC - the document that creates the status of a candidate - and moves on to relevant concepts, specifically, disqualifications and its effects, remedies, effects of successful suits, and ultimately the three-term limit rule. I discussed this fully at length in the case of *Talaga v. COMELEC*.[7] I hereby reiterate my *Talaga* discussions for ease of presentation.

The CoC and the Qualifications for its Filing.

A basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*,[8] the Court described the nature of a CoC as follows –

> A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

[7] G.R. No. 196804.

[8] 373 Phil. 896, 908 (1999).

Both the 1973 and 1987 Constitutions left to Congress the task of providing the qualifications of ***local elective officials***. Congress undertook this task by enacting Batas Pambasa Bilang (*B.P. Blg.*) 337 (*Local Government Code or LGC*), B.P. Blg. 881 (*Omnibus Election Code or OEC*) and, later, Republic Act (*R.A.*) No. 7160 (*Local Government Code of 1991 or LGC 1991*).[9]

Under Section 79 of the OEC, a political aspirant legally becomes a "candidate" only upon the due filing of his sworn CoC.[10] In fact, Section 73 of the OEC makes the filing of the CoC a condition *sine qua non* for a person to "be eligible for any elective public office"[11] – *i.e.*, to be validly voted for in the

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[9] Prior to these laws, the applicable laws were the Revised Administrative Code of 1917, R.A. No. 2264 (An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments); and B.P. Blg. 52 (An Act Governing the Election of Local Government Officials).

[10] See, however, Section 15 of R.A. No. 8436, as amended. *Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009, 605 SCRA 574, 581-586, citing *Lanot v. COMELEC*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

[11] Section 73 of B.P. Blg. 881 reads:

Section 73. *Certificate of candidacy*. — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them.

However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. [italics supplied]

elections. Section 76 of the OEC makes it a "ministerial duty" for a COMELEC official "to receive and acknowledge receipt of the certificate of candidacy"[12] filed.

C*OMELEC* Resolution No. 8678 provides what a CoC must contain or state:[13]

Section 13 of R.A. No. 9369, however, adds that "[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: *Provided*, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period[.]" (italics supplied)

[12] See *Cipriano v. Commission on Elections*, 479 Phil. 677, 689 (2004).

[13] The statutory basis is Section 74 of B.P. Blg. 881 which provides:

Section 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-

Section 2. *Contents of certificate of candidacy.* - The certificate of candidacy shall be under oath and shall state that the person filing it is announcing his candidacy for the office and constituency stated therein; that he is eligible for said office, his age, sex, civil status, place and date of birth, his citizenship, whether natural-born or naturalized; the registered political party to which he belongs; if married, the full name of the spouse; his legal residence, giving the exact address, the precinct number, *barangay*, city or municipality and province where he is registered voter; his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. [italics supplied]

From the point of view of the common citizen who wants to run for a local elective office, the above recital contains all the requirements that he must satisfy; it contains the basic and essential requirements applicable **to all citizens to qualify for candidacy** for a local elective office. These are their formal terms of entry to local politics. A citizen must not only possess all these requirements; he must positively represent in his CoC that he possesses them. Any falsity on these requirements constitutes a material misrepresentation that can lead to the cancellation of the CoC. On this point, Section 78 of the OEC provides:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by [any] person **exclusively** on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. [italics, emphases and underscores ours]

A necessarily related provision is Section 39 of LGC 1991 which states:

> Sec. 39. *Qualifications*. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the*barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*,*sangguniang panlungsod*, or *sanggunian bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.
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> (c) Candidates for the position of Mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day. [italics ours]

Notably, Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative requirement refers to the representation that the would-be candidate is ***not*** a permanent resident nor an immigrant in another country. This requirement, however, is in fact simply part of the positive requirement of residency in the locality for which the CoC is filed and, in this sense, is not strictly a negative requirement. **Neither does Section 74 require any statement that the would-be candidate <u>does not possess</u> any ground for disqualification specifically enumerated by law, as disqualification is a matter that the OEC and LGC 1991 separately deal with, as discussed below. Notably, Section 74 does not *require* a would-be candidate to state that he has *not* served for three consecutive terms in the same elective position immediately prior to the present elections**.

With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding "that

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data and program of government not exceeding one hundred words, if he so desires.

the importance of a valid certificate of candidacy rests at the very core of the electoral process."[14]

Pertinent laws[15] provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring "equal access to opportunities for public service,"[16] bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.[17]

The Concept of Disqualification vis-à-vis Remedy of Cancellation; and Effects of Disqualification.

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules.[18] It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens (Section 74 of the OEC) may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him ***as an individual***, ***separately from the general qualifications that must exist for a citizen to run for a local public office***. Notably, **the breach of the three-term limit** is a trait or condition that can possibly apply *only* to those who have previously served for three consecutive terms in the same position sought immediately prior to the present elections.

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[14] *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

[15] Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of B.P. Blg. 881.

[16] 1987 Constitution, Article II, Section 26.

[17] See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

[18] *Merriam-Webster's 11th Collegiate Dictionary*, p. 655.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.[19]

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

a. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

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[19] If at all, only two grounds for disqualification under the Local Government Code ***may*** as well be considered for the cancellation of a CoC, *viz.*: those with dual citizenship and permanent residence in a foreign country, or those who have acquired the right to reside abroad and continue to avail of the same right after January 1, 1992. It may be argued that these two disqualifying grounds likewise go into the eligibility requirement of a candidate, as stated under oath by a candidate in his CoC.

b. Those removed from office as a result of an administrative case;

c. Those convicted by final judgment for violating the oath of allegiance to the Republic;

d. Those with dual citizenship;

e. Fugitives from justice in criminal or non-political cases here or abroad;

f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

g. The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of "disqualification" is that under Section 68 of the OEC, **it refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts applicable to specific individuals that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the **cancellation of a candidate's CoC**, the law considers the cancellation **from the point of view of those positive requirements that every citizen who wishes to run for office must commonly satisfy**. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate ***and*** his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

While the violation of the three-term rule is properly a ground for disqualification, it is a unique ground, constitutionally anchored at that, that sets it apart from and creates a distinction even from the ordinary grounds of disqualification. The succeeding discussions incorporate these intradisqualification distinctions on the grounds for disqualification, which in sum refer to (i) the period to file a petition and (ii) capability of substitution and (iii) on the application of the doctrine of rejection of second placer and the doctrine's exceptions.

Distinctions among (i) denying due course to or cancellation of a CoC, (ii) disqualification, and (iii) quo warranto

The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and on the application of disqualification. The remedies available are essentially: the **cancellation of a CoC**,**disqualification from candidacy or from holding office**, and *quo warranto*, which are distinct remedies with varying applicability and effects. For ease of presentation and understanding, their availability, grounds and effects are topically discussed below.

As to the grounds:

In the **denial of due course to or cancellation of a CoC**, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office;[20] the governing provisions are *Sections 78 and 69 of the OEC*.[21]

In a **disqualification case**, as mentioned above, the grounds are traits, conditions, characteristics or acts of disqualification,[22] individually applicable to a candidate, as provided under Sections 68 and 12 of B.P. Blg. 881; Section 40 of LGC 1991; and, as discussed below, Section 8, Article X of the Constitution. As previously discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate's CoC although they may result in disqualification from candidacy whose immediate effect **upon finality before the elections** is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification.

In a *quo warranto* petition, the grounds to oust an elected official from his office are ineligibility and disloyalty to the Republic of the Philippines. This is provided under Section 253

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[20] *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-794.

[21] See Section 7 of R.A. No. 6646.

[22] Sections 68 and 12 of B.P. Blg. 881 cover these acts: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) over spending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

of the OEC and governed by the Rules of Court as to procedures. While *quo warranto* and cancellation share the same ineligibility grounds, **they differ as to the time these grounds are cited.** A cancellation case is brought before the elections, while a *quo warranto* is filed after and may still be filed even if a CoC cancellation case was not filed before elections.

The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under Section 253 may be brought on the basis of two grounds — (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.[23]

Note that the question of what would constitute acts of disqualification – under Sections 68 and 12 of the OEC and Section 40 of LGC 1991 – is best resolved by directly referring to the provisions involved. On the other hand, what constitutes a violation of the three-term limit rule under the Constitution has been clarified in our case law.[24] The approach is not as straight forward in a petition to deny due course to or cancel a CoC and also to a *quo warranto* petition, which similarly covers the ineligibility of a candidate/elected official. In *Salcedo II v. COMELEC*,[25] we ruled that—

[I]n order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the **false representation**

[23] *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1999), citing *Aznar v. Commission on Elections*, 185 SCRA 703 (1990).

[24] *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602; *Borja, Jr. v. Commission on Elections*, 295 Phil. 157 (1998); *Socrates v. COMELEC*, 440 Phil. 107 (2002); *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601; *Montebon v. Commission on Elections*, G.R. No. 180444, April 9, 2008, 551 SCRA 50; and *Aldovino, Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 234.

[25] *Supra* note 23, at 386-389.

mentioned therein pertain to a **material matter** for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.

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Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to **qualifications for elective office**. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. [emphases ours, citation omitted]

Thus, in addition to the failure to satisfy or comply with the eligibility requirements, a material misrepresentation must be present in a cancellation of CoC situation. The law apparently does not allow material divergence from the listed requirements to qualify for candidacy and enforces its edict by requiring positive representation of compliance under oath. Significantly, where disqualification is involved, the mere existence of a ground appears sufficient and a material representation assumes no relevance.

As to the period for filing:

The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under **Section 78 of the OEC**, the petition must be filed within twenty-five (25) days from the filing of the CoC.[26] However, if the petition is brought under **Section 69** of the same law, the petition must be filed within five (5) days from the last day of filing the CoC.[27]

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[26] *Loong v. Commission on Elections,* G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

[27] Section 5(a) of R.A. No. 6646.

On the other hand, the period to file a **disqualification case** is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696.[28] **The three-term limit disqualification, because of its unique characteristics, does not strictly follow this time limitation and is discussed at length below**. At the very least, it should follow the temporal limitations of a *quo warranto* petition which must be filed within ten (10) days from proclamation.[29] The constitutional nature of the violation, however, argues against the application of this time requirement; the *rationale* for the rule and the role of the Constitution in the country's legal order dictate that a petition should be allowed while a consecutive fourth-termer is in office.

As to the effects of a successful suit:

A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed.[30] After this period, generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution. The application of the exception, however, presupposes a valid CoC. Unavoidably, a "candidate" **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC**,

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[28] Section 4(B) of COMELEC Resolution No. 8696 reads:

SEC. 4. Procedure in filing petitions. - For purposes of the preceding sections, the following procedure shall be observed:

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B. PETITION TO DISOUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISOUALIFY FOR LACK OF OUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.

[29] Section 253 of the OEC.

[30] Section 15 of R.A. No. 9369.

to all intents and purposes.[31] Similarly, a successful *quo warranto* suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

On the other hand, a candidate who was **simply disqualified** is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office; substitution can thus take place under the terms of Section 77 of the OEC.[32] However, a three-term candidate with a valid and subsisting CoC cannot be substituted *if* the basis of the substitution is his disqualification on account of his three-term limitation. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election where the three-term official emerged as winner. As in a *quo warranto,* any substitution is too late at this point.

As to the effects of a successful suit on the right of the second placer in the elections:

In any of these three remedies, the doctrine of rejection of the second placer applies for the simple reason that –

> To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.[33]

With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the **rules on succession** under the law accordingly apply.

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[31] *Miranda v. Abaya*, *supra* note 14, at 658-660.

[32] Section 77 of B.P. Blg. 881 expressly allows substitution of a candidate who is "disqualified for any cause."

[33] *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 424.

As an **exceptional situation**, however, the candidate with the second highest number of votes (*second placer*) may be validly proclaimed as the winner in the elections should the winning candidate be **disqualified** by final judgment *before* the elections, as clearly provided in Section 6 of R.A. No. 6646.[34] The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote.[35]

In a **CoC cancellation** proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an *inexistent* "candidate" or for one who is deemed not to be in the ballot. Although legally a misnomer, the "second placer" should be proclaimed the winner as the candidate with the highest number of votes for the contested position. This same consequence should result if the cancellation case becomes final after elections, as the cancellation signifies non-candidacy from the very start, *i.e.*, from before the elections.

Violation of the three-term limit rule

a. The Three-Term Limit Rule.

The three-term limit rule is a creation of Section 8, Article X of the Constitution. This provision fixes the maximum limit an elective local official can consecutively serve in office, and at the same time gives the command, in no uncertain terms, that *no such official shall serve for more than three consecutive terms*. Thus, a three-term local official is **barred from serving a fourth and subsequent consecutive terms**.

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[34] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 43-47; Section 6 of R.A. No. 6646.

[35] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

This bar, as a constitutional provision, must necessarily be read into and interpreted as a component part of the OEC under the legal reality that **neither this Code nor the Local Government Code provides for the three-term limit rule's operational details; it is not referred to as a ground for the cancellation of a CoC nor for the disqualification of a candidate, much less are its effects provided for.** Thus, the need to fully consider, reconcile and harmonize the terms and effects of this rule with our election and other laws.

b. Is the Rule an Eligibility Requirement or a Disqualification?

In practical terms, the question – of whether the three-term limit rule is a matter of "eligibility" that must be considered in the filing of a CoC – translates to the need to state in a would-be candidate's CoC application that he is eligible for candidacy because he has not served three consecutive terms immediately before filing his application.

The wording of Section 8, Article X of the Constitution, however, does not justify this requirement as Section 8 simply sets a limit on the number of consecutive terms an official can serve. It does not refer to elections, much less does it bar a three-termer's candidacy. As previously discussed, Section 74 of the OEC does not expressly require a candidate to assert the *non-possession* of any disqualifying trait or condition, much less of a candidate's observance of the three-term limit rule. **In fact, the assertion of a would-be candidate's eligibility, as required by the OEC, could not have contemplated making a three-term candidate ineligible *for candidacy* since that disqualifying trait began to exist only later under the 1987 Constitution**.

What Section 8, Article X of the Constitution indisputably mandates is solely a bar against *serving* for a fourth consecutive term, not a bar against candidacy. **Of course, between the filing of a CoC (that gives an applicant the status of a candidate) and assumption to office as an election winner is a wide expanse of election activities whose various stages our election laws**

treat in various different ways. Thus, if candidacy will be aborted from the very start (*i.e.*, at the initial CoCfiling stage), what effectively takes place – granting that the thirdtermer possesses all the eligibility elements required by law – is a shortcut that is undertaken on the theory that the candidate cannot serve in any way *if* he wins a fourth term.

I submit that while simple and efficient, **essential legal considerations should dissuade the Court from using this approach**. **To make this shortcut is to incorporate into the law, by judicial fiat, a requirement that is not expressly there**. In other words, such shortcut may go beyond allowable interpretation that the Court can undertake, and cross over into prohibited judicial legislation. Not to so hold, on the other hand, does not violate the three-term limit rule even in spirit, since its clear and undisputed mandate is to disallow serving for a fourth consecutive term; this objective is achieved when the local official does not win and can always be attained by the direct application of the law if he does win.

Another reason, and an equally weighty one, is that a shortcut would run counter to **the concept of commonality that characterizes the eligibility requirements**; it would allow the introduction of an element that does not apply to all citizens as an entry qualification. Viewed from the prism of the general distinctions between eligibility and disqualification discussed above, the three-term limit is unavoidably a restriction that applies only to local officials who have served for three consecutive terms, not to all would-be candidates at large; it applies only to *specific individuals* who may have otherwise been eligible if not for the three-term limit rule and is thus a defect that attaches only to the candidate. In this sense, it cannot but be a disqualification and at that, a very specific one.

That the prohibited fourth consecutive term can only take place after a three-term local official wins his fourth term signifies too that the prohibition (and the resulting disqualification) only takes place after elections. This circumstance, to my mind, supports the view that the three-term limit rule does not at all involve itself with the matter of candidacy; it only regulates

service beyond the limits the Constitution has set. **Indeed, it is a big extrapolative leap for a prohibition that applies after election, to hark back and affect the initial election process for the filing of CoCs**.

Thus, on the whole, I submit that the legally sound view is ***not*** to bar a three-termer's candidacy for a fourth term if the three-term limit rule is the only reason for the bar. In these lights, the three-term limit rule – as a bar against a fourth consecutive term – is effectively a disqualification against such service rather than an eligibility requirement.[36]

c. Filing of Petition and Effects.

As a disqualification that can only be triggered after the elections, it is not one that can be implemented or given effect before such time. The reason is obvious; before that time, the gateway to the 4th consecutive term has not been opened because the four-term re-electionist has not won. This reality brings into sharp focus the timing of the filing of a petition for disqualification for breach of the three-term limit rule. Should a petition under the three-term limit rule be allowed only after the four-term official has won on the theory that it is at that point that the Constitution demands a bar?

The timing of the filing of the petition for disqualification is a matter of procedure that primarily rests with the COMELEC. Of course, a petition for disqualification cannot be filed against one who is not yet a candidate as only candidates (and winners) can be disqualified. Hence, the filing should be done after the filing of the CoC. On the matter of the time limitations of its filing, I believe that the petition does not need to be hobbled by

[36] Separate from these considerations is the possibility that the candidacy of a third-termer may be considered a nuisance candidacy under Section 69 of the OEC. Nuisance candidacy, by itself, is a special situation that has merited its own independent provision that calls for the denial or cancellation of the COC if the bases required by law are proven; thus, it shares the same remedy of cancellation for material misrepresentation on the eligibility requirements. The possibility of being a nuisance candidate is not discussed as it is not in issue in the case.

the terms of COMELEC Resolution No. 8696[37] because of the **special nature and characteristics of the three-term limit rule** – *i.e.*, the constitutional breach involved; the fact that it can be effective only after a candidate has won the election; and the lack of specific provision of the election laws covering it.

To be sure, a constitutional breach cannot be allowed to remain unattended because of the procedures laid down by administrative bodies. While *Salcedo* considers the remedy of *quo warranto* as almost the same as the remedy of cancellation on the question of eligibility, the fact that the remedies can be availed of only at particular periods of the election process signifies more than the temporal distinction.

From the point of view of eligibility, one who merely seeks to hold public office through a valid candidacy cannot wholly be treated in the same manner as one who has won and is at the point of assuming or serving the office to which he was elected; the requirements **to be eligible as a candidate** are defined by the election laws and by the local government code, but beyond these are **constitutional restrictions on eligibility to serve**. The three-term limit rule serves as the best example of this fine distinction; a local official who is allowed to be a candidate under our statutes but who is effectively in his fourth term should be considered *ineligible to serve* if the Court were to give life to the constitutional provision, couched in a strong prohibitory language, that "no such official shall serve for more than three consecutive terms."

A possible legal stumbling block in allowing the filing of the petition before the election is the existence of a cause of action or prematurity at that point. If disqualification is triggered only after a three-termer has won, then it may be argued with some strength that a petition, filed against a respondent three-term local official before he has won a fourth time, has not violated any law and does not give the petitioner the right to file a petition for lack of cause of action or prematurity.

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[37] *Supra* note 28.

I take the view, however, that the petition does not need to be immediately acted upon and can merely be docketed as a cautionary petition reserved for future action if and when the three-term local official wins a fourth consecutive term. If the parties proceed to litigate without raising the prematurity or lack of cause of action as objection, a ruling can be deferred until after cause of action accrues; if a ruling is entered, then any decreed disqualification cannot be given effect and implemented until a violation of the three-term limit rule occurs.

Unlike in an ordinary disqualification case (where a disqualification by final judgment before the elections against the victorious but disqualified candidate can catapult the second placer into office) and in a cancellation case (where the judgment, regardless of when it became final, against the victorious candidate with an invalid CoC similarly gives the "second placer" a right to assume office), a disqualification based on a violation of the three-term limit rule sets up a very high bar against the second placer unless he can clearly and convincingly show that the electorate had deliberately and knowingly misapplied their votes.

Rodolfo's petition is properly one for disqualification

On the basis of the above discussions, I vote to grant the present petition.

Notwithstanding the caption of Dr. Rodolfo's petition, his petition is properly one for disqualification, since he only alleged a violation of the three-term limit rule – a disqualification, not a cancellation issue. Thus, the nature and consequences of a disqualification petition are what we must recognize and give effect to in this case. This conclusion immediately impacts on Antipolo who, as second placer and in the absence of any of the exceptions, must bow out of the picture under the doctrine of rejection of the second placer.[38]

First, as discussed above, a resulting disqualification based on a violation of the three-term limit rule cannot begin to operate until *after* the elections, where the three-term official emerged

[38] See: discussions at pp. 16, 18-20.

as victorious.[39] There is no way that Antipolo, the second placer in the election, could assume the office of Mayor because no disqualification took effect ***before*** the elections against Lonzanida despite the decision rendered then. To reiterate, the prohibition against Lonzanida only took place ***after*** his election for his fourth consecutive term. At that point, the election was over and the people had chosen. With Lonzanida ineligible to assume office, the Vice-Mayor takes over by succession.

Second, likewise, it has not been shown that the electorate deliberately and knowingly misapplied their votes in favor of Lonzanida, resulting in their disenfranchisement. Since a disqualification based on a violation of the three-term limit rule does not affect a CoC that is otherwise valid, then Lonzanida remained a candidate who could be validly voted for in the elections.[40] It was only when his disqualification was triggered that a permanent vacancy occurred in the office of the Mayor of San Antonio, Zambales. Under the LGC,[41] it is Aratea, the duly elected Vice Mayor, who should serve as Mayor in place of the elected but disqualified Lonzanida.

DISSENTING OPINION

REYES, *J.*:

I respectfully dissent from the majority opinion and offer my humble consideration of the issues presented in this case.

The Issues

In this case, the Court is called upon to resolve the following issues:

1. Whether the petitiOn filed before the Commission on Elections (COMELEC) is a petition to cancel a certificate of candidacy (COC) or a petition to disqualify;

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[39] See: discussions at pp. 14 -15.

[40] See: discussions at p. 16.

[41] Section 44.

2. Whether the COMELEC correctly disposed the case in accordance with the nature of the petition filed; and

3. Whether private respondent Estel a D. Anti polo (Anti polo) who obtained the second highest number of votes may be proclaimed the mayor of San Antonio, Zambales.

The petition filed against Romeo Lonzanida (Lonzanida) IS one for disqualification and not for cancellation of COC.

It is my view that the petition filed against Lonzanida is in the nature of a petition for disqualification.

It is significant to note that the challenge to Lonzanida's candidacy originated from a *Petition to Disqualify/Deny Due Course to and/or Cancel the Certificate of Candidacy* filed by Dra. Sigrid Rodolfo (Dra. Rodolfo), seeking the cancellation of the former's COC on the ground of misrepresentation. Dra. Rodolfo alleged that Lonzanida made a material misrepresentation in his COC by stating that he was eligible to run as Mayor of San Antonio, Zambales when in fact he has already served for four (4) consecutive terms for the same position, in violation of Section 8, Article X of the 1987 Constitution and Section 43(b) of R.A. No. 7160.[1] After evaluating the merits of the petition, the COMELEC Second Division issued the Resolution dated February 18, 2010 granting the petition, disposing thus:

> The three-term limit rule was initially proposed to be an absolute bar to any elective local government official from running for the same position after serving three consecutive terms. The said disqualification was primarily intended to forestall the accumulation of massive political power by an elective local government official in a given locality in order to perpetuate his tenure in office. Corollary to this, the need to broaden the choices of the electorate of the candidates who will run for office, and to infuse new blood in the political arena by disqualifying officials running for the same office after nine years of holding the same.

[1] *Rollo,* pp. 49-50.

Respondent Lonzanida never denied having held the office of mayor of San Antonio, Zambales for more than nine consecutive years. Instead, he raised arguments to forestall or dismiss the petition on the grounds other than the main issue itself. We find such arguments as wanting. Respondent Lonzanida, for holding the office of mayor for more than three consecutive terms, went against the three-term limit rule; therefore, he could not be allowed to run anew in the 2010 elections. It is time to infuse new blood in the political arena of San Antonio.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Certificate of Candidacy of Respondent Romeo D. Lonzanida for the position of mayor in the municipality of San Antonio, Zambales is hereby **CANCELLED**. His name is hereby ordered **STRICKEN OFF** the list of Official Candidates for the position of Mayor of San Antonio, Zambales in the May 10, 2010 elections.

SO ORDERED.[2] (Citation omitted)

Upon Lonzanida's motion for reconsideration, the COMELEC *en banc* affirmed the ruling of the Second Division in its Resolution[3] dated August 11, 2010 further noting that Lonzanida was even more disqualified to run in the elections by reason of a final judgment of conviction against him for a crime punishable for more than one (1) year of imprisonment, thus:

It is likewise worth mentioning at this point that Lonzanida has been found by no less than the Supreme Court guilty beyond reasonable doubt of ten (10) counts of Falsification under Article 171 of the Revised Penal Code. We take judicial notice of the fact that the Supreme Court, in the case of *Lonzanida vs. People of the Philippines*, has affirmed the Resolution of the Sandiganbayan which contains the following dispositive portion:

> "WHEREFORE, premises considered, judgment is hereby rendered finding accused Mayor Romeo Lonzanida *y* Dumlao guilty of ten (10) counts of Falsification of Public Document defined and penalized under Article 171 par. 2 of the Revised Penal Code, and in the absence of any mitigating and aggravating

[2] *Id.* at 57-58.

[3] *Id.* at 60-67.

> circumstances, applying the Indeterminate Sentence Law, said accused is hereby sentenced to suffer in each of the cases the penalty of imprisonment of four (4) years and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *pris[i]on mayor* as maximum, and to pay a fine of [₱]5,000.00, in each of the cases without subsidiary imprisonment in case of insolvency."

Based on the above-mentioned affirmed Decision, Lonzanida shall suffer the penalty of imprisonment of four (4) years and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum. In view of the said Decision, Lonzanida is, therefore, disqualified to run for any local elective position pursuant to Section 40(a) of the Local Government Code x x x:

Prescinding from the foregoing premises, Lonzanida, for having served as Mayor of San Antonio, Zambales for more than three (3) consecutive terms and for having been convicted by a final judgment of a crime punishable by more than one (1) year of imprisonment, is clearly disqualified to run for the same position in the May 2010 Elections.

WHEREFORE, in view of the foregoing the Motion for Reconsideration is hereby **DENIED**.

SO ORDERED.[4] (Citations omitted)

In the foregoing dispositions, the COMELEC overlooked the distinction between the remedies presented before it. It bears stressing that while the petition filed by Dra. Rodolfo against Lonzanida was titled as a *Petition to Disqualify/Deny due Course to and/or Cancel the Certificate of Candidacy*, the designation pertains to two (2) different remedies: petition for disqualification and petition to deny due course or cancel a COC.

In the recent case of *Fermin v. Commission on Elections*,[5] this Court emphasized the distinctions between the two remedies which seemed to have been obliterated by the imprudent use of the terms in a long line of jurisprudence. In the said case, Umbra

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[4] *Id.* at 64-66.

[5] G.R. No. 179695, December 18, 2008, 574 SCRA 782.

Ramil Bayam Dilangalen, a mayoralty candidate of Northern Kabuntalan in Shariff Kabunsuan, filed a petition for disqualification against Mike A. Fermin on the ground that he did not possess the required period of residency to qualify as candidate. This Court, speaking through Associate Justice Antonio Eduardo B. Nachura, held:

> Pivotal in the ascertainment of the timeliness of the Dilangalen petition is its proper characterization.
>
> As aforesaid, petitioner, on the one hand, argues that the Dilangalen petition was filed pursuant to Section 78 of the OEC; while private respondent counters that the same is based on Section 68 of the Code.
>
> After studying the said petition in detail, the Court finds that the same is in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the OEC. The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible. It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law.
>
> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for*. It is noted that the candidate states in his/her CoC that he/she is **eligible** for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate**. Indeed, the Court has already likened a proceeding

under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. **They are different remedies, based on different grounds, and resulting in different eventualities**. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.

The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, *i.e.*, he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office *is not a ground for the "disqualification" of a candidate* under Section 68. The provision only refers to *the commission of prohibited acts and the possession of a permanent resident status in a foreign country* as grounds for disqualification, x x x.[6] (Citations omitted, and emphasis and italics supplied)

It bears emphasizing that while both remedies aim to prevent a candidate from joining the electoral race, they are separate and distinct from each other. One remedy must not be confused with the other lest the consequences of a judgment for one be imposed for a judgment on the other to the prejudice of the parties. They are governed by separate provisions of law, which provide for different sets of grounds, varying prescriptive periods and consequences.

As to governing law, a petition to cancel the COC of a candidate is filed under Section 78 of the OEC which provides:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.*— A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively

[6] *Id.* at 791-795.

on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

As mentioned in the above-stated provision, a petition under Section 78 may be filed if a candidate made a material representation in his COC with respect to the details which are required to be stated therein under Section 74 of the OEC which reads:

Sec. 74. *Contents of certificate of candidacy.* The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if he has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

In order to justify the cancellation of COC, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court concluded that this refers to qualifications for elective office. It contemplates statements regarding age, residence and citizenship or non-possession of natural-born Filipino status. Furthermore, aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. In other words, it must be made with an intention to deceive the electorate as to one's qualification for public office.[7]

On the other hand, a petition for disqualification may be filed under Section 68 of the OEC which states:

Sec. 68. *Disqualifications.*— Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having: (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who

[7] *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 775-776, citing*Salcedo II v. COMELEC*, 371 Phil. 377, 386 (1999), citing *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, *Abella v. Larrazabal*, 259 Phil. 992 (1989), *Aquino v. Commission on Elections*, 318 Phil. 467 (1995), *Labo, Jr. v. Commission on Elections*, G.R. No. 105111, July 3, 1992, 211 SCRA 297, *Frivaldo v. COMELEC*, 327 Phil. 521 (1996), *Republic v. De la Rosa*, G.R. No. 104654, June 6, 1994, 232 SCRA 785, *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300.

is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

The same petition may also be filed pursuant to Section 12 of the OEC and Section 40 of the LGC which provide for other grounds for disqualification to run for public office, *viz*:

Section 12 of the OEC

Sec. 12. *Disqualifications*. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service or sentence, unless within the same period he again becomes disqualified.

Section 40 of the LGC

Sec. 40. *Disqualifications.*— The following persons are disqualified from running for any elective local posit-ion:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or non-political cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

Disqualification proceedings are initiated for the purpose of barring an individual from becoming a candidate or from continuing as a candidate for public office. In other words, the objective is to eliminate a candidate from the race either from the start or during its progress. On the other hand, proceedings for the cancellation of COC seek a declaration of ineligibility, that is, the lack of qualifications prescribed in the Constitution or the statutes for holding public office and the purpose of the proceedings for declaration of ineligibility is to remove the incumbent from office.[8]

In her petition, Dra. Rodolfo alleged that Lonzanida violated Section 8, Article X of the Constitution, replicated under Section 43(b) of the LGC, which provides for the proscription against occupying the same public office for more than three (3) consecutive terms to support her action to prevent the latter from pursuing his candidacy in the May 2010 elections. The core of her petition is the purported misrepresentation committed by Lonzanida in his COC by stating he was eligible to run as Mayor of San Antonio, Zambales when in fact he has already served for the same position in 1998 to 2001, 2001 to 2004, 2004 to 2007 and 2007 to 2010. However, violation of the three-term limit is not stated as a ground for filing a petition under Section 78, Section 68 or Section 12 of the OEC or Section 40 of the LGC. In order to make a fitting disposition of the present controversy, it has to be determined whether the petition filed against Lonzanida is actually a petition for cancellation of COC or a petition for disqualification.

To reiterate, the ground for filing a petition for cancellation of COC is basically a misrepresentation of the details required

[8] *Supra* note 5, at 799, citing the Separate Opinion of Justice Vicente V. Mendoza in *Romualdez- Marcos v. Commission on Elections*, *id.* at 397-398.

to be stated in the COC which, in Lonzanida's case, pertain to the basic qualifications for candidates for local elective positions provided under Section 39 of the LGC which reads:

> Sec. 39. *Qualifications.*— (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*,*sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.
>
> xxx xxx xxx
>
> (c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

These basic requirements, which former Senator Aquilino Pimentel, the principal author of the LGC, termed as "positive qualifications"[9] are the requisite status or circumstances which a local candidate must have at the time of filing of his COC. Essentially, the details required to be stated in the COC are the personal circumstances of the candidate, *i.e.*, name/stagename, age, civil status, citizenship and residency, which serve as basis of his eligibility to become a candidate taking into consideration the standards set under the law. The manifest intent of the law in imposing these qualifications is to confine the right to participate in the elections to local residents who have reached the age when they can seriously reckon the gravity of the responsibility they wish to take on and who, at the same time, are heavily acquainted with the actual state and urgent demands of the community.

On the other hand, the grounds for disqualification refer to acts committed by an aspiring local servant, or to a circumstance, status or condition which renders him unfit for public service. Contrary to the effect of Section 39 of the LGC, possession of

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[9] Aquilino Q. Pimentel, Jr., *THE LOCAL GOVERNMENT CODE OF* 1991, p. 136.

any of the grounds for disqualification results to the forfeiture of the right of a candidate to participate in the elections. Thus, while a person may possess the core eligibilities required under Section 39, he may still be prevented from running for a local elective post if he has any of the disqualifications stated in Section 40. The rationale behind prescribing these disqualifications is to limit the right to hold public office to those who are fit to exercise the privilege in order to preserve the purity of the elections.[10]

Based on the foregoing disquisition on the nature of the two remedies, I find that the violation of the three-term limit cannot be a ground for cancellation of COC. To emphasize, this remedy can only be pursued in cases of material misrepresentation in the COC, which are limited to the details that must be stated therein. Moreover, Antipolo's contention that Lonzanida should be deemed to have made a misrepresentation in his COC when he stated that he was eligible to run when in fact he was not is inconsistent with the basic rule in statutory construction that provisions of a law should be construed as a whole and not as a series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may thus be modified or restricted by the latter.[11] Thus, the statement in the COC which contains a declaration by the candidate that he is "eligible to the office he seeks to be elected to" must be strictly construed to refer only to the details pertaining to his qualifications, *i.e.*, age, citizenship or residency, among others, which the law requires him to state in his COC which he must even swear under oath to possess.

Considering that the number of terms for which a local candidate had served is not required to be stated in the COC,

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[10] *People v. Corral*, 62 Phil. 945, 948 (1936).

[11] *Phil. Rabbit Bus Line, Inc. v. Hon. Cruz*, 227 Phil. 147, 150 (1986), citing *Reformina v. Judge Tomol, Jr.*, 223 Phil. 472, 479 (1985).

it cannot be a ground for a petition to cancel a COC. The question now is, can it be a ground for a petition for disqualification? I believe that it can.

Pertinently, Section 8, Article X of the Constitution states:

> Sec. 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and **no such official shall serve for more than three consecutive terms**. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Emphasis ours)

As it is worded, that a candidate for a local elective position has violated the three-term limit is a *disqualification* as it is a status, circumstance or condition which bars him from running for public office despite the possession of all the qualifications under Section 39 of the LGC. It follows that the petition filed by Dra. Rodolfo against Lonzanida should be considered a petition for disqualification and not a petition to cancel a COC.

Overlooking the delineation between the two remedies presents the danger of confusing the proper disposition of one for the other. Although both remedies may affect the status of candidacy of a person running for public office, the difference lies with the breadth of the effect. In *Fermin*, we elucidated, thus:

> **While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a COC**. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose COC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.[12] (Citations omitted and emphasis ours)

[12] *Supra* note 5, at 796.

In its Resolution dated February 18, 2010, the COMELEC, while finding that Lonzanida is disqualified to run as Mayor of San Antonio, Zambales for having served the same position for more than three (3) consecutive terms, ordered for the cancellation of Lonzanida's COC. In effect, it cancelled Lonzanida's COC on the basis of a ground which is fittingly a ground for a petition for disqualification, not for a petition to cancel a COC. The same holds true with respect to Lonzanidas' conviction for ten (10) counts of falsification which was taken up by the COMELEC in resolving Lonzanida's motion for reconsideration in its Resolution dated August 11, 2010 notwithstanding the fact that said ground was not even alleged in the petition filed by Dra. Rodolfo.

A final judgment of disqualification before the elections is necessary before the votes cast in favor of a candidate be considered stray.

Anent the effect of a judgment of disqualification, Section 72 of the OEC is clear. It states:

> Sec. 72. *Effects of disqualification cases and priority.* – x x x.
>
> xxx xxx xxx
>
> Any candidate who has been **declared by final judgment** to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption to office. (Emphasis ours)

The foregoing provision was reiterated in Section 6 of R.A. No. 6646, pertaining to "The Electoral Reforms Law of 1987," thus:

> Sec. 6. *Effect of Disqualification Case.*— Any candidate who has been **declared by final judgment** to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any

reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis ours)

It can be gathered from the foregoing that a judgment of disqualification against a candidate comes into full effect only upon attaining finality. Before that period, the candidate facing a disqualification case may still be voted for and even be proclaimed winner. After the judgment of disqualification has become final and executory, the effect on the status of his candidacy will depend on whether the finality took effect before or after the day of elections. If the judgment became final before the elections, he may no longer be considered a candidate and the votes cast in his favor are considered stray. On the other hand, if the judgment lapsed into finality after the elections, he is still considered a candidate and the votes cast in his name during the elections shall be counted in his favor.

The requirement for a final judgment ultimately redounds to the benefit of the electorate who can still freely express their will by naming the candidate of their choice in their ballots without being delimited by the fact that one of the candidates is facing a disqualification case. It effectively thwarts indecent efforts of a less popular candidate in eliminating competition with the more popular candidate by mere expedient of filing a disqualification case against him. In the same manner, it ensures that an ineligible candidate, even after he was proclaimed the winner, can still be ousted from office and be replaced with the truly deserving one. In order not to frustrate these objectives by reason of the protracted conduct of the proceedings, the Rules provide that the COMELEC retains its jurisdiction even after elections, if for any reason no final judgment of disqualification is rendered before the elections, and the candidate facing

disqualification is voted for and receives the highest number of votes. Thus, in*Sunga v. COMELEC*[13] we enunciated:

> Clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, *i.e.*, until judgment is rendered thereon. The word "shall" signifies that this requirement of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even after the election. x x x.
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> x x x A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.[14] (Citation omitted)

Without a final judgment, a candidate facing disqualification may still be proclaimed the winner and assume the position for which he was voted for. In the absence of an order suspending proclamation, the winning candidate who is sought to be disqualified is entitled to be proclaimed as a matter of law. This is clear from Section 6 of R.A. No. 6646 which provides that the proclamation of the candidate sought to be disqualified is suspended only if there is an order of the COMELEC suspending proclamation.[15] The mere pendency of a disqualification case against a candidate, and a winning candidate at that, does not justify the suspension of his proclamation after winning in the election. To hold otherwise would unduly encourage the filing of baseless and malicious petitions for disqualification if only to effect the suspension of the proclamation of the winning candidate, not only to his damage and prejudice but also to the

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[13] 351 Phil. 310 (1998).

[14] *Id.* at 322-323.

[15] *Bagatsing v. COMELEC*, 378 Phil. 585, 601 (1999).

defeat of the sovereign will of the electorate, and for the undue benefit of undeserving third parties.[16]

The candidate receiving the second highest number of votes cannot be proclaimed the winner.

It must be noted that after the issuance of the Resolution dated August 11, 2010, the COMELEC rendered two more issuances that are now being assailed in the instant petition – the Order dated January 12, 2011 and the Resolution dated February 2, 2011. During the interim period, the May 2010 election was held and Lonzanida received the highest number of votes and was proclaimed winner. Upon finality of the judgment of his disqualification, a permanent vacancy was created in the office of the mayor and Efren Racel Aratea (Aratea), the duly-elected Vice-Mayor of San Antonio, Zambales, assumed the position per authority granted to him by the DILG Secretary.

Thereafter, on August 25, 2010, fourteen (14) days after the issuance of the Resolution dated August 11, 2010, Antipolo filed a motion to intervene and to admit attached petition-in-intervention. Antipolo alleged that she has a legal interest in the matter in litigation being the only remaining qualified candidate for the office of the mayor of San Antonio, Zambales after Lonzanida's disqualification.[17] Having obtained the highest number of votes among the remaining qualified candidates for the position, she opined that she should be proclaimed the mayor of the locality.[18] Subsequently, the COMELEC *en banc* allowed Antipolo's motion to intervene in its Order dated January 12, 2011, thus:

> Acting on the "Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention" filed by Estela D. Antipolo (Antipolo) and pursuant to the power of this Commission to suspend its Rules or

[16] *Id.* at 602, citing *Singco v. Commission on Elections*, 189 Phil. 315, 322-323 (1980).

[17] *Rollo*, p. 79.

[18] *Id.* at 84.

any portion thereof in the interest of justice, this Commission hereby **RESOLVES** to:

1. **GRANT** the aforesaid Motion;

2. **ADMIT** the Petition-in-Intervention filed by Antipolo;

3. **REQUIRE** the Respondent, **ROMEO DUMLAO LONZANIDA**, as well as **EFREN RACEL ARATEA**, proclaimed Vice-Mayor of San Antonio, Zambales, to file their respective Comments on the Petition-in-Intervention within a non-extendible period of five (5) days from receipt hereof; and

4. **SET** the above-mentioned Petition-in-Intervention for hearing on January 26, 2011 at 10:00 a.m., COMELEC Session Hall, 8th Floor, Palacio del Gobernador, Intramuros, Manila.[19]

On February 2, 2011, the COMELEC *en banc* issued a Resolution nullifying Aratea's proclamation as acting mayor and ordering him to cease and desist from discharging the duties of the office of the mayor. Further, it ordered for the constitution of a Special Board of Canvassers to proclaim Antipolo as the duly-elected Mayor of San Antonio, Zambales, ratiocinating as follows:

It is beyond cavil that Lonzanida is not eligible to hold and discharge the functions of the Office of the Mayor of San Antonio, Zambales. The sole issue to be resolved at this juncture is how to fill the vacancy resulting from Lonzanida's disqualification. Intervenor Antipolo claims that being the sole qualified candidate who obtained the highest number of votes, she should perforce be proclaimed as Mayor of San Antonio, Zambales. Oppositor Aratea on the other hand argues that Antipolo is a mere second placer who can never be proclaimed, and that the resulting vacancy should be filled in accordance with Section 44 of the Local Government Code of 1991.

In order to judiciously resolve this issue however, we wish to emphasize the character of the disqualification of respondent Lonzanida.

As early as February 18, 2010, the Commission speaking through the Second Division had already ordered the cancellation of Lonzanida's certificate of candidacy, and had stricken off his name in the list of official candidates for the mayoralty post of San Antonio,

[19] *Id.* at 32.

Zambales[.] Thereafter, the Commission En Banc in its resolution dated August 11, 2010 unanimously affirmed the resolution disqualifying Lonzanida. Our findings were likewise sustained by the Supreme Court no less. The disqualification of Lonzanida is not simply anchored on one ground. On the contrary, it was emphasized in our *En Banc* resolution that Lonzanida's disqualification is two-pronged: first, he violated the constitutional fiat on the three-term limit; and second, as early as December 1, 2009, he is known to have been convicted by final judgment for ten (10) counts of Falsification under Article 171 of the Revised Penal Code. In other words, on election day, respondent Lonzanida's disqualification is notoriously known in fact and in law. Ergo, since respondent was never a candidate for the position of Mayor, San Antonio, Zambales, the votes cast for him should be considered stray votes. Consequently, Intervenor Antipolo, who remains as the sole qualified candidate for the mayoralty post and obtained the highest number of votes should now be proclaimed as the duly[-]elected Mayor of San Antonio, Zambales.

We cannot sustain the submission of Oppositor Aratea that Intervenor Antipolo could never be proclaimed as the duly elected Mayor of Antipolo [sic] for being a second placer in the elections. The teachings in the cases of *Codilla vs. De Venecia* and *Nazareno and Domino vs. Comelec[,] et al.*, while they remain sound jurisprudence find no application in the case at bar. What sets this case apart from the cited jurisprudence is that the notoriety of Lonzanida's disqualification and ineligibility to hold public office is established both in fact and in law on election day itself. Hence, Lonzanida's name, as already ordered by the Commission on February 18, 2010 should have been stricken off from the list of official candidates for Mayor of San Antonio, Zambales.[20] (Citations omitted)

The foregoing ratiocination is illustrative of the complication that can result from the inability to distinguish the differences between a petition for disqualification and a petition for cancellation of COC. It bears emphasizing that in terms of effect, a judgment on a petition to cancel a COC touches the very eligibility of a person to qualify as a candidate such that an order for cancellation of his COC renders him a non-candidate as if he never filed a COC at all. The ripple effect is that all votes cast in his favor shall be considered stray. Thus, the

[20] *Id.* at 36-38.

candidate receiving the second highest number of votes may be proclaimed the winner as he is technically considered the candidate who received the highest number of votes. Further, it is of no consequence if the judgment on the petition to cancel COC became final before or after the elections since the consequences of the same retroact to the date of filing of the COC.

On the other hand, the breadth of the effect a judgment on a petition for disqualification is relatively less extensive.*First*, the effect of a judgment thereon is limited to preventing a candidate from continuing his participation in the electoral race or, if already proclaimed, to unseat from public office. *Second*, the judgment takes effect only upon finality which can occur either before or after the elections. If the judgment became final before the elections, the effect is similar to the cancellation of a COC. However, if the judgment became final after the elections, he is still considered an official candidate and may even be proclaimed winner should he receive the highest number of votes in the elections. In the event that he is finally ousted out of office, Section 44 of the LGC will govern the succession into the vacated office.

Relating the foregoing principle to the instant case, Lonzanida is still considered an official candidate in the May 2010 elections notwithstanding the pendency of the disqualification case against him. The mere pendency of a disqualification case against him is not sufficient to deprive him of the right to be voted for because the law requires no less than a final judgment of disqualification. Consequently, the COMELEC should not have ordered for the proclamation of Antipolo as Mayor of San Antonio, Zambales. It is well-settled that the disqualification of the winning candidate does not give the candidate who garnered the second highest number of votes the right to be proclaimed to the vacated post. In *Aquino v. Commission on Elections*,[21] we had the occasion to explicate the rationale behind this doctrine. Thus:

To contend that Syjuco should be proclaimed because he was the "first" among the qualified candidates in the May 8, 1995 elections

[21] *Supra* note 7.

is to misconstrue the nature of the democratic electoral process and the sociological and psychological underpinnings behind voters' preferences. The result suggested by private respondent would lead not only to our reversing the doctrines firmly entrenched in the two cases of *Labo vs. Comelec* but also to a massive disenfranchisement of the thousands of voters who cast their vote in favor of a candidate they believed could be validly voted for during the elections. Had petitioner been disqualified before the elections, the choice, moreover, would have been different. The votes for Aquino given the acrimony which attended the campaign, would not have automatically gone to second placer Syjuco. The nature of the playing field would have substantially changed. To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.[22] (Citation omitted)

xxx xxx xxx

We cannot, in another shift of the pendulum, subscribe to the contention that the runner-up in an election in which the winner has been disqualified is actually the winner among the remaining qualified candidates because this clearly represents a minority view supported only by a scattered number of obscure American state and English court decisions. These decisions neglect the possibility that the runner-up, though obviously qualified, could receive votes so measly and insignificant in number that the votes they receive would be tantamount to rejection. Theoretically, the "second placer" could receive just one vote. In such a case, it is absurd to proclaim the totally repudiated candidate as the voters' "choice." Moreover, even in instances where the votes received by the second placer may not be considered numerically insignificant, voters preferences are nonetheless so volatile and unpredictable that the result among qualified candidates, should the equation change because of the disqualification of an ineligible candidate, would not be self-evident. Absence of the apparent though ineligible winner among the choices could lead to a shifting of votes to candidates other than the second

[22] *Id.* at 502-503.

placer. By any mathematical formulation, the runner-up in an election cannot be construed to have obtained a majority or plurality of votes cast where an "ineligible" candidate has garnered either a majority or plurality of the votes.[23] (Citation omitted)

Apparently, in its Resolution dated February 2, 2011, the COMELEC submits to the general rule that the second placer in the elections does not assume the post vacated by the winning candidate in the event that a final judgment of disqualification is rendered against the latter. However, it posits that the notoriety of Lonzanida's disqualification and ineligibility to hold public office distinguishes the instant case from the throng of related cases upholding the doctrine. It anchored its ruling in the pronouncement we made in *Labo, Jr. v. Commission on Elections*,[24] to wit:

> The rule would have been different if the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected.[25]

The exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but nonetheless cast their votes in favor of the ineligible candidate. These assumptions however do not obtain in the present case. The COMELEC's asseveration that the electorate of San Antonio, Zambales was fully aware of Lonzanida's disqualification is purely speculative and conjectural.[26] No evidence was ever presented to prove the character

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[23] *Id.* at 508-509.

[24] *Supra* note 7.

[25] *Id.* at 312.

[26] *Grego v. Commission on Elections*, 340 Phil. 591, 610 (1997), citing *Frivaldo v. COMELEC, supra* note 7, at 567.

of Lonzanida's disqualification particularly the fact that the voting populace was "fully aware in fact and in law" of Lonzanida's alleged disqualification as to "bring such awareness within the realm of notoriety," in other words, that the voters intentionally wasted their ballots knowing that, in spite of their voting for him, he was ineligible.[27] Therefore, it is an error for the COMELEC to apply the exception in *Labo* when the operative facts upon which its application depends are wanting.

Finally, as regards the question on who should rightfully fill the permanent vacancy created in the office of the mayor, Section 44 of the LGC explicitly states:

> Sec. 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.*— If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

The law is couched without equivocation. In the event that a vacancy is created in the office of the mayor, it is the duly-elected vice-mayor, petitioner Aratea in this case, who shall succeed as mayor. Clearly then, the COMELEC gravely abused its discretion in disregarding the law and established jurisprudence governing succession to local elective position and proclaiming private respondent Antipolo, a defeated candidate who received the second highest number of votes, as Mayor of San Antonio Zambales.

In view of the foregoing disquisitions, I respectfully vote to **GRANT** the petition. Necessarily, the Order dated January 12, 2011 and Resolution dated February 2, 2011 issued by public respondent Commission on Elections in SPA No. 09-158 (DC) should be **REVERSED and SET ASIDE** and private respondent Estela D. Antipolo's proclamation should be **ANNULLED.** Petitioner Efren Racel Aratea, being the duly-elected Vice-Mayor, should be proclaimed Mayor of San Antonio, Zambales pursuant to the rule on succession under Section 44 of the Local Government Code of 1991.

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[27] See *Frivaldo v. COMELEC*, *supra* note 7, at 567.

EN BANC

[G.R. No. 196804. October 9, 2012]

MAYOR BARBARA RUBY C. TALAGA, *petitioner, vs.* **COMMISSION ON ELECTIONS and RODERICK A. ALCALA,** *respondents.*

[G.R. No. 197015. October 9, 2012]

PHILIP M. CASTILLO, *petitioner, vs.* **COMMISSION ON ELECTIONS, BARBARA RUBY TALAGA and RODERICK A. ALCALA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (BATAS PAMBANSA BLG. 881); CERTIFICATE OF CANDIDACY (COC); THE FILING OF A COC WITHIN THE PERIOD PROVIDED BY LAW IS A MANDATORY REQUIREMENT FOR ANY PERSON TO BE CONSIDERED A CANDIDATE IN A NATIONAL OR LOCAL ELECTION.— The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the *Omnibus Election Code*. xxx The evident purposes of the requirement for the filing of CoCs and in fixing the time limit for filing them are, namely: (*a*) to enable the voters to know, at least 60 days prior to the regular election, the candidates from among whom they are to make the choice; and (*b*) to avoid confusion and inconvenience in the tabulation of the votes cast. If the law does not confine to the duly-registered candidates the choice by the voters, there may be as many persons voted for as there are voters, and votes may be cast even for unknown or fictitious persons as a mark to identify the votes in favor of a candidate for another office in the same election. Moreover, according to *Sinaca v. Mula*, the CoC is: x x x in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run

for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated. Accordingly, a person's declaration of his intention to run for public office and his affirmation that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the person making the declaration a valid or official candidate.

2. ID.; ID.; ID.; ID.; TWO REMEDIES AVAILABLE TO PREVENT A CANDIDATE FROM RUNNING IN AN ELECTORAL RACE; DIFFERENCE BETWEEN THE TWO REMEDIES.— In the event that a candidate is disqualified to run for a public office, or dies, or withdraws his CoC before the elections, Section 77 of the *Omnibus Election Code* provides the option of substitution. xxx Nonetheless, whether the ground for substitution is death, withdrawal or disqualification of a candidate, Section 77 of the *Omnibus Election Code* unequivocally states that only an official candidate of a registered or accredited party may be substituted. Considering that a cancelled CoC does not give rise to a valid candidacy, there can be no valid substitution of the candidate under Section 77 of the *Omnibus Election Code*. It should be clear, too, that a candidate who does not file a valid CoC may not be validly substituted, because a person without a valid CoC is not considered a candidate in much the same way as any person who has not filed a CoC is not at all a candidate. Likewise, a candidate who has not withdrawn his CoC in accordance with Section 73 of the *Omnibus Election Code* may not be substituted. A withdrawal of candidacy can only give effect to a substitution if the substitute candidate submits prior to the election a sworn CoC as required by Section 73 of the *Omnibus Election Code*.

3. ID.; ID.; ID.; ID.; EXISTENCE OF A VALID COC IS A CONDITION *SINE QUA NON* FOR A VALID SUBSTITUTION OF CANDIDATE.— There are two remedies available to prevent a candidate from running in an electoral race. One is through a petition for disqualification and the other through a petition to deny due course to or cancel a certificate of candidacy. The Court differentiated the two

remedies in *Fermin v. Commission on Elections*, thuswise: x x x [A] petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

4. ID.; ID.; ID.; ID.; THE DENIAL OF DUE COURSE TO OR CANCELLATION OF THE COC UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE INVOLVES A FINDING NOT ONLY THAT A PERSON LACKS A QUALIFICATION BUT ALSO MADE A MATERIAL PRESENTATION THAT IS FALSE.— The Court concurs with the conclusion of the COMELEC *En Banc* that the Castillo petition in SPA 09-029 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the *Omnibus Election Code*. xxx Castillo's petition contained essential allegations pertaining to a Section 78 petition, namely: (*a*) Ramon made a false representation in his CoC; (*b*) the false representation referred to a material matter that would affect the substantive right of Ramon as candidate (that is, the right to run for the election for which he filed his certificate); and (*c*) Ramon made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact that would otherwise render him ineligible. The petition expressly challenged Ramon's eligibility for public office based on the prohibition stated in the Constitution and the *Local Government Code* against any person serving three consecutive terms, and specifically prayed that "the Certificate of Candidacy filed by the respondent [Ramon] be denied due course to or cancel the same and that he be declared as a disqualified candidate." The denial of due course to or the cancellation of the CoC under Section 78 involves a finding not only that a person lacks a qualification but also that he made a material representation that is false. A petition for the denial of due

course to or cancellation of CoC that is short of the requirements will not be granted. In *Mitra v. Commission on Elections*, the Court stressed that there must also be a deliberate attempt to mislead.

5. ID.; ID.; ID.; ID.; A SECTION 78 PETITION UNDER THE OMNIBUS ELECTION CODE SHOULD NOT BE INTERCHANGED WITH A SECTION 68 PETITION THEREUNDER, FOR THEY ARE BASED ON DIFFERENT GROUNDS, AND CAN RESULT IN DIFFERENT EVENTUALITIES.— It is underscored, however, that a Section 78 petition should not be interchanged or confused with a Section 68 petition. The remedies under the two sections are different, for they are based on different grounds, and can result in different eventualities. A person who is disqualified under Section 68 is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered as a candidate at all because his status is that of a person who has not filed a CoC. *Miranda v. Abaya* has clarified that a candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he is not considered a candidate.

6. ID.; ID.; ID.; ID.; PETITIONER CASTILLO'S COC WAS INVALID AND INEFFECTUAL *AB INITIO* FOR CONTAINING THE INCURABLE DEFECT CONSISTING IN HIS FALSE DECLARATION OF HIS ELIGIBILITY TO RUN.— The objective of imposing the three-term limit rule was "to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office." xxx To accord with the constitutional and statutory proscriptions, Ramon was absolutely precluded from asserting an eligibility to run as Mayor of Lucena City for the fourth consecutive term. Resultantly, his CoC was invalid and ineffectual *ab initio* for containing the incurable defect consisting in his false declaration of his eligibility to run. The invalidity and inefficacy of his CoC made his situation even worse than that of a nuisance candidate because the nuisance candidate may remain eligible despite cancellation of his CoC or despite the denial of due

course to the CoC pursuant to Section 69 of the *Omnibus Election Code*. Ramon himself specifically admitted his ineligibility when he filed his Manifestation with Motion to Resolve on December 30, 2009 in the COMELEC. That sufficed to render his CoC invalid, considering that for all intents and purposes the COMELEC's declaration of his disqualification had the effect of announcing that he was no candidate at all.

7. ID.; ID.; ID.; ID.; A NON-CANDIDATE LIKE PETITIONER CASTILLO HAS NO RIGHT TO PASS ON TO HIS SUBSTITUTE.— We stress that a non-candidate like Ramon had no right to pass on to his substitute. As *Miranda v. Abaya* aptly put it: **Even on the most basic and fundamental principles, it is readily understood that the concept of a substitute presupposes the existence of the person to be substituted, for how can a person take the place of somebody who does not exist or who never was. The Court has no other choice but to rule that in all the instances enumerated in Section 77 of the Omnibus Election Code, the existence of a *valid* certificate of candidacy seasonably filed is a requisite *sine qua non*.** All told, a disqualified candidate may only be substituted if he had a ***valid*** certificate of candidacy in the first place because, if the disqualified candidate did not have a valid and seasonably filed certificate of candidacy, he is and was not a candidate at all. If a person was not a candidate, he cannot be substituted under Section 77 of the Code. Besides, if we were to allow the so-called "substitute" to file a "new" and "original" certificate of candidacy beyond the period for the filing thereof, it would be a crystalline case of unequal protection of the law, an act abhorred by our Constitution.

8. ID.; ID.; ID.; ID.; DESPITE THE COMELEC MAKING NO FINDING OF MATERIAL MISREPRESENTATION ON THE PART OF RAMON TALAGA, ITS GRANTING OF PETITIONER CASTILLO'S PETITION WITHOUT EXPRESS QUALIFICATIONS MANIFESTED THAT THE COMELEC HAD CANCELLED RAMON'S COC BASED ON HIS APPARENT INELIGIBILITY.— That the COMELEC made no express finding that Ramon committed any deliberate misrepresentation in his CoC was of little consequence in the determination of whether his CoC should be deemed cancelled or not. In *Miranda v. Abaya*, the specific relief that the petition prayed for was that the CoC "be not

given due course and/or cancelled." The COMELEC categorically granted "the petition" and then pronounced — in apparent contradiction — that Joel *Pempe* Miranda was "disqualified." The Court held that the COMELEC, by granting the petition without any qualification, disqualified Joel *Pempe* Miranda and at the same time cancelled Jose *Pempe* Miranda's CoC. xxx The crucial point of *Miranda v. Abaya* was that the COMELEC actually granted the particular relief of cancelling or denying due course to the CoC prayed for in the petition by not subjecting that relief to any qualification. *Miranda v. Abaya* applies herein. Although Castillo's petition in SPA No. 09-029 (DC) specifically sought *both* the disqualification of Ramon *and* the denial of due course to or cancellation of his CoC, the COMELEC categorically stated in the Resolution dated April 19, 2010 that it was granting the petition. Despite the COMELEC making no finding of material misrepresentation on the part of Ramon, its granting of Castillo's petition without express qualifications manifested that the COMELEC had cancelled Ramon's CoC based on his apparent ineligibility. The Resolution dated April 19, 2010 became final and executory because Castillo did not move for its reconsideration, and because Ramon later withdrew his motion for reconsideration filed in relation to it.

9. ID.; ID.; ID.; ID.; SECOND PLACER DOCTRINE; NOT APPLICABLE IN CASE AT BAR; PRESENT CASE IS SIGNIFICANTLY DIFFERENT FROM THE CASE OF *CAYAT V. COMMISSION ON ELECTIONS*.— We cannot agree with Castillo's assertion that with Ramon's disqualification becoming final *prior to* the May 10, 2010 elections, the ruling in *Cayat* was applicable in his favor. Barbara Ruby's filing of her CoC in substitution of Ramon significantly differentiated this case from the factual circumstances obtaining in *Cayat*. Rev. Fr. Nardo B. Cayat, the petitioner in *Cayat*, was disqualified on April 17, 2004, and his disqualification became final *before* the May 10, 2004 elections. Considering that no substitution of Cayat was made, Thomas R. Palileng, Sr., his rival, remained the *only* candidate for the mayoralty post in Buguias, Benguet. In contrast, after Barbara Ruby substituted Ramon, the May 10, 2010 elections proceeded with her being regarded by the electorate of Lucena City as a *bona fide* candidate. To the electorate, she became a contender for the same position vied

for by Castillo, such that she stood on the same footing as Castillo. Such standing as a candidate negated Castillo's claim of being the candidate who obtained the highest number of votes, and of being consequently entitled to assume the office of Mayor. Indeed, Castillo could not assume the office for he was only a second placer. *Labo, Jr.* should be applied. There, the Court emphasized that the candidate obtaining the second highest number of votes for the contested office could not assume the office despite the disqualification of the first placer because the second placer was "not the choice of the sovereign will." Surely, the Court explained, a minority or defeated candidate could not be deemed elected to the office. There was to be no question that the second placer lost in the election, was repudiated by the electorate, and could not assume the vacated position. No law imposed upon and compelled the people of Lucena City to accept a loser to be their political leader or their representative.

10. ID.; ID.; ID.; ID.; REQUISITES THAT MUST CONCUR BEFORE A SECOND PLACER IS ALLOWED TO TAKE THE PLACE OF THE WINNING CANDIDATE; NOT PRESENT IN CASE AT BAR.— The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (*a*) the candidate who obtained the highest number of votes is disqualified; and (*b*) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of the votes in favor of the ineligible candidate. Under this sole exception, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate with the second highest number of votes may be deemed elected. But the exception did not apply in favor of Castillo simply because the second element was absent. The electorate of Lucena City were not the least aware of the fact of Barbara Ruby's ineligibility as the substitute. In fact, the COMELEC *En Banc* issued the Resolution finding her substitution invalid only on May 20, 2011, or a full year *after* the elections. On the other hand, the COMELEC *En Banc* properly disqualified Barbara Ruby from assuming the position of Mayor of Lucena City. To begin with, there was

no valid candidate for her to substitute due to Ramon's ineligibility. Also, Ramon did not voluntarily withdraw his CoC before the elections in accordance with Section 73 of the *Omnibus Election Code*. Lastly, she was not an additional candidate for the position of Mayor of Lucena City because her filing of her CoC on May 4, 2010 was beyond the period fixed by law. Indeed, she was not, in law and in fact, a candidate. A permanent vacancy in the office of Mayor of Lucena City thus resulted, and such vacancy should be filled pursuant to the law on succession defined in Section 44 of the LGC.

VELASCO, *J., concurring opinion*:

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (BATAS PAMBANSA BLG. 881); CERTIFICATE OF CANDIDACY (COC); NO VALID SUBSTITUTION OF CANDIDATES IN CASE AT BAR; THE RECORDS SHOW THAT WHEN PETITIONER FILED HER CERTIFICATE OF CANDIDACY ON MAY 04, 2010, THERE WAS STILL NO GROUND FOR SUBSTITUTION SINCE THE JUDGMENT ON RAMON TALAGA'S DISQUALIFICATION HAD NOT YET ATTAINED FINALITY.— In view of the opinions submitted, it is my view that there was *no valid substitution* of candidates for the mayoralty position in Lucena City between Ramon Talaga and his wife, Ruby Talaga. I likewise opine that considering the judgments on the *disqualification* of Ruben Talaga and on the validity of the *substitution became final only after the May 10, 2010 elections*, the *laws of succession in case of permanent vacancies* under *Section 44 of the Local Government Code* should apply. First, *Section 77 of the Omnibus Election Code* is clear that before a substitution of candidates for an elective position could be validly done, the official candidate of a registered or accredited political party should *die*, *withdraw* or must be *disqualified for any cause*. In the present case, the records will show that at the time Ruby C. Talaga filed her Certificate of Candidacy, or May 4, 2010, **there was still no ground for substitution** since the *judgment on Ramon Talaga's disqualification had not yet attained finality*.

2. ID.; ID.; ID.; ID.; CONSIDERING THAT RAMON TALAGA'S DISQUALIFICATION BECAME FINAL AFTER THE

MAY 10, ELECTIONS, IT WAS ONLY DURING THAT TIME THAT THE OFFICE OF THE MAYOR OF LUCENA CITY BECAME VACANT; THE INCUMBENT VICE MAYOR SHOULD FILL THE VACANCY OF MAYOR OF LUCENA CITY FOLLOWING THE RULE OF SUCCESSION UNDER THE LOCAL GOVERNMENT CODE IN CASES OF PERMANENT VACANCIES.— Considering further that Ramon Talaga's disqualification became final after the May 10, 2010 Elections, it was only during that time that office of the Mayor of Lucena City became vacant. Since there is no question that Ramon's disqualification to serve as City Mayor is permanent in character, the incumbent Vice-Mayor should serve as Mayor pursuant to Section 44 of the Local Government Code, which provides: **Section 44.** *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* — If a **permanent vacancy** occurs in the office of the governor or **mayor**, the vice-governor or **vice-mayor concerned shall become the** governor or **mayor**. x x x For purposes of this Chapter, **a permanent vacancy arises when an elective local official** fills a higher vacant office, refuses to assume office, **fails to qualify**, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office. x x x In view of the foregoing, I concur with the *ponencia* of Justice Lucas P. Bersamin that it is the incumbent Vice-Mayor, Roderick Alcala, who should be the Mayor of Lucena City.

BRION, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (BATAS PAMBANSA BLG. 881); CERTIFICATE OF CANDIDACY (COC); SECTION 74 THEREOF DOES NOT REQUIRE ANY NEGATIVE QUALIFICATION EXCEPT ONLY AS REQUIRED THEREIN; THE PROVISION DOES NOT REQUIRE ANY WOULD BE CANDIDATE TO STATE THAT HE HAS NOT SERVED FOR THREE CONSECUTIVE TERMS IN THE SAME ELECTIVE POSITION IMMEDIATELY PRIOR TO THE PRESENT ELECTIONS.— Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative requirement refers to the representation that the would-be

candidate is ***not*** a permanent resident nor an immigrant in another country. This requirement, however, is in fact simply part of the positive requirement of residency in the locality for which the CoC is filed and, in this sense, it is not strictly a negative requirement. **Neither does Section 74 require any statement that the would-be candidate does not possess any ground for disqualification specifically enumerated by law, as disqualification is a matter that the OEC and LGC 1991 separately deal with, as discussed below. Notably, Section 74 does not *require* a would-be candidate to state that he has *not* served for three consecutive terms in the same elective position immediately prior to the present elections**. With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding "that **the importance of a valid certificate of candidacy rests at the very core of the electoral process.**" Pertinent laws provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring "equal access to opportunities for public service," bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.

2. ID.; ID.; ID.; ID.; DISQUALIFICATION UNDER SECTION 68 REFERS ONLY TO A "CANDIDATE," NOT TO ONE WHO IS NOT YET A CANDIDATE; THE TIME TO HOLD A PERSON ACCOUNTABLE FOR THE GROUNDS FOR DISQUALIFICATION IS AFTER ATTAINING THE STATUS OF A CANDIDATE, WITH THE FILING OF THE COC.— A unique feature of "disqualification" is that under Section 68 of the OEC, it **refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

3. ID.; ID.; ID.; ID.; ELIGIBILITY REQIREMENTS ARE THE REQUIREMENTS THAT APPLY TO, AND MUST BE COMPLIED BY, ALL CITIZENS WHO WISH TO RUN FOR LOCAL ELECTIVE OFFICE WHILE DISQUALIFICATIONS REFER TO THE TRAITS, CONDITIONS OR ACTS THAT SERVE AS GROUNDS AGAINST ONE WHO HAS QUALIFIED AS A CANDIDATE TO LOSE THIS STATUS OR PRIVILEGE, WHICH HAS NOTHING TO DO WITH A CANDIDATE'S COC.— To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC. When the law allows the **cancellation of a candidate's CoC, the law considers the cancellation from the point of view of the requirements that every citizen who wishes to run for office must commonly satisfy**. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate ***and*** his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

4. ID.; ID.; ID.; ID.; "THREE-TERM LIMIT RULE"; BARS AN ELECTIVE LOCAL OFFICIAL FROM SERVING A FOURTH AND SUBSEQUENT CONSECUTIVE TERMS.— The three-term limit rule is a creation of Section 8, Article X of the Constitution. This provision fixes the maximum limit an elective local official can consecutively serve in office, and at the same time gives the command, in no uncertain terms, that *no such official shall serve for more than three consecutive terms.* Thus, a three-term local official is barred from serving

a fourth and subsequent consecutive terms. This bar, as a constitutional provision, must necessarily be read into and interpreted as a component part of the OEC under the legal reality that **neither this Code nor the LGC provides for the three-term limit rule's operational details; it is not referred to as a ground for the cancellation of a CoC nor for the disqualification of a candidate, much less are its effects provided for.** Thus, the need to fully consider, reconcile and harmonize the terms and effects of this rule on elections in general and, in particular, on the circumstances of the present case.

5. ID.; ID.; ID.; ID.; ID.; THE WORDING OF SECTION 8, ARTICLE X OF THE CONSTITUTION SIMPLY SETS A LIMIT ON THE NUMBER OF CONSECUTIVE TERMS AN OFFCIAL CAN SERVE; THE CONSTITUTIONAL PROVISION DOES NOT REFER TO ELECTIONS, MUCH LESS DOES IT BAR A THREE-TERMER'S CANDIDACY.— In practical terms, the question of whether the three-term limit rule is a matter of "eligibility" that must be considered in the filing of a CoC translates to the need to state in a would-be candidate's CoC application that he is eligible for candidacy because he has not served for three consecutive terms immediately before filing his application. **The wording of Section 8, Article X of the Constitution, however, does not justify this requirement as Section 8 simply sets a limit on the number of consecutive terms an official can serve. It does not refer to elections, much less does it bar a three-termer's candidacy.** As previously discussed, Section 74 of the OEC does not expressly require a candidate to assert the *non-possession* of any disqualifying trait or condition, much less of a candidate's observance of the three-term limit rule. **In fact, the assertion of a would-be candidate's eligibility, as required by the OEC, could not have contemplated making a three-term candidate ineligible *for candidacy* since that disqualifying trait began to exist only later under the 1987 Constitution**. What Section 8, Article X of the Constitution indisputably mandates is solely a bar against serving for a fourth consecutive term, not a bar against candidacy. Of course, **between the filing of a CoC (that gives an applicant the status of a candidate) and assumption to office as an election winner is a wide expanse of election activities whose various**

stages our election laws treat in various different ways. Thus, if candidacy will be aborted from the very start (*i.e.*, at the initial CoC-filing stage), what effectively takes place – granting that the third-termer possesses all the eligibility elements required by law – is a shortcut that is undertaken on the theory that the candidate cannot serve in any way if he wins a fourth term. I submit that while simple and efficient, **essential legal considerations should dissuade the Court from using this approach**. **To make this shortcut is to incorporate into the law, by judicial fiat, a requirement that is not expressly there.** In other words, such shortcut may go beyond allowable interpretation that the Court can undertake, and cross over into prohibited judicial legislation. Not to so hold, on the other hand, does not violate the three-term limit rule even in spirit, since its clear and undisputed mandate is to disallow serving for a fourth consecutive term; this objective is achieved when the local official does not win and can always be attained by the direct application of the law if he does win.

6. ID.; ID.; ID.; ID.; ID.; THE THREE-TERM LIMIT RULE, AS A BAR AGAINST A FOURTH CONSECUTIVE TERM, IS EFFECTIVELY A DISQUALIFICATION AGAINST SUCH SERVICE RATHER THAN AN ELIGIBILITY REQUIREMENT.— Another reason, and an equally weighty one, is that a shortcut would run counter to **the concept of commonality that characterizes the eligibility requirements**; it would allow the introduction of an element that does not apply to all citizens as an entry qualification. Viewed from the prism of the general distinctions between eligibility and disqualification discussed above, the three-term limit is unavoidably a restriction that applies only to local officials who have served for three consecutive terms, not to all would-be candidates at large; it applies only to *specific individuals* who may have otherwise been eligible were it not for the three-term limit rule and is thus a defect that attaches only to the candidate and not to his CoC. In this sense, it cannot but be a disqualification and at that, a very specific one. That the prohibited fourth consecutive term can only take place after a three-term local official wins his fourth term signifies too that the prohibition (and the resulting disqualification) only takes place after elections. This circumstance, to my mind,

supports the view that the three-term limit rule does not at all involve itself with the matter of candidacy; it only regulates service beyond the limits the Constitution has set. **Indeed, it is a big extrapolative leap for a prohibition that applies after election, to hark back and affect the initial election process for the filing of CoCs.** Thus, on the whole, I submit that the legally sound view is ***not*** to bar a three-termer's candidacy for a fourth term if the three-term limit rule is the only reason for the bar. In these lights, the three-term limit rule – as a bar against a fourth consecutive term – is effectively a disqualification against such service rather than an eligibility requirement.

7. ID.; ID.; ID.; ID.; ID.; A LOCAL OFFICIAL WHO IS ALLOWED TO BE A CANDIDATE UNDER OUR STATUTES BUT WHO IS EFFECTIVELY IN HIS FOURTH TERM SHOULD BE CONSIDERED INELIGIBLE TO SERVE IF THE COURT WERE TO GIVE LIFE TO THE CONSTITUTIONAL PROVISION, COUCHED IN A STRONG PROHIBITORY LANGUAGE, THAT "NO SUCH OFFICIAL SHALL SERVE FOR MORE THAN THREE CONSECUTIVE TERMS."— From the point of view of eligibility, one who merely seeks to hold public office through a valid candidacy cannot wholly be treated in the same manner as one who has won and is at the point of assuming or serving the office to which he has been elected; the requirements **to be eligible as a candidate** are defined by the election laws and by the local government code, but beyond these are **constitutional restrictions on eligibility to serve**. The three-term limit rule serves as the best example of this fine distinction; a local official who is allowed to be a candidate under our statutes but who is effectively in his fourth term should be considered *ineligible to serve* if the Court were to give life to the constitutional provision, couched in a strong prohibitory language, that "no such official shall serve for more than three consecutive terms."

8. ID.; ID.; ID.; ID.; ID.; A PETITION FOR DISQUALIFICATION BASED ON THE THREE-TERM LIMIT RULE DOES NOT NEED TO BE IMMEDIATELY ACTED UPON AND CAN MERELY BE DOCKETED AS A CAUTIONARY PETITION RESERVED FOR FUTURE ACTION IF AND WHEN THE THREE-TERM OFFICIAL

WINS A FOURTH CONSECUTIVE TERM.— A possible legal stumbling block in allowing the filing of the petition before the election is the lack of a cause of action or prematurity at that point. If disqualification is triggered only after a three-termer has won, then it may be argued with some strength that a petition, filed against a respondent three-term local official before he has won a fourth time, has not violated any law and does not give the petitioner the right to file a petition for lack of cause of action or prematurity. I take the view, however, that the petition does not need to be immediately acted upon and can merely be docketed as a cautionary petition reserved for future action if and when the three-term local official wins a fourth consecutive term. If the parties proceed to litigate without raising the prematurity or lack of cause of action as objection, a ruling can be deferred until after the cause of action accrues; if a ruling is entered, then any decreed disqualification cannot be given effect and implemented until a violation of the three-term limit rule occurs.

9. ID.; ID.; ID.; ID.; ID.; THE COMMISSION ON ELECTIONS WAS SUBSTANTIALLY CORRECT IN TREATING PETITIONER CASTILLO'S PETITION AS ONE FOR DISQUALIFICATION AND NOT ONE FOR CANCELLATION OF CERTIFICATE OF CANDIDACY.— On the basis of my views on the effect of the three-term limit rule, I disagree with the *ponencia's* conclusion that Castillo's petition is one for the cancellation or denial of due course of Ramon's CoC. I likewise so conclude after examining Castillo's petition, its allegations and the grounds it invoked. As a rule, the nature of the action is determined by the allegations in the complaint or petition. The cause of action is not what the title or designation of the petition states; the acts defined or described in the body of the petition control. The designation or caption and even the prayer, while they may assist and contribute their persuasive effect, cannot also be determinative of the nature or cause of action for they are not even indispensable parts of the petition. xxx Castillo's allegations simply articulate the fact that Ramon had served for three consecutive terms and the legal conclusion that the three-term limit rule under the Constitution and LGC 1991 disqualifies him from running for a fourth consecutive term. Under these allegations, Castillo's petition cannot come within the purview of Section 78 of the

OEC; Ramon's status as a three-term candidate is a ground to disqualify him (as precautionary measure before elections) for possessing a ground for disqualification under the Constitution and the LGC, specifically, for running for the same office after having served for three continuous terms. From the given facts and from the standards of strict legality based on my discussions above, I conclude that the COMELEC was substantially correct in treating the case as one for disqualification – that is, *without cancelling his CoC* - in its April 19, 2010 Resolution and in ruling for disqualification, subject to my reservation about prematurity and the existence of a ripe cause of action. This reservation gathers strength in my mind as I consider that most of the developments in the case took place before the May 10, 2010 elections under the standards of Section 8, Article X of the Constitution. Brought to its logical end, this consideration leads me to conclude that while the COMELEC might have declared Ramon's disqualification to be final, its declaration was ineffectual as no disqualification actually ever took effect. None could have taken place as the case it ruled upon was not ripe for a finding of disqualification; Ramon, although a three-term local official, had not won a fourth consecutive term and, in fact, could not have won because he gave way to his wife in a manner not amounting to a withdrawal.

10. ID.; ID.; ID.; ID.; ID.; MAYOR RUBY TALAGA'S SUBSTITUTION OF HER HUSBAND IS INVALID NOT BECAUSE OF THE LATTER'S CERTIFICATE OF CANDIDACY WAS CANCELLED BUT BECAUSE OF ITS NON-CONFORMITY WITH THE CONDITIONS REQUIRED BY SECTION 77 OF THE OMNIBUS ELECTION CODE.— As a rule, a CoC must be filed only within the timelines specified by law. This temporal limitation is a mandatory requirement to qualify as a candidate in a national or local election. It is only when a candidate with a valid and subsisting CoC is *disqualified, dies* or *withdraws* his or her CoC before the elections that the remedy of substitution under Section 77 of the OEC is allowed. In the present case, the grounds that would give rise to the substitution had to be present for Ruby's substitution to be valid. Specifically, she had to show that either Ramon had died, had withdrawn his valid and subsisting CoC, or had been disqualified for any cause.

All these are best determined by considering the antecedents of the present case. xxx All these, of course, will have to be viewed from the prism of the three-term limit rule. Substitution refers to an exceptional situation in an election scenario where the law leans backwards to allow a registered party to put in place a replacement candidate when the death, withdrawal or disqualification of its original candidate occurs. The question that arises under the bare provisions of Section 77 of the OEC is how the COMELEC should handle the law's given conditions and appreciate the validity of a substitution. The approaches to be made may vary on a case-to-case basis depending on the attendant facts, but a failsafe method in an election situation is to give premium consideration not to the candidates or their parties, but to the electorate's process of choice and the integrity of the elections. In other words, in a legal or factual equipoise situation, the conclusion must lean towards the integrity of the electoral process.

11. ID.; ID.; ID.; ID.; ID.; WITHDRAWAL AND DISQUALIFICATION ARE SEPARATE GROUNDS FOR SUBSTITUTION UNDER SECTION 77 OF THE OMNIBUS ELECTION CODE AND ONE SHOULD NOT BE CONFUSED WITH THE OTHER.— A significant aspect (although a negative one) of this development is that Ramon never indicated his clear intention to withdraw his CoC. Despite the *Aldovino* ruling, he only manifested his recognition that he was disqualified and had asked for a ruling on Castillo's petition. To be sure, he could have made a unilateral withdrawal with or without any intervention from the COMELEC First Division. The reality, however, was that he did not; he did not withdraw either from his disqualification case nor his CoC, pursuant to Section 73 of the OEC; he opted and continued to act within the confines of the pending case. A question that may possibly be asked is whether Ramon's Manifestation recognizing his disqualification can be considered a withdrawal. The short answer, in my view, is that it cannot be so considered. Withdrawal and disqualification are separate grounds for substitution under Section 77 of the OEC and one should not be confused with the other. Recognition of disqualification, too, without more, cannot be considered a withdrawal. Disqualification results from compulsion of law while withdrawal is largely an act that springs from the candidate's

own volition. Ramon's obvious submission to the COMELEC First Division, by asking for a ruling, cannot in any sense be considered a withdrawal. The ***second*** occasion was in early May 2010 when he withdrew, through a Manifestation, his motion for reconsideration of the First Division's ruling finding him disqualified for violation of the three-term limit rule. To recall, he made his *ex parte* manifestation of withdrawal in the morning of May 4, 2010, while his wife filed her CoC in substitution in the afternoon of the same day, on the apparent theory that his acceptance of the First Division disqualification ruling qualified her for substitution under Section 77 of the OEC. I cannot view these moves as indicative of withdrawal because the parties' main basis, as shown by their moves, was to take advantage of a final ruling decreeing disqualification as basis for Ruby's substitution. Plainly, no withdrawal of the CoC was ever made and no withdrawal was also ever intended as they focused purely on the effects of Ramon's disqualification. This intent is evident from their frantic efforts to secure a final ruling by the COMELEC *en banc* on Ramon's disqualification.

12. ID.; ID.; ID.; ID.; ID.; THERE IS NO EFFECTIVE DISQUALIFICATION THAT COULD HAVE BEEN THE BASIS FOR A SECTION 77 SUBSTITUTION IN CASE AT BAR; THE CAUSE FOR DISQUALIFICATION IS THE ELECTION OF THE DISQUALIFIED CANDIDATE TO A FOURTH TERM, A DEVELOPMENT THAT NEVER TOOK PLACE IN THE PRESENT CASE, AND WITHOUT A DISQUALIFIED CANDIDATE THAT MAYOR RUBY TALAGA WAS REPLACING, NO SUBSTITUTION PURSUANT TO SECTION 77 COULD HAVE TAKEN PLACE.— But neither can I recognize that there was an effective disqualification that could have been the basis for a Section 77 substitution. As repeatedly discussed above, the constitutional prohibition and the disqualification can only set in after election, when a three-term local official has won for himself a fourth term. Quite obviously, Ramon – without realizing the exact implications of the three–term limit rule – opted for a disqualification as his mode of exit from the political scene. This is an unfortunate choice as he could not have been disqualified (or strictly, his disqualification could not have taken effect) until after he had won as Mayor in the

May 2010 elections – too late in time if the intention was to secure a substitution for Ruby. Additionally, there was no way that Ramon could have won as he had opted out of the race, through his acceptance of an ineffectual disqualification ruling, in favor of his wife, Ruby. I hark back, too, to the reason I have given on why the constitutional three-term limit rule cannot affect, and does not look back to, the candidate's CoC which should remain valid if all the elements of eligibility are otherwise satisfied. Whatever twists and turns the case underwent through the series of moves that Ramon and his wife made after the First Division's April 19, 2010 ruling cannot erase the legal reality that, at these various points, no disqualification had ripened and became effective. To repeat, the cause for disqualification is the election of the disqualified candidate to a fourth term – a development that never took place. Without a disqualified candidate that Ruby was replacing, no substitution pursuant to Section 77 of the OEC could have taken place. This reality removes the last ground that would have given Ruby the valid opportunity to be her husband's substitute. To note an obvious point, the CoC that Ruby filed a week before the May 10, 2010 elections could not have served her at all as her filing was way past the deadline that the COMELEC set. To return to the immediate issue at hand and as previously discussed, a substitution under Section 73 of the OEC speaks of an exceptional, not a regular, situation in an election and should be strictly interpreted according to its terms. In the clearest and simplest terms, without a dead, withdrawing or disqualified candidate of a registered party, there can be no occasion for substitution. This requirement is both temporal and substantive. In the context of this case and in the absence of a valid substitution of Ramon by Ruby, votes for Ramon appearing in the ballots on election day could not have been counted in Ruby's favor.

13. ID.; ID.; ID.; ID.; ID.; IN VIEW OF THE INVALIDITY OF MAYOR RUBY TALAGA'S SUBSTITUTION, HER CANDIDACY WAS FATALLY FLAWED AND COULD NOT HAVE BEEN GIVEN EFFECT; HER CERTIFICATE OF CANDIDACY, STANDING BY ITSELF, WAS FILED LATE AND CANNOT BE GIVEN RECOGNITION, AND WITHOUT A VALID CERTIFICATE OF CANDIDACY, EITHER BY SUBSTITUTION OR BY INDEPENDENT

FILING, SHE COULD NOT HAVE BEEN VOTED FOR, FOR THE POSITION OF MAYOR OF LUCENA CITY.— In view of the invalidity of Ruby's substitution, her candidacy was fatally flawed and could not have been given effect. Her CoC, standing by itself, was filed late and cannot be given recognition. Without a valid CoC, either by substitution or by independent filing, she could not have been voted for, for the position of Mayor of Lucena City. Thus, the election took place with only one valid candidate standing – Castillo – who should now be proclaimed as the duly elected Mayor. xxx The *ponencia*'s reasoning would have been sound had Ruby been a candidate, who for one reason or another simply cannot assume office. **The harsh legal reality however is that she never was and never became a candidate** - a status which must be present before the doctrine of rejection of second placer may apply - either through the ordinary method of filing within the period allowed by law or through the extraordinary method of substitution. Ruby's status is comparable to (or even worse than) a candidate whose CoC was cancelled after the elections. As previously discussed, the cancellation of a CoC signifies non-candidacy from the very start, *i.e.*, before the elections, which entitles the "second placer" to assume office. The same result should obtain in this case. From the perspective of Vice Mayor Alcala's intervention, Ruby did not validly assume the mayoralty post and could not have done so as she was never a candidate with a valid CoC. To recall my earlier discussions, it is only the CoC that gives a person the status of being a candidate. No person who is not a candidate can win. Thus, Ruby – despite being seated – never won. In the absence of any permanent vacancy occurring in the Office of the Mayor of Lucena City, no occasion arises for the application of the law on succession under Section 44 of the Local Government Code and established jurisprudence. **Thus, I dissent as the petition of Vice-Mayor Roderick Alcala should have failed.**

MENDOZA, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (BATAS PAMBANSA BLG. 881); CERTIFICATE OF CANDIDACY (COC); A PETITION TO DENY DUE COURSE OR TO CANCEL A COC UNDER

SECTION 78 IS DIFFERENT FROM A DISQUALIFICATION CASE AND A *QUO WARRANTO* CASE.— In *Fermin v. Comelec*, it was stressed that "a 'Section 78' petition ought not to be interchanged or confused with a 'Section 68' petition. *They are different remedies, based on different grounds, and resulting in different eventualities."* In the said case, it was written: To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also **have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all.** In *Fermin*, a petition to deny due course or to cancel a certificate of candidacy was also distinguished from a petition for *quo warranto* as follows: Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is ***not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for.*** It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate**. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed **before** proclamation, while a petition for *quo warranto* is filed **after** proclamation of the wining candidate.

2. ID.; ID.; ID.; ID.; FALSE MATERIAL REPRESENTATION IS NOT RESTRICTED TO QUALIFICATIONS ONLY, IT COULD RELATE TO, OR COVER, ANY OTHER MATERIAL MISREPRESENTATION AS TO

ELIGIBILITY.— Also as can be gleaned from the foregoing, it was clearly stressed in *Fermin* that the denial of due course to, or the cancellation of, the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that was false. When it was stated in *Fermin* that the false material representation "may relate to the qualifications required of the public office he/she is running for," it simply meant that it could cover one's qualifications. It was not, however, restricted to qualifications only. When word "may" was used, it meant that it could relate to, or cover, any other material misrepresentation as to eligibility. Certainly, when one speaks of eligibility, it is understood that a candidate must have all the constitutional and statutory qualifications and none of the disqualifications. "*Eligible xxx relates to the capacity of holding as well as that of being elected to an office.*" "*Ineligibility*" has been defined as a "*disqualification or legal incapacity to be elected to an office* or appointed to a particular position."

3. ID.; ID.; ID.; ID.; A PERSON WHOSE CERTIFICATE OF CANDIDACY IS CANCELLED OR DENIED DUE COURSE UNDER SECTION 78 CANNOT BE TREATED AS A CANDIDATE AT ALL.— A cancelled certificate of candidacy cannot give rise to a valid candidacy, and much less to valid votes. Much in the same manner as a person who filed no certificate of candidacy at all and a person who filed it out of time, a person whose certificate of candidacy is cancelled or denied due course is no candidate at all. The Court has been consistent on this. In *Fermin*, in comparing a petition under Section 78 with a petition under Section 68, it was written: "While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all." Thus, whether or not his CoC was cancelled before or after the election is immaterial, his votes would still be considered stray as his certificate was void from the beginning.

4. ID.; ID.; ID.; ID.; A CANDIDATE DISQUALIFIED BY FINAL JUDGMENT BEFORE AN ELECTION CANNOT BE VOTED FOR, AND VOTES CAST FOR HIM SHALL NOT BE COUNTED.— Granting arguendo that the petition is

considered as one for disqualification, still, he cannot be voted for and the votes for him cannot be counted if he was disqualified by final judgment before an election. In Section 6 of R.A No. 6646 or The Electoral Reforms Law of 1987, it is clearly provided that a candidate **disqualified by final judgment before** an election cannot be voted for, and votes cast for him shall **not be counted**.

5. ID.; ID.; ID.; ID.; A CANDIDATE WHOSE CERTIFICATE OF CANDIDACY HAS BEEN CANCELLED OR DENIED DUE COURSE CANNOT BE SUBSTITUTED.— Section 77 of the Omnibus Election Code enumerates the instances wherein substitution may be allowed: They are death, disqualification and withdrawal of another. **A candidate whose CoC has been cancelled or denied due course cannot be substituted**. This was the clear ruling in *Miranda v. Abaya*, where it was written: It is at once evident that the importance of a valid certificate of candidacy rests at the very core of the electoral process. It cannot be taken lightly, lest there be anarchy and chaos. Verily, this explains why the law provides for grounds for the **cancellation and denial of due course to certificates of candidacy.** After having considered the importance of a certificate of candidacy, it can be readily understood why in *Bautista* we ruled that a person with a cancelled certificate is no candidate at all. Applying this principle to the case at bar and considering that **Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course.**

6. ID.; ID.; ID.; ID.; A CANDIDATE WHO STATES IN HIS COC THAT HE IS "ELIGIBLE," DESPITE HAVING SERVED THE CONSTITUTIONAL LIMIT OF THREE CONSECUTIVE TERMS, IS CLEARLY COMMITTING A MATERIAL MISREPRESENTATION, WARRANTING NOT ONLY A CANCELLATION OF HIS COC BUT ALSO A PROSCRIPTION AGAINST SUBSTITUTION.— Needless to state, the Comelec considered Ramon as having made *material misrepresentation* as he was manifestly **not eligible**, having served as mayor of Lucena City for three consecutive terms.

It could not have been otherwise. A candidate who states in his CoC that he is "eligible," despite having served the constitutional limit of three consecutive terms, is clearly committing a *material misrepresentation*, warranting not only a cancellation of his CoC but also a proscription against substitution. As held in *Bautista, Miranda, Gador, and Fermin*, a person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all and his votes will be considered as stray as his certificate was void from the beginning. Also in *Cayat,* assuming that this is a disqualification case, the rule is that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. Accordingly, when his CoC was denied due course or cancelled, Ramon was never considered a candidate at all from the beginning.

7. ID.; ID.; ID.; ID.; NO SUBSTITUTION IN CASE OF CANCELLATION OR DENIAL OF DUE COURSE OF A COC.— As Ramon was never a candidate at all, his *substitution by Barbara Ruby was legally ineffectual*. This was the clear ruling in the case of *Miranda v. Abaya*, where it was ruled that "considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, ***there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course***."

8. ID.; ID.; ID.; ID.; THERE BEING NO VALID SUBSTITUTION, THE CANDIDATE WITH THE HIGHEST NUMBER OF VOTES SHOULD BE PROCLAIMED AS THE DULY ELECTED MAYOR.— As there was no valid substitution, Castillo, the candidate with the highest number of votes is entitled to be, and should have been, proclaimed as the duly elected mayor. The reason is that he is the **winner**, not the loser. He was the one who garnered the highest number of votes among the recognized legal candidates who had valid CoCs. Castillo was **not the second placer.** He was the **first placer.** On this score, I have to digress from the line of reasoning of the majority and register my **dissent.** The ruling in *Cayat* is applicable because, although the petition therein was for disqualification, the CoC of Cayat was cancelled. At any rate, even granting that it is not exactly

at all fours, the undisputed fact is that Castillo's petition is one under Section 78. That being the case, the applicable rule is that enunciated in *Bautista, Miranda, Gador, and Fermin* - "**the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all**." The votes cast for him and those for his purported substitute could only be considered as stray and could not be counted.

9. ID.; ID.; ID.; ID.; SECOND PLACER DOCTRINE; NOT APPLICABLE IN CASE AT BAR; THERE IS NO VACANCY IN CASE AT BAR THAT COULD START THE BALL ROLLING FOR THE OPERATION OF THE RULE OF SUCCESSION UNDER RULE 44 OF THE LOCAL GOVERNMENT CODE.— The second placer doctrine applies only in case of a vacancy caused by a disqualification under Section 12 and Section 68 of the OEC and Section 40 of the LGC or *quo warranto* petition under Section 253. When a winning candidate is **disqualified** under Section 12 and Section 68 of the OEC and Section 40 of the LGC or **unseated** under Section 253, a **vacancy is created** and **succession** under Section 44 of the the Local Government Code becomes operable. xxx As stated therein, one of the causes for a vacancy is when a winning candidate fails to qualify or is disqualified. The vacancy is created when a first placer is disqualified *after* the elections. This is very clear because *before* an election, there is no first placer to speak of. As the CoC of Ramon was cancelled, he was not a candidate at all. As he was not a candidate, he could not be considered a first placer. The first placer was the bona fide candidate who garnered the highest number of votes among the legally recognized candidates – Castillo. As Ramon was not a candidate, his purported substitute, Barbara Ruby, was not a bona fide candidate. There is, therefore, **no vacancy**, the only situation which could start the ball rolling for the operation of the rule of succession under Rule 44 of the Local Government Code.

10. ID.; ID.; ID.; ID.; GRANTING ARGUENDO THAT PETITIONER CASTILLO WAS THE SECOND PLACER, THE DOCTRINE WOULD STILL NOT APPLY.— Granting arguendo that Castillo was a second placer, the rejection of the second placer doctrine, first enunciated in *Labo v. Comelec*, would still not apply in this situation. In *Labo* and similarly

situated cases, it was ruled that "the subsequent disqualification of a candidate who obtained the highest number of votes does not entitle the candidate who garnered the second highest number of votes to be declared the winner." The *Labo* ruling, however, is not applicable in the situation at bench for two reasons: ***First,*** Ramon was not a candidate as he was disqualified by final judgment before the elections; and ***Second,*** the situation at bench constitutes a clear exception to the rule as stated in *Labo v. Comelec*, *Cayat v. Comelec* and *Grego v. Comelec*. On the first ground, in *Cayat*, it was ruled that *Labo* is applicable only when there is "no final judgment of disqualification before the elections." Specifically x x x In this case, the cancellation of Ramon's CoC because of his disqualification became final before the May 10, 2010 National and Local Elections.

11. ID.; ID.; ID.; ID.; THE GRATUITOUS PRESUMPTION THAT THE VOTES FOR RAMON Y. TALAGA, JR. WERE CAST IN THE SINCERE BELIEF THAT HE WAS A QUALIFIED CANDIDATE IS NEGATED BY THE ELECTORATE'S AWARENESS THAT RAMON HAD LONG SERVED AS MAYOR OF THE CITY FOR ALMOST A DECADE.— The only other instance that a second placer is allowed to be proclaimed instead of the first placer is when the exception laid down in *Labo v. Comelec*, *Cayat v. Comelec* and *Grego v. Comelec* is applicable. In *Grego*, it was held that "the exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate." In this case, the two assumptions have been satisfied: 1] the cancellation of Ramon's CoC became final before the May 10, 2010 National and Local Elections and 2] the electorate was conscious of the circumstances surrounding Ramon's candidacy and subsequent disqualification. The fact that Ramon was a renowned political figure in Lucena City, owing to his three (3) consecutive terms as mayor therein, cannot be denied. Verily, the people of Lucena City were fully aware of the circumstances of his candidacy, but still voted for Ramon despite his notorious ineligibility for the post. The gratuitous

presumption that the votes for Ramon were cast in the sincere belief that he was a qualified candidate is negated by the electorate's awareness that Ramon had long-served as mayor of the city for almost a decade. This cannot be classified as an innocuous mistake because the proscription was prescribed by the Constitution itself. Indeed, voting for a person widely known as having reached the maximum term of office set by law was a risk which the people complacently took. Unfortunately, they misapplied their franchise and squandered their votes when they supported the purported substitute, Barbara Ruby. Thus, the said votes could only be treated as stray, void, or meaningless.

REYES, *J., separate opinion*:

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (BATAS PAMBANSA BLG. 881); THE PETITION FILED AGAINST RAMON Y. TALAGA, JR., IS ONE FOR DISQUALIFICATION AND NOT FOR CANCELLATION OF CERTICATE OF CANDIDACY.— It is well to remember that Philip Castillo (Castillo) challenged Ramon's candidacy by filing a petition which seeks to deny due course or cancel the COC of the latter on the ground that he had already served three (3) consecutive terms as City Mayor of Lucena. I am of the view that the petition must be treated as one for disqualification since the ground used to support the same, *i.e.* the violation of the three-term limit, is a disqualifying circumstance which prevents a candidate from pursuing his candidacy. Indeed, the violation of the three-term limit is not specifically enumerated as one of the grounds for the disqualification of a candidate under Sections 12 and 68 of the Omnibus Election Code (OEC) or Section 40 of the LGC. Similarly, however, the same ground is not particularly listed as a ground for petition for cancellation of COC under Section 78 of the OEC, in relation to Section 74 thereof.

2. ID.; ID.; ID.; ID.; THE VIOLATION OF THE THREE-TERM LIMIT IS A CIRCUMSTANCE OR CONDITION WHICH BARS A CANDIDATE FROM RUNNING FOR PUBLIC OFFICE; IT IS A DISQUALIFYING CIRCUMSTANCE WHICH IS PROPERLY A GROUND FOR

DISQUALIFICATION.— Basically, the qualifications for running for public office relate to age, residence, citizenship and status as registered voter. These facts are material as they are determinative of the fitness of the candidate for public office. In imposing these qualifications, the law seeks to confine the right to participate in the electoral race to individuals who have reached the age when they can seriously reckon the significance of the responsibilities they wish to assume and who are, at the same time, familiar with the current state and pressing needs of the community. Thus, when a candidate declares in his COC that he is eligible to the office for which he seeks to be elected, he is attesting to the fact that he possesses all the qualifications to run for public office. It must be deemed to refer only to the facts which he expressly states in his COC, and not to all other facts or circumstances which can be conveniently subsumed under the term "eligibility" for the simple reason that they can affect one's status of candidacy. To hold the contrary is to stretch the concept of "eligibility" and, in effect, add a substantial qualification before an individual may be allowed to run for public office. On the other hand, the grounds for disqualification pertain to acts committed by an aspiring local servant, or to a circumstance, status or condition which renders him unfit for public service. Possession of any of the grounds for disqualification forfeits the candidate of the right to participate in the electoral race notwithstanding the fact he has all the qualifications required under the law for those seeking an elective post. The violation of the three-term limit is a circumstance or condition which bars a candidate from running for public office. It is thus a disqualifying circumstance which is properly a ground for a petition for disqualification.

3. ID.; LOCAL GOVERNMENT CODE; VACANCIES AND SUCCESSION; SECTION 44 OF THE LOCAL GOVERNMENT CODE WAS PROPERLY APPLIED IN FILLING THE PERMANENT VACANCY IN THE OFFICE OF THE MAYOR.— I agree with the *ponencia's* conclusion that Roderick Alcala (Alcala), the duly-elected Vice-Mayor should succeed to the office of the mayor. Section 44 of the LGC clearly states:xxx Castillo, the candidate who received the second highest number of votes, cannot be deemed to have won the elections. It is well-settled that the ineligibility of a

candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides. The lone instance when the second placer can take the stead of a disqualified candidate was pronounced in *Labo v. COMELEC*, *viz*: [I]f the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected. Based on the circumstances obtaining in this case, Barbara's disqualification was not notoriously known in Lucena City since the COMELEC was only able to rule on her disqualification after the elections. Thus, during the election day, the electorate reasonably assumed that Barbara is a qualified candidate and that the votes they cast in her favor will not be misapplied. Little did they know that the candidate they voted for will eventually be disqualified and ousted out of office.

ABAD, *J., dissenting opinion*:

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (BATAS PAMBANSA BLG. 881) CERTIFICATE OF CANDIDACY (COC); ALTHOUGH PETITIONER CASTILLO DENOMINATED HIS PETITION AS ONE FOR CANCELLATION OR DENIAL OF DUE COURSE TO RAMON'S COC AND SOUGHT THE SAME RELIEF, IT DID NOT RAISE ANY OF THE SPECIFIED GROUNDS FOR SUCH ACTION UNDER SECTIONS 69 AND 78 OF THE OMNIBUS ELECTION CODE.— There are two remedies available to prevent a candidate from running in an election: a petition for disqualification, and a petition to deny due course to or cancel a COC. The majority holds that, in resolving the case before

it, the COMELEC had in fact denied due course to and cancelled Ramon's COC. I disagree. Although Castillo denominated his petition as one for cancellation or denial of due course to Ramon's COC and sought the same relief, it did not raise any of the specified grounds for such action under Sections 69 and 78 of the Omnibus Election Code. xxx While Castillo denominated his petition as one to deny due course to or cancel Ramon's COC, and prayed for such remedies, the basic rule is that the nature of an action is governed by the allegations in the petition, not by its caption or prayer. We cannot rely simply on the fact that the COMELEC resolution granted the petition without making any qualifications. A closer reading of the resolution will show that Ramon was merely being disqualified for having served three consecutive terms. It made no mention of Ramon's COC as having been cancelled or denied due course, and indeed gave no grounds which would justify such a result. The *ponencia* cites *Miranda v. Abaya* to justify its stand, but fails to note that in *Miranda* the Court found that there was blatant misrepresentation, which is in clear contrast to this case.

2. ID.; ID.; ID.; ID.; ID.; NO LAW MAKES THE EFFECTIVITY OF A SUBSTITUTION HINGE ON PRIOR COMMISSION ON ELECTIONS (COMELEC) APPROVAL.— The Office of the Solicitor General (OSG) joined Alcala and Castillo in claiming that Ruby did not validly substitute Ramon because at the time that she filed her COC, the COMELEC had not yet disqualified Ramon by final judgment as required by Section 77 of the Omnibus Election Code. But Ramon's withdrawal of his motion for reconsideration in the morning of May 4, 2010 rendered the COMELEC First Division's April 19, 2010 resolution final and executory, even without the *En Banc's* formal action. The Court held in *Rodriguez, Jr. v. Aguilar, Sr.* that a motion for reconsideration, once withdrawn, has the effect of canceling such motion as if it were never filed. The consequence of this is that the decision subject of the withdrawn motion for reconsideration *ipso facto* lapses into finality upon the expiration of period for appeal. Thus, in accordance with COMELEC Rules, the April 19, 2010 resolution became final and executory five days from its promulgation

or on April 24, 2010. The May 5, 2010 COMELEC *En Banc* resolution merely confirmed the final and executory nature of the First Division's April 19, 2010 resolution. As correctly observed by Chairman Brillantes in his dissent, the withdrawal's effectivity cannot be made to depend on COMELEC approval because, if such were the case, substitution of candidates may be frustrated by either the commission's delay or inaction. Castillo claims that, for the substitution of a candidate to be effective, the COMELEC must approve the same on or before election day. Here, the COMELEC *En Banc* issued Resolution 8917 which approved Ruby's COC on May 13, 2010 or three days after the elections. But no law makes the effectivity of a substitution hinge on prior COMELEC approval. Indeed, it would be illogical to require such prior approval since the law allows a substitute candidate to file his COC even up to mid-day of election day with any board of election inspectors in the political subdivision where he is a candidate. Surely, this rules out the possibility of securing prior COMELEC approval of the substitution. COMELEC Resolution 8917, which gave due course to Ruby's COC and directed her inclusion in the certified list of candidates, amounted to a mere formality since the substitution took effect when she filed her COC and the required CONA.

3. ID.; ID.; ID.; ID.; ID.; THE OPINION THAT A CANDIDATE WHO HAS ALREADY SERVED THREE CONSECUTIVE TERMS CAN ONLY BE DISQUALIFIED AFTER HE HAS BEEN PROCLAIMED AS THE WINNER FOR THE FOURTH TERM WOULD CAUSE CONFUSION IN THE POLLS AND MAKE A MOCKERY OF THE ELECTION PROCESS.— I would like to voice my concern regarding Justice Arturo D. Brion's view on the applicability of the three-term limit rule as a ground for disqualification. In his separate opinion, Justice Brion opines that a candidate who has already served three consecutive terms can only be disqualified after he has been proclaimed as the winner for a fourth term. His theory is that the Constitution merely prohibits an official from serving more than three consecutive terms; it does not prohibit him from running for a fourth term. Such an interpretation, however, would cause confusion in the polls and make a mockery of the election process. It robs qualified candidates of the

opportunity of being elected in a fair contest among qualified candidates. The candidacy of one who has already served three consecutive terms is worse than that of a nuisance candidate. Election laws should be interpreted in such a way as to best determine the will of the electorate, not to defeat it. The Supreme Court has on occasion upheld the disqualification of candidates who have already served three consecutive terms from running for another. Indeed in *Aldovino*, penned by no other than Justice Brion himself, the dispositive portion read: "The private respondent Wilfredo F. Asilo is declared DISQUALIFIED **to run**, and perforce to serve, as Councilor of Lucena City for a prohibited fourth term." Thus, while Justice Brion likewise concludes that the action before the COMELEC was a petition for disqualification and not for the denial or cancelation of his COC, I cannot entirely agree with his reasoning.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for Barbara Ruby C. Talaga.

Sardillo and Fong Law Office for Roderick Alcala.

Altamira Cas & Collado Law Offices for Philip M. Castillo.

The Solicitor General for public respondent.

Escobido and Pulgar Law Offices for Save Quezon Province Movement.

D E C I S I O N

BERSAMIN, *J.*:

In focus in these consolidated special civil actions are the disqualification of a substitute who was proclaimed the winner of a mayoralty election; and the ascertainment of who should assume the office following the substitute's disqualification.

The consolidated petitions for *certiorari* seek to annul and set aside the *En Banc* Resolution issued on May 20, 2011 in SPC No. 10-024 by the Commission on Elections (COMELEC), the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered:

1. REVERSING and SETTING ASIDE the January 11, 2011 Resolution of the Second Division;

2. GRANTING the petition-in-intervention of Roderick A. Alcala;

3. ANNULLING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefor;

4. Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;

5. In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor as provided under Section 44 of the Local Government Code;

6. DIRECTING the Clerk of Court of the Commission to furnish copies of this Resolution to the Office of the President of the Philippines, the Department of Interior and Local Government, the Department of Finance and the Secretary of the Sangguniang Panglunsod of Lucena City.

Let the Department of Interior and Local Government and the Regional Election Director of Region IV of COMELEC implement this resolution.

SO ORDERED.[1]

Antecedents

On November 26, 2009 and December 1, 2009, Ramon Talaga (Ramon) and Philip M. Castillo (Castillo) respectively filed their certificates of candidacy (CoCs) for the position of Mayor of Lucena City to be contested in the scheduled May 10, 2010 national and local elections.[2] Ramon, the official candidate of the Lakas-Kampi-CMD,[3] declared in his CoC that he was eligible for the office he was seeking to be elected to.

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[1] *Rollo* (G.R. No. 196804), pp. 50-51.

[2] *Id.* at 94, 96.

[3] *Id.* at 221.

Four days later, or on December 5, 2009, Castillo filed with the COMELEC a petition denominated as *In the Matter of the Petition to Deny Due Course to or Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor for Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena*, which was docketed as SPA 09-029 (DC).[4] He alleged therein that Ramon, despite knowing that he had been elected and had served three consecutive terms as Mayor of Lucena City, still filed his CoC for Mayor of Lucena City in the May 10, 2010 national and local elections.

The pertinent portions of Castillo's petition follow:

1. Petitioner is of legal age, Filipino, married, and a resident of Barangay Mayao Crossing, Lucena City but may be served with summons and other processes of this Commission at the address of his counsel at 624 Aurora Blvd., Lucena City 4301;

2. Respondent Ramon Y. Talaga, Jr. is likewise of legal age, married, and a resident of Barangay Ibabang Iyam, Lucena City and with postal address at the Office of the City Mayor, City Hall, Lucena City, where he may be served with summons and other processes of this Commission;

3. Petitioner, the incumbent city vice-mayor of Lucena having been elected during the 2007 local elections, is running for city mayor of Lucena under the Liberal party this coming 10 May 2010 local elections and has filed his certificate of candidacy for city mayor of Lucena;

4. Respondent was successively elected mayor of Lucena City in 2001, 2004, and 2007 local elections based on the records of the Commission on Elections of Lucena City and had fully served the aforesaid three (3) terms without any voluntary and involuntary interruption;

5. Except the preventive suspension imposed upon him from 13 October 2005 to 14 November 2005 and from 4 September 2009 to 30 October 2009 pursuant to Sandiganbayan 4th Division Resolution in Criminal Case No. 27738 dated 3 October 2005, the public service as city mayor of the respondent is continuous and uninterrupted under the existing laws and jurisprudence;

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[4] *Id.* at 88.

6. There is no law nor jurisprudence to justify the filing of the certificate of candidacy of the respondent, hence, such act is outrightly unconstitutional, illegal, and highly immoral;

7. Respondent, knowing well that he was elected for and had fully served three (3) consecutive terms as a city mayor of Lucena, he still filed his Certificate of Candidacy for City Mayor of Lucena for this coming 10 May 2010 national and local elections;

8. Under the Constitution and existing Election Laws, New Local Government Code of the Philippines, and jurisprudence the respondent is no longer entitled and is already disqualified to be a city mayor for the fourth consecutive term;

9. The filing of the respondent for the position of city mayor is highly improper, unlawful and is potentially injurious and prejudicial to taxpayers of the City of Lucena; and

10. It is most respectfully prayed by the petitioner that the respondent be declared disqualified and no longer entitled to run in public office as city mayor of Lucena City based on the existing law and jurisprudence.[5]

The petition prayed for the following reliefs, to wit:

WHEREFORE, premises considered, it is respectfully prayed that **the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same** and that he be **declared as a disqualified candidate** under the existing Election Laws and by the provisions of the New Local Government Code.[6] (Emphasis supplied.)

Ramon countered that the Sandiganbayan had preventively suspended him from office during his second and third terms; and that the three-term limit rule did not then apply to him pursuant to the prevailing jurisprudence[7] to the effect that an involuntary

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[5] *Id.* at 88-91.

[6] *Id.* at 91.

[7] *Montebon v. Commission on Elections,* G.R. No. 180444, April 9, 2008, 551 SCRA 50, 56.; *Lonzanida v. Commission on Elections,* G.R. No. 135150, July 28, 1999, 311 SCRA 602, 613; *Borja, Jr. v. Commission on Elections,* G.R. No. 133495, September 3, 1998, 295 SCRA 157.

separation from office amounted to an interruption of continuity of service for purposes of the application of the three-term limit rule.

In the meantime, on December 23, 2009, the Court promulgated the ruling in *Aldovino, Jr. v. Commission on Elections*,[8] holding that preventive suspension, being a mere temporary incapacity, was not a valid ground for avoiding the effect of the three-term limit rule. Thus, on December 30, 2009, Ramon filed in the COMELEC a Manifestation with Motion to Resolve, taking into account the intervening ruling in *Aldovino.* Relevant portions of his Manifestation with Motion to Resolve are quoted herein, *viz*:

> 4. When respondent filed his certificate of candidacy for the position of Mayor of Lucena City, the rule that '*where the separation from office is caused by reasons beyond the control of the officer – i.e. involuntary – the service of term is deemed interrupted'* has not yet been overturned by the new ruling of the Supreme Court. As a matter of fact, the prevailing rule then of the Honorable Commission in [sic] respect of the three (3)-term limitation was its decision in the case of *Aldovino, et al. vs. Asilo* where it stated:
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> > "Thus, even if respondent was elected during the 2004 elections, which was supposedly his third and final term as city councilor, **the same cannot be treated as a complete service or full term in office since the same was interrupted when he was suspended by the Sandiganbayan Fourth Division.** And the respondent actually heeded the suspension order since he did not receive his salary during the period October 16-31 and November 1-15 by reason of his actual suspension from office. And this was further bolstered by the fact that the DILG issued a Memorandum directing him, among others, to reassume his position." (Emphasis supplied.)
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> 5. Clearly, there was no misrepresentation on the part of respondent as would constitute a ground for the denial of due course to and/or the cancellation of respondent's certificate of candidacy at the time he filed the same. Petitioner's ground for the denial of due course to and/or the cancellation of respondent's certificate of candidacy

[8] G.R. No. 184836, December 23, 2009, 609 SCRA 234, 263-264.

thus has no basis, in fact and in law, as there is no ground to warrant such relief under the Omnibus Election Code and/or its implementing laws.

6. Pursuant, however, to the new ruling of the Supreme Court in respect of the issue on the three (3)-term limitation, respondent acknowledges that he is now DISQUALIFIED to run for the position of Mayor of Lucena City having served three (3) (albeit interrupted) terms as Mayor of Lucena City prior to the filing of his certificate of candidacy for the 2010 elections.

7. In view of the foregoing premises and new jurisprudence on the matter, respondent respectfully submits the present case for decision declaring him as DISQUALIFIED to run for the position of Mayor of Lucena City.[9]

Notwithstanding his express recognition of his disqualification to run as Mayor of Lucena City in the May 10, 2010 national and local elections, Ramon did not withdraw his CoC.

Acting on Ramon's Manifestation with Motion to Resolve, the COMELEC First Division issued a Resolution on April 19, 2010,[10] disposing as follows:

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. Accordingly, Ramon Y. Talaga, Jr. is hereby declared **DISQUALIFIED** to run for Mayor of Lucena City for the 10 May 2010 National and Local Elections.

SO ORDERED.

Initially, Ramon filed his Verified Motion for Reconsideration against the April 19, 2010 Resolution of the COMELEC First Division.[11] Later on, however, he filed at 9:00 a.m. of May 4, 2010 an *Ex-parte* Manifestation of Withdrawal of the Pending Motion for Reconsideration.[12] At 4:30 p.m. on the same date, Barbara Ruby filed her own CoC for Mayor of Lucena City in

[9] *Rollo* (G.R. No. 196804), pp. 99-100.

[10] *Id.* at 102-105.

[11] *Id.* at 106-125.

[12] *Id.* at 126-129.

substitution of Ramon, attaching thereto the Certificate of Nomination and Acceptance (CONA) issued by Lakas-Kampi-CMD, the party that had nominated Ramon.[13]

On May 5, 2010, the COMELEC *En Banc*, acting on Ramon's *Ex parte* Manifestation of Withdrawal, declared the COMELEC First Division's Resolution dated April 19, 2010 final and executory.[14]

On election day on May 10, 2010, the name of Ramon remained printed on the ballots but the votes cast in his favor were counted in favor of Barbara Ruby as his substitute candidate, resulting in Barbara Ruby being ultimately credited with 44,099 votes as against Castillo's 39,615 votes.[15]

Castillo promptly filed a petition in the City Board of Canvassers (CBOC) seeking the suspension of Barbara Ruby's proclamation.[16]

It was only on May 13, 2010 when the COMELEC *En Banc*, upon the recommendation of its Law Department,[17] gave due course to Barbara Ruby's CoC and CONA through Resolution No. 8917, thereby including her in the certified list of candidates.[18] Consequently, the CBOC proclaimed Barbara Ruby as the newly-elected Mayor of Lucena City.[19]

On May 20, 2010, Castillo filed a Petition for Annulment of Proclamation with the COMELEC,[20] docketed as SPC 10-024. He alleged that Barbara Ruby could not substitute Ramon because his CoC had been cancelled and denied due course; and Barbara

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[13] *Id.* at 130-131.

[14] *Id.* at 133-134.

[15] *Id.* at 140.

[16] *Id.* at 135-139.

[17] *Id.* at 179.

[18] *Id.* at 142-144

[19] *Id.* at 145.

[20] *Id.* at 185-217.

Ruby could not be considered a candidate because the COMELEC *En Banc* had approved her substitution three days after the elections; hence, the votes cast for Ramon should be considered stray.

In her Comment on the Petition for Annulment of Proclamation,[21] Barbara Ruby maintained the validity of her substitution. She countered that the COMELEC *En Banc* did not deny due course to or cancel Ramon's COC, despite a declaration of his disqualification, because there was no finding that he had committed misrepresentation, the ground for the denial of due course to or cancellation of his COC. She prayed that with her valid substitution, Section 12 of Republic Act No. 9006[22] applied, based on which the votes cast for Ramon were properly counted in her favor.

On July 26, 2010, Roderick Alcala (Alcala), the duly-elected Vice Mayor of Lucena City, sought to intervene,[23] positing that he should assume the post of Mayor because Barbara Ruby's substitution had been invalid and Castillo had clearly lost the elections.

On January 11, 2011, the COMELEC Second Division dismissed Castillo's petition and Alcala's petition-in-intervention,[24] holding:

> In the present case, Castillo was notified of Resolution 8917 on May 13, 2010 as it was the basis for the proclamation of Ruby on that date. He, however, failed to file any action within the prescribed period either in the Commission or the Supreme Court assailing the said resolution. Thus, the said resolution has become final and executory. It cannot anymore be altered or reversed.

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[21] *Id.* at 283-298.

[22] Section 12. *Substitution of candidates.* – In case of valid substitutions after the official ballots have been printed, the votes cast for the substituted candidates shall be considered votes for the substitutes.

[23] *Rollo* (G.R. No. 196804), pp. 305-320.

[24] *Id.* at 79.

xxx xxx xxx

x x x. A close perusal of the petition filed by Castillo in SPA 10-029 (Dc) shows that it was actually for the disqualification of Ramon for having served three consecutive terms, which is a ground for his disqualification under the Constitution in relation to Section 4(b)3 of Resolution 8696. There was no mention therein that Ramon has committed material representation that would be a ground for the cancellation or denial of due course to the CoC of Ramon under Section 78 of the Omnibus Election Code. The First Division, in fact, treated the petition as one for disqualification as gleaned from the body of the resolution and its dispositive portion quoted above. This treatment of the First Division of the petition as one for disqualification only is affirmed by the fact that its members signed Resolution No. 8917 where it was clearly stated that the First Division only disqualified Ramon.

Having been disqualified only, the doctrine laid down in *Miranda v. Abaya* is not applicable. Ramon was rightly substituted by Ruby. As such, the votes for Ramon cannot be considered as stray votes but should be counted in favor of Ruby since the substituted and the substitute carry the same surname – Talaga, as provided in Section 12 of Republic Act No. 9006.

xxx xxx xxx

Moreover, there is no provision in the Omnibus Election Code or any election laws for that matter which requires that the substitution and the Certificate of Candidacy of the substitute should be approved and given due course first by the Commission or the Law Department before it can be considered as effective. All that Section 77 of the Omnibus Election Code as implemented by Section 13 of Resolution No. 8678 requires is that it should be filed with the proper office. The respondent is correct when she argued that in fact even the BEI can receive a CoC of a substitute candidate in case the cause for the substitution happened between the day before the election and mid-day of election day. Thus, even if the approval of the substitution was made after the election, the substitution became effective on the date of the filing of the CoC with the Certificate of Nomination and Acceptance.

There being no irregularity in the substitution by Ruby of Ramon as candidate for mayor of Lucena City, the counting of the votes of

Ramon in favor of Ruby is proper. The proclamation, thus, of Ruby as mayor elect of Lucena City is in order. Hence, we find no cogent reason to annul the proclamation of respondent Barbara Ruby C. Talaga as the duly elected Mayor of the City of Lucena after the elections conducted on May 10, 2010.[25]

Acting on Castillo and Alcala's respective motions for reconsideration, the COMELEC *En Banc* issued the assailed Resolution dated May 20, 2011 reversing the COMELEC Second Division's ruling.[26] Pointing out that: (*a*) Resolution No. 8917 did not attain finality for being issued without a hearing as a mere incident of the COMELEC's ministerial duty to receive the COCs of substitute candidates; (*b*) Resolution No. 8917 was based on the wrong facts; and (*c*) Ramon's disqualification was resolved with finality only on May 5, 2010, the COMELEC *En Banc* concluded that Barbara Ruby could not have properly substituted Ramon but had simply become an additional candidate who had filed her COC out of time; and held that Vice Mayor Alcala should succeed to the position pursuant to Section 44 of the Local Government Code (LGC).[27]

Issues

The core issue involves the validity of the substitution by Barbara Ruby as candidate for the position of Mayor of Lucena City in lieu of Ramon, her husband.

Ancillary to the core issue is the determination of who among the contending parties should assume the contested elective position.

Ruling

The petitions lack merit.

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[25] *Id.* at 75-78.

[26] *Id.* at 50-51.

[27] Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x

1.
Existence of a valid CoC is a condition *sine qua non* for a valid substitution

The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the *Omnibus Election Code*, to wit:

> Section 73. *Certificate of candidacy* — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

Section 74 of the *Omnibus Election Code* specifies the contents of a COC, *viz*:

> Section 74. *Contents of certificate of candidacy.*—**The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office**; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. x x x

The evident purposes of the requirement for the filing of CoCs and in fixing the time limit for filing them are, namely: (*a*) to enable the voters to know, at least 60 days prior to the regular election, the candidates from among whom they are to make the choice; and (*b*) to avoid confusion and inconvenience in the tabulation of the votes cast. If the law does not confine to the duly-registered candidates the choice by the voters, there may be as many persons voted for as there are voters, and votes may be cast even for unknown or fictitious persons as a mark

to identify the votes in favor of a candidate for another office in the same election.[28] Moreover, according to *Sinaca v. Mula*,[29] the CoC is:

> x x x in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Accordingly, a person's declaration of his intention to run for public office and his affirmation that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the person making the declaration a valid or official candidate.

There are two remedies available to prevent a candidate from running in an electoral race. One is through a petition for disqualification and the other through a petition to deny due course to or cancel a certificate of candidacy. The Court differentiated the two remedies in *Fermin v. Commission on Elections*,[30] thuswise:

> x x x [A] petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.[31]

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[28] *Miranda v. Abaya,* G.R. No. 136351, July 28, 1999, 311 SCRA 617, 625.

[29] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.

[30] G.R. No. 179695, December 18, 2008, 574 SCRA 782.

[31] *Id.* at 794-796.

Inasmuch as the grounds for disqualification under Section 68 of the *Omnibus Election Code* (*i.e.*, prohibited acts of candidates, and the fact of a candidate's permanent residency in another country when that fact affects the residency requirement of a candidate) are separate and distinct from the grounds for the cancellation of or denying due course to a COC (*i.e.*, nuisance candidates under Section 69 of the *Omnibus Election Code*; and material misrepresentation under Section 78 of the *Omnibus Election Code*), the Court has recognized in *Miranda v. Abaya*[32] that the following circumstances may result from the granting of the petitions, to wit:

(1) A candidate may not be qualified to run for election but may have filed a valid CoC;

(2) A candidate may not be qualified and at the same time may not have filed a valid CoC; and

(3) A candidate may be qualified but his CoC may be denied due course or cancelled.

In the event that a candidate is disqualified to run for a public office, or dies, or withdraws his CoC before the elections, Section 77 of the *Omnibus Election Code* provides the option of substitution, to wit:

Section 77. *Candidates in case of death, disqualification or withdrawal.* — If after the last day for the filing of certificates of candidacy, **an official candidate** of a registered or accredited political party **dies, withdraws or is disqualified for any cause**, **only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified.** The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates

[32] *Supra* note 28, at 627.

to be voted for by the entire electorate of the country, with the Commission.

Nonetheless, whether the ground for substitution is death, withdrawal or disqualification of a candidate, Section 77 of the *Omnibus Election Code* unequivocally states that only an official candidate of a registered or accredited party may be substituted.

Considering that a cancelled CoC does not give rise to a valid candidacy,[33] there can be no valid substitution of the candidate under Section 77 of the *Omnibus Election Code*. It should be clear, too, that a candidate who does not file a valid CoC may not be validly substituted, because a person without a valid CoC is not considered a candidate in much the same way as any person who has not filed a CoC is not at all a candidate.[34]

Likewise, a candidate who has not withdrawn his CoC in accordance with Section 73 of the *Omnibus Election Code* may not be substituted. A withdrawal of candidacy can only give effect to a substitution if the substitute candidate submits prior to the election a sworn CoC as required by Section 73 of the *Omnibus Election Code*.[35]

2.
Declaration of Ramon's disqualification rendered his CoC invalid; hence, he was not a valid candidate to be properly substituted

In the light of the foregoing rules on the CoC, the Court concurs with the conclusion of the COMELEC *En Banc* that the Castillo petition in SPA 09-029 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the *Omnibus Election Code*.

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[33] *Bautista v. Commission on Elections*, G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493.

[34] *Miranda v. Abaya, supra* note 28, at 626-627.

[35] *Luna v. Commission on Elections*, G.R. No. 165983, April 24, 2007, 522 SCRA 107, 115.

In describing the nature of a Section 78 petition, the Court said in *Fermin v. Commission on Elections*:[36]

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for*. It is noted that the candidate states in his/her CoC that he/she is **eligible** for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office**. **If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.** Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.

Castillo's petition contained essential allegations pertaining to a Section 78 petition, namely: (*a*) Ramon made a false representation in his CoC; (*b*) the false representation referred to a material matter that would affect the substantive right of Ramon as candidate (that is, the right to run for the election for which he filed his certificate); and (*c*) Ramon made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact that would otherwise render him ineligible.[37] The petition expressly challenged Ramon's eligibility for public office based on the prohibition stated in the Constitution and the *Local Government Code* against any person serving three consecutive terms, and specifically prayed that "the Certificate of Candidacy filed by the respondent [Ramon]

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[36] *Supra* note 30, at 792-794 (bold emphases and underscoring are part of the original text).

[37] *Salcedo II v. Commission on Elections*, G.R. No. 135886, August 16, 1999, 312 SCRA 447, 455.

be denied due course to or cancel the same and that he be declared as a disqualified candidate."[38]

The denial of due course to or the cancellation of the CoC under Section 78 involves a finding not only that a person lacks a qualification but also that he made a material representation that is false.[39] A petition for the denial of due course to or cancellation of CoC that is short of the requirements will not be granted. In *Mitra v. Commission on Elections*,[40] the Court stressed that there must also be a deliberate attempt to mislead, thus:

> The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.

It is underscored, however, that a Section 78 petition should not be interchanged or confused with a Section 68 petition. The remedies under the two sections are different, for they are based

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[38] *Rollo* (G.R. No. 196804), p. 91.

[39] Section 78. *Petition to deny due course to or cancel a certificate of candidacy*. — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[40] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

on different grounds, and can result in different eventualities.[41] A person who is disqualified under Section 68 is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered as a candidate at all because his status is that of a person who has not filed a CoC.[42] *Miranda v. Abaya*[43] has clarified that a candidate who is disqualified under Section 68 can be validly substituted pursuant to Section 77 because he remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he is not considered a candidate.

To be sure, the cause of Ramon's ineligibility (*i.e.*, the three-term limit) is enforced both by the Constitution and statutory law. Article X, Section 8 of the 1987 Constitution provides:

> Section 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and **no such official shall serve for more than three consecutive terms.** Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Section 43 of the *Local Government Code* reiterates the constitutional three-term limit for all elective local officials, to wit:

> Section 43. *Term of Office.* – (a) x x x
>
> (b) **No local elective official shall serve for more than three (3) consecutive terms in the same position.** Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected. (Emphasis supplied.)

The objective of imposing the three-term limit rule was "to avoid the evil of a single person accumulating excessive power

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[41] *Fermin v. Commission on Elections, supra* note 30, at 794.

[42] *Id.* at 796.

[43] *Supra* note 28, at 627.

over a particular territorial jurisdiction as a result of a prolonged stay in the same office." The Court underscored this objective in *Aldovino, Jr. v. Commission on Elections*,[44] stating:

> x x x [T]he framers of the Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. To allow petitioner Latasa to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of the City of Digos, petitioner would then be possibly holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen *consecutive* years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it.

To accord with the constitutional and statutory proscriptions, Ramon was absolutely precluded from asserting an eligibility to run as Mayor of Lucena City for the fourth consecutive term. Resultantly, his CoC was invalid and ineffectual *ab initio* for containing the incurable defect consisting in his false declaration of his eligibility to run. The invalidity and inefficacy of his CoC made his situation even worse than that of a nuisance candidate because the nuisance candidate may remain eligible despite cancellation of his CoC or despite the denial of due course to the CoC pursuant to Section 69 of the *Omnibus Election Code*.[45]

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[44] *Supra* note 8, at 258; citing *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601.

[45] Section 69. *Nuisance candidates.* — The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

Ramon himself specifically admitted his ineligibility when he filed his Manifestation with Motion to Resolve on December 30, 2009 in the COMELEC.[46] That sufficed to render his CoC invalid, considering that for all intents and purposes the COMELEC's declaration of his disqualification had the effect of announcing that he was no candidate at all.

We stress that a non-candidate like Ramon had no right to pass on to his substitute. As *Miranda v. Abaya* aptly put it:

> **Even on the most basic and fundamental principles, it is readily understood that the concept of a substitute presupposes the existence of the person to be substituted, for how can a person take the place of somebody who does not exist or who never was. The Court has no other choice but to rule that in all the instances enumerated in Section 77 of the Omnibus Election Code, the existence of a *valid* certificate of candidacy seasonably filed is a requisite *sine qua non*.**
>
> All told, a disqualified candidate may only be substituted if he had a ***valid*** certificate of candidacy in the first place because, if the disqualified candidate did not have a valid and seasonably filed certificate of candidacy, he is and was not a candidate at all. If a person was not a candidate, he cannot be substituted under Section 77 of the Code. Besides, if we were to allow the so-called "substitute" to file a "new" and "original" certificate of candidacy beyond the period for the filing thereof, it would be a crystalline case of unequal protection of the law, an act abhorred by our Constitution.[47] (Emphasis supplied)

3.
Granting without any qualification of petition in SPA No. 09-029(DC) manifested COMELEC's intention to declare Ramon disqualified and to cancel his CoC

That the COMELEC made no express finding that Ramon committed any deliberate misrepresentation in his CoC was of little consequence in the determination of whether his CoC should be deemed cancelled or not.

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[46] *Rollo* (G.R. No. 196804), pp. 98-101.

[47] *Supra* note 28, at 627.

In *Miranda v. Abaya*,[48] the specific relief that the petition prayed for was that the CoC "be not given due course and/or cancelled." The COMELEC categorically granted "the petition" and then pronounced — in apparent contradiction — that Joel *Pempe* Miranda was "disqualified." The Court held that the COMELEC, by granting the petition without any qualification, disqualified Joel *Pempe* Miranda and at the same time cancelled Jose *Pempe* Miranda's CoC. The Court explained:

> The question to settle next is whether or not aside from Joel "Pempe" Miranda being disqualified by the Comelec in its May 5, 1998 resolution, his certificate of candidacy had likewise been denied due course and cancelled.
>
> The Court rules that it was.
>
> Private respondent's petition in SPA No. 98-019 specifically prayed for the following:
>
> > WHEREFORE, it is respectfully prayed that the Certificate of Candidacy filed by respondent for the position of Mayor for the City of Santiago *be not given due course and/or cancelled.*
> >
> > Other reliefs just and equitable in the premises are likewise prayed for.
> >
> > (*Rollo*, p. 31; Emphasis ours.)
>
> In resolving the petition filed by private respondent specifying a very particular relief, the Comelec ruled favorably in the following manner:
>
> > WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) *GRANTS the Petition.* Respondent JOSE "Pempe" MIRANDA is hereby DISQUALIFIED from running for the position of mayor of Santiago City, Isabela, in the May 11, 1998 national and local elections.
> >
> > SO ORDERED.
> >
> > (p. 43, *Rollo*; Emphasis ours.)

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[48] *Id.*

From a plain reading of the dispositive portion of the Comelec resolution of May 5, 1998 in SPA No. 98-019, it is sufficiently clear that the prayer specifically and particularly sought in the petition was GRANTED, there being no qualification on the matter whatsoever. The disqualification was simply ruled over and above the granting of the specific prayer for denial of due course and cancellation of the certificate of candidacy. x x x.[49]

xxx xxx xxx

x x x. There is no dispute that the complaint or petition filed by private respondent in SPA No. 98-019 is one to deny due course and to cancel the certificate of candidacy of Jose "Pempe" Miranda (*Rollo*, pp. 26-31). There is likewise no question that the said petition was GRANTED without any qualification whatsoever. It is rather clear, therefore, that whether or not the Comelec granted any further relief in SPA No. 98-019 by disqualifying the candidate, *the fact remains that the said petition was granted and that the certificate of candidacy of Jose "Pempe" Miranda was denied due course and cancelled***.** x x x.[50]

The crucial point of *Miranda v. Abaya* was that the COMELEC actually granted the particular relief of cancelling or denying due course to the CoC prayed for in the petition by not subjecting that relief to any qualification.

Miranda v. Abaya applies herein. Although Castillo's petition in SPA No. 09-029 (DC) specifically sought *both* the disqualification of Ramon *and* the denial of due course to or cancellation of his CoC, the COMELEC categorically stated in the Resolution dated April 19, 2010 that it was granting the petition. Despite the COMELEC making no finding of material misrepresentation on the part of Ramon, its granting of Castillo's petition without express qualifications manifested that the COMELEC had cancelled Ramon's CoC based on his apparent ineligibility. The Resolution dated April 19, 2010 became final and executory because Castillo did not move for its

[49] *Id.* at 628.

[50] *Id.* at 632.

reconsideration, and because Ramon later withdrew his motion for reconsideration filed in relation to it.

4.
Elected Vice Mayor must succeed and assume the position of Mayor due to a permanent vacancy in the office

On the issue of who should assume the office of Mayor of Lucena City, Castillo submits that the doctrine on the rejection of the second-placer espoused in *Labo, Jr. v. Commission on Elections*[51] should not apply to him because Ramon's disqualification became final prior to the elections.[52] Instead, he cites *Cayat v. Commission on Elections*,[53] where the Court said:

> x x x [I]n *Labo* there was no final judgment of disqualification before the elections. The doctrine on the rejection of the second placer was applied in *Labo* and a host of other cases because the judgment declaring the candidate's disqualification in *Labo* and the other cases had not become final before the elections. To repeat, *Labo* and the other cases applying the doctrine on the rejection of the second placer have one common essential condition — the disqualification of the candidate had not become final before the elections. This essential condition does not exist in the present case.
>
> Thus, in *Labo*, Labo's disqualification became final only on 14 May 1992, three days after the 11 May 1992 elections. On election day itself, Labo was still legally a candidate. In the present case, Cayat was disqualified by final judgment 23 days before the 10 May 2004 elections. On election day, Cayat was no longer legally a candidate for mayor. In short, Cayat's candidacy for Mayor of Buguias, Benguet was legally non-existent in the 10 May 2004 elections.
>
> The law expressly declares that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This is a mandatory provision of law. Section 6 of Republic Act No. 6646, The Electoral Reforms Law of 1987, states:

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[51] G.R. No. 105111 & 105384, July 3, 1992, 211 SCRA 297.

[52] *Rollo* (G.R. No. 197015), pp. 18-19.

[53] G.R. No. 163776, April 24, 2007, 522 SCRA 23.

> Sec. 6. Effect of Disqualification Case.— Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis added)

Section 6 of the Electoral Reforms Law of 1987 covers two situations. The first is when the disqualification becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final after the elections, which is the situation covered in the second sentence of Section 6.

The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 votes cast in Cayat's favor are stray. Cayat was never a candidate in the 10 May 2004 elections. Palileng's proclamation is proper because he was the sole and only candidate, second to none.[54]

Relying on the pronouncement in *Cayat*, Castillo asserts that he was entitled to assume the position of Mayor of Lucena City for having obtained the highest number of votes among the remaining qualified candidates.

It would seem, then, that the date of the finality of the COMELEC resolution declaring Ramon disqualified is decisive. According to Section 10, Rule 19 of the COMELEC's Resolution No. 8804,[55] a decision or resolution of a Division becomes final

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[54] *Id.* at 44-45.

[55] *In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections* (Promulgated on March 22, 2010).

and executory after the lapse of five days following its promulgation unless a motion for reconsideration is seasonably filed. Under Section 8, Rule 20 of Resolution No. 8804, the decision of the COMELEC *En Banc* becomes final and executory five days after its promulgation and receipt of notice by the parties.

The COMELEC First Division declared Ramon disqualified through its Resolution dated April 19, 2010, the copy of which Ramon received on the same date.[56] Ramon filed a motion for reconsideration on April 21, 2010[57] in accordance with Section 7 of COMELEC Resolution No. 8696,[58] but withdrew the motion on May 4, 2010,[59] ostensibly to allow his substitution by Barbara Ruby. On his part, Castillo did not file any motion for reconsideration. Such circumstances indicated that there was no more pending matter that could have effectively suspended the finality of the ruling in due course. Hence, the Resolution dated April 19, 2010 could be said to have attained finality upon the lapse of five days from its promulgation and receipt of it by the parties. This happened probably on April 24, 2010. Despite such finality, the COMELEC *En Banc* continued to act on the withdrawal by Ramon of his motion for reconsideration through the May 5, 2010 Resolution declaring the April 19, 2010 Resolution of the COMELEC First Division final and executory.

Yet, we cannot agree with Castillo's assertion that with Ramon's disqualification becoming final *prior to* the May 10, 2010 elections, the ruling in *Cayat* was applicable in his favor. Barbara Ruby's filing of her CoC in substitution of Ramon significantly differentiated this case from the factual

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[56] *Rollo* (G.R. No. 196804), p. 106.

[57] *Id.*

[58] Section 7. Motion for reconsideration. - A motion to reconsider a Decision, Resolution, Order or Ruling of a Division shall be filed within three (3) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the Decision, Resolution, Order or Ruling. x x x

[59] *Rollo* (G.R. No. 196804), pp. 126-129.

circumstances obtaining in *Cayat*. Rev. Fr. Nardo B. Cayat, the petitioner in *Cayat*, was disqualified on April 17, 2004, and his disqualification became final *before* the May 10, 2004 elections. Considering that no substitution of Cayat was made, Thomas R. Palileng, Sr., his rival, remained the *only* candidate for the mayoralty post in Buguias, Benguet. In contrast, after Barbara Ruby substituted Ramon, the May 10, 2010 elections proceeded with her being regarded by the electorate of Lucena City as a *bona fide* candidate. To the electorate, she became a contender for the same position vied for by Castillo, such that she stood on the same footing as Castillo. Such standing as a candidate negated Castillo's claim of being the candidate who obtained the highest number of votes, and of being consequently entitled to assume the office of Mayor.

Indeed, Castillo could not assume the office for he was only a second placer. *Labo, Jr.* should be applied. There, the Court emphasized that the candidate obtaining the second highest number of votes for the contested office could not assume the office despite the disqualification of the first placer because the second placer was "not the choice of the sovereign will."[60] Surely, the Court explained, a minority or defeated candidate could not be deemed elected to the office.[61] There was to be no question that the second placer lost in the election, was repudiated by the electorate, and could not assume the vacated position.[62] No law imposed upon and compelled the people of Lucena City to accept a loser to be their political leader or their representative.[63]

The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites

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[60] *Supra* note 51, at 309.

[61] *Id.* at 312.

[62] *Id.* at 309-310; citing *Abella v. Commission on Elections*, 201 SCRA 253.

[63] *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 802; citing *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 635.

concur, namely: (*a*) the candidate who obtained the highest number of votes is disqualified; and (*b*) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of the votes in favor of the ineligible candidate.[64] Under this sole exception, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate with the second highest number of votes may be deemed elected.[65] But the exception did not apply in favor of Castillo simply because the second element was absent. The electorate of Lucena City were not the least aware of the fact of Barbara Ruby's ineligibility as the substitute. In fact, the COMELEC *En Banc* issued the Resolution finding her substitution invalid only on May 20, 2011, or a full year *after* the elections.

On the other hand, the COMELEC *En Banc* properly disqualified Barbara Ruby from assuming the position of Mayor of Lucena City. To begin with, there was no valid candidate for her to substitute due to Ramon's ineligibility. Also, Ramon did not voluntarily withdraw his CoC before the elections in accordance with Section 73 of the *Omnibus Election Code*. Lastly, she was not an additional candidate for the position of Mayor of Lucena City because her filing of her CoC on May 4, 2010 was beyond the period fixed by law. Indeed, she was not, in law and in fact, a candidate.[66]

A permanent vacancy in the office of Mayor of Lucena City thus resulted, and such vacancy should be filled pursuant to the law on succession defined in Section 44 of the LGC, to wit:[67]

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[64] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

[65] *Labo, Jr. v. Commission on Elections, supra* note 51, at 312.

[66] *Gador v. Commission on Elections*, G.R. No. 52365, January 22, 1980, 95 SCRA 431.

[67] Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* – If a permanent vacancy occurs

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor*. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x

WHEREFORE, the Court **DISMISSES** the petitions in these consolidated cases; **AFFIRMS** the Resolution issued on May 20, 2011 by the COMELEC *En Banc*; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Peralta, Villarama, Jr., and *Perez, JJ.,* concur.

Velasco, Jr., J., see concurring opinion.

Del Castillo, J., the *C.J.* certifies that *J.* del Castillo concurred with the majority opinion of *J.* Bersamin.

Reyes, J., concurs with Justice Bersamin insofar as the conclusion of his decision.

Leonardo-de Castro, J., joins the concurring and dissenting opinion of Justice Mendoza and in the result of the concurring & dissenting opinion of Justice Brion.

Mendoza, J., see concurring and dissenting opinion.

Sereno, C.J., joins the dissent of *J.* Abad.

Carpio, J., joins the dissent of *J.* Abad. Ramon Talaga's CoC was valid when filed.

Brion and *Abad, JJ.,* see dissenting opinion.

Perlas-Bernabe, J., joins the dissent of *J.* Mendoza.

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in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x

CONCURRING OPINION

VELASCO, JR., *J.*:

In view of the opinions submitted, it is my view that there was *no valid substitution* of candidates for the mayoralty position in Lucena City between Ramon Talaga and his wife, Ruby Talaga. I likewise opine that considering the judgments on the *disqualification* of Ruben Talaga and on the validity of the *substitution became final only after the May 10, 2010 elections*, the *laws of succession in case of permanent vacancies* under *Section 44 of the Local Government Code* should apply.

First, *Section 77 of the Omnibus Election Code*[1] is clear that before a substitution of candidates for an elective position could be validly done, the official candidate of a registered or accredited political party should *die*, *withdraw* or must be *disqualified for any cause*. In the present case, the records will show that at the time Ruby C. Talaga filed her Certificate of Candidacy, or May 4, 2010, **there was still no ground for substitution** since the *judgment on Ramon Talaga's disqualification had not yet attained finality*.

Although the Decision of the Comelec was promulgated on April 19, 2010, the *five-day period for its execution or implementation was suspended* when Ramon Talaga filed a Motion for Reconsideration on April 21, 2010. This is clear under Section 2 of Rule 19 of the Comelec Rules of Procedure, which provides:

Section 2. *Period for Filing Motions for Reconsideration.* - A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof.

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[1] BATAS PAMBANSA BILANG 881, Section 77, *Candidates in case of death, disqualification or withdrawal of another*. - If after the last day for the filing of certificates of candidacy, ***an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause***, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. x x x

***Such motion**, **if not proforma, suspends the execution or implementation of the decision, resolution, order or ruling**.* (Emphasis supplied)

It also appears that on the morning of May 4, 2012, or before Ruby Talaga filed her Certificate of Candidacy, Ramon Talaga filed a manifestation to withdraw his Motion for Reconsideration. However, this manifestation does not have any effect in determining the finality of an action for disqualification of a candidate. It is significant to note that under the Comelec Rules of Procedure, an action for disqualification of candidate is a Special Case or Special Action.[2] In relation thereto, Section 13 of Rule 18 of same rules provide that the finality of a judgment in a Special Action is based on the **date of promulgation**, *to wit*:

Section 13. *Finality of Decisions or Resolutions.* –

(a) In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission *en banc* shall become final and executory after thirty (30) days from its promulgation.

(b) In ***Special Actions and Special Cases*** a decision or resolutions of the Commission *en banc* shall become final and executory ***after five (5) days from its promulgation*** unless restrained by the Supreme Court.

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become **final and executory after the lapse of five (5) days in Special actions and Special cases** and after fifteen (15) days in all other actions or proceedings, following its promulgation. (Emphasis supplied)

Notably, the finality of the judgment of the Comelec is reckoned from the *date of the promulgation* and not from the date of receipt of the resolution, decision or order – which is the standard rule in non-election related cases. To my mind, the rationale for such requirement would manifest by relating the

[2] Part V, Title B, Rule 23 of the COMELEC RULES OF PROCEDURE.

aforementioned provision with Section 5 of Rule 18 of the same Rules, which provides:

> **Section 5.** *Promulgation*. — The **promulgation of a decision or resolution** of the Commission or a Division shall be made on a **date previously fixed**, of which **notice shall be served in advance upon the parties** or their attorneys personally or by registered mail or by telegram. (Emphasis supplied)

It appears that because of the requirements of 'advance notice' and a 'scheduled date' of promulgation, there is an assurance that the parties to an election case would be present on the date of promulgation. Hence, the actual promulgation of a Comelec decision, order or resolution constitutes an actual notice to the parties.

In the present case, the five-day period in attaining finality judgment could have been reckoned from May 5, 2010 or the day when the Comelec *En Banc* issued an order dismissing the Motion for Reconsideration filed by Ramon Talaga. However, the records will show that the *parties were not notified of the promulgation of the said May 5, 2010 Decision.* In here, the notice of the May 5, 2010 Order of the Comelec *En Banc* was made only on the next day, or May 6, 2010 and was received by the parties or their counsels only on May 7, 2012 and May 13, 2010.[3] Therefore, when the parties were not notified of the promulgation of the May 5, 2010 Order of the Comelec *En Banc* as required by the Comelec Rules, the judgment on Ramon Talaga's disqualification could not be considered as final and executory as to them. Furthermore, even assuming arguendo the May 6, 2010 Notice was valid, the judgment would attain finality only after five-days from receipt thereof. Nevertheless, whether it was received on May 7 or May 13, the judgment on Ramon Talaga's disqualification became final and executory after the May 10, 2010 Elections.

Considering further that Ramon Talaga's disqualification became final after the May 10, 2010 Elections, it was only

[3] *Rollo*, p. 132.

during that time that office of the Mayor of Lucena City became vacant. Since there is no question that Ramon's disqualification to serve as City Mayor is permanent in character, the incumbent Vice-Mayor should serve as Mayor pursuant to Section 44 of the Local Government Code, which provides:

> **Section 44.** *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* - If a **permanent vacancy** occurs in the office of the governor or **mayor**, the vice-governor or **vice-mayor concerned shall become the** governor or **mayor**.
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> xxx xxx xxx
>
> For purposes of this Chapter, **a permanent vacancy arises when an elective local official** fills a higher vacant office, refuses to assume office, **fails to qualify**, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.
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> xxx xxx xxx (Emphasis supplied)

In view of the foregoing, I concur with the *ponencia* of Justice Lucas P. Bersamin that it is the incumbent Vice-Mayor, Roderick Alcala, who should be the Mayor of Lucena City.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I **concur** with the *ponencia* in dismissing Mayor Barbara Ruby Talaga's petition against the assailed Commission on Elections (*COMELEC*) *en banc* Resolution of May 20, 2011 in SPC No. 10-024; but I **dissent** with the *ponencia*'s reasoning that the cause of invalidity of Ruby's substitution of Ramon Talaga is the cancellation of Ramon's certificate of candidacy (*CoC*). I **dissent,** too, with the *ponencia*'s ruling that it is the Vice-Mayor who should be seated as Mayor, applying the rules of succession under the Local Government Code (*LGC*).

Ramon and Philip Castillo were the original candidates for the mayoralty post in Lucena City for the May 10, 2010

elections.[1] Soon after they filed their CoCs, Castillo filed a petition to "deny due course to or to cancel the certificate of candidacy" of Ramon on the ground that he had served for three consecutive terms as mayor.[2]

Ramon defended himself by citing the then COMELEC ruling that his preventive suspension in the course of his three terms as mayor prevented him from serving continuously.[3] On December 23, 2009, however, the Supreme Court issued a contrary ruling in *Aldovino, Jr. v. Commission on Elections*[4] and held that preventive suspension is only a temporary incapacity that does not interrupt a local official's term of office for purposes of the three-term limit rule.

In light of this development, Ramon manifested before the COMELEC that he made no misrepresentation in his CoC because of the prevailing COMELEC ruling; he acknowledged that he was disqualified to run for mayor, and he prayed for a ruling declaring him disqualified.[5]

The requested ruling came on April 19, 2010, through the grant of Castillo's petition by the COMELEC First Division.[6] Ramon responded to the ruling by filing a motion for reconsideration,[7] but he withdrew his motion on May 4, 2010 through an *ex parte* manifestation of withdrawal.[8] Later, on the same day, Ruby – Ramon's wife – filed her CoC, attaching thereto the required Certificate of Nomination by Ramon's party.[9]

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[1] *Rollo* (G.R. No. 196804), p. 42.

[2] *Id.* at 88-92.

[3] *Id.* at 229.

[4] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

[5] *Rollo* (G.R. No. 196804), pp. 98-101.

[6] *Id.* at 102-105.

[7] *Id.* at 106-124.

[8] *Id.* at 126-129.

[9] *Id.* at 130-131.

The COMELEC *en banc's* action on Ramon's manifestation of withdrawal did not come until the next day – May 5, 2010. The *en banc*, in its Order, considered the April 19, 2010 Resolution of the COMELEC First Division final and executory.[10]

On election day, May 10, 2010, Ramon's name remained in the printed ballot, but votes for him were counted in Ruby's favor as votes for the substitute candidate.[11]

Castillo sought to suspend the proclamation of Ramon or Ruby who had garnered 44,099 votes as against Castillo's 39,615.[12] On May 13, 2010, the COMELEC gave due course to Ruby's CoC as substitute candidate.[13] The Board of Canvassers, on the other hand, did not suspend the proclamation as Castillo had requested, and instead proclaimed Ruby as winner and elected Mayor of Lucena City on that same day.[14]

Castillo sought to annul Ruby's proclamation through another petition[15] while the elected Vice Mayor, Roderick Alcala, moved to intervene in Castillo's petition.[16] On January 11, 2011, the COMELEC Second Division dismissed Castillo's petition and denied Alcala's motion. The COMELEC Second Division reasoned out that the substitution became final and executory when Castillo failed to act after receiving a copy of the COMELEC resolution giving due course to Ruby's substitution.[17]

Both parties went to the COMELEC *en banc* for the reconsideration of the COMELEC Second Division's ruling. The COMELEC *en banc* reversed the January 11, 2011 ruling of the COMELEC Second Division on due process consideration

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[10] *Id.* at 133-134.

[11] *Id.* at 136.

[12] *Id.* at 135-138.

[13] *Id.* at 142-144.

[14] *Id.* at 145.

[15] *Id.* at 185-214.

[16] *Id.* at 305-318.

[17] *Id.* at 361-375.

and on the ground that the filing of Ruby's CoC was not a proper substitution for being premature and for being filed out of time.[18] Against this COMELEC *en banc* ruling, both parties went to the Court.

The issues raised by the parties before the Court can be condensed as follows:

a. Whether Ruby validly substituted for Ramon as candidate for mayor of Lucena City;

b. In the negative, whether the cause of the invalidity of the substitution is Ramon's disqualification or the cancellation of his CoC;

c. Who between Castillo and Alcala should assume the position of mayor of Lucena City?

The *ponencia* dismissed Ruby's petition (G.R. No. 196804) and Castillo's petition (G.R. No. 197015) for lack of merit; and upheld the COMELEC *en banc's* resolution of May 20, 2011 in SPC No. 10-024.

I agree with the *ponencia*'s conclusion that Ruby never validly substituted Ramon, and, therefore, she never became a candidate who can be validly voted for in the May 2010 elections. The *ponencia* considers Ruby's substitution as invalid because Ramon's CoC contains an "incurable defect consisting in his false declaration of his eligibility to run"[19] for a fourth consecutive term. The *ponencia* adds that despite the absence of an express finding of material misrepresentation by the COMELEC, the fact that it granted Castillo's petition "without express qualifications"[20] manifested that the COMELEC had cancelled Ramon's CoC. In short, the *ponencia* considers the CoC of a three-term candidate as invalid, warranting its cancellation.

I dissent with the reasoning of the *ponencia*. I base my position of dissent on the following grounds – the same grounds which

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[18] *Id.* at 42-52.

[19] Decision, p. 17.

[20] *Id.* at 20.

would later support my position that it is Castillo who should be seated as Mayor—

a. the violation of the three-term limit rule is a unique but proper ground for disqualification and not for the cancellation of a CoC under Section 78 of the Omnibus Election Code (*OEC*);

b. the petition filed by Castillo against Ramon was based on the three-term limit rule and, hence, was a petition for disqualification, but no effective disqualification ever took place since Ramon never qualified to serve for a fourth term; and

c. since Ruby did not validly substitute Ramon and Ramon opted to exit out of the election race (although through an erroneous mode of asking for a ruling disqualifying him), neither of the two can be considered candidates and the votes cast in their favor should be considered stray; thus, Castillo should be proclaimed as Mayor of Lucena City.

Hidden behind but not erased by this simplistic recital of the issues, rulings and dissent is the legal reality that these cases pose issues way beyond the question of substitution that appears on the surface. They require a look into the nature of a CoC; distinctions between eligibility, or lack of it, and disqualification; the effects of cancellation and disqualification; the applicable remedies; and the unique nature and the effect of the constitutional three-term limit for local elective officials.

The CoC and the Qualifications for its Filing.

A basic rule and one that cannot be repeated often enough is that the CoC is the document that creates the status of a candidate. In *Sinaca v. Mula*,[21] the Court described the nature of a CoC as follows –

[21] 373 Phil. 896, 908 (1999).

A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Both the 1973 and 1987 Constitutions left to Congress the task of providing the qualifications of ***local elective officials***. Congress undertook this task by enacting Batas Pambasa Bilang (*B.P. Blg.*) 337 (LGC), the OEC and, later, Republic Act (*R.A.*) No. 7160 (*Local Government Code of 1991 or LGC 1991*).[22]

Under Section 79 of the OEC, a political aspirant legally becomes a "candidate" only upon the due filing of his sworn CoC.[23] In fact, Section 73 of the OEC makes the filing of the CoC a condition *sine qua non* for a person to "be eligible for any elective public office"[24] – *i.e.*, to be validly voted for in the

[22] Prior to these laws, the applicable laws were the Revised Administrative Code of 1917, R.A. No. 2264 (An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments); and B.P. Blg. 52 (An Act Governing the Election of Local Government Officials).

[23] See, however, Section 15 of R.A. No. 8436, as amended. *Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009, 605 SCRA 574, 581-586, citing *Lanot v. COMELEC*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

[24] Section 73 of OEC reads:

Section 73. *Certificate of candidacy.* - No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them.

However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy

elections. Section 76 of the OEC makes it a "ministerial duty" for a COMELEC official "to receive and acknowledge receipt of the certificate of candidacy"[25] filed.

C*OMELEC* Resolution No. 8678 provides what a CoC must contain or state:[26]

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may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. [italics supplied]

Section 13 of R.A. No. 9369, however, adds that "[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: *Provided,* That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period[.]" (italics supplied)

[25] See *Cipriano v. Commission on Elections*, 479 Phil. 677, 689 (2004).

[26] The statutory basis is Section 74 of OEC which provides:

Section 74. *Contents of certificate of candidacy.*— The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being

Section 2. *Contents of certificate of candidacy.* — The certificate of candidacy shall be under oath and shall state that the person filing it is announcing his candidacy for the office and constituency stated therein; that he is eligible for said office, his age, sex, civil status, place and date of birth, his citizenship, whether natural-born or naturalized; the registered political party to which he belongs; if married, the full name of the spouse; his legal residence, giving the exact address, the precinct number, barangay, city or municipality and province where he is registered voter; his post office address for election purposes; his profession or occupation or employment; that he is not a permanent resident or an immigrant to a foreign country; that he will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, decrees, resolution, rules and regulations promulgated and issued by the duly-constituted authorities; that he assumes the foregoing obligations voluntarily without mental reservation or purpose of evasion; and that the facts stated in the certificate are true and correct to the best of his own knowledge. [italics supplied]

From the point of view of the common citizen who wants to run for a local elective office, the above recital contains all the requirements that he must satisfy; it contains the basic and essential requirements applicable **to all citizens to qualify for candidacy** for a local elective office. These are their formal terms of entry to local politics. A citizen must not only possess all these requirements; he must positively represent in his CoC application that he possesses them. Any falsity on these requirements constitutes a material misrepresentation that can lead to the cancellation of the CoC. On this point, Section 78 of the OEC provides:

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made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by [any] person **exclusively** on the ground that any **material representation contained therein as required under Section 74** hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. [italics, emphases and underscores ours]

A necessarily related provision is Section 39 of LGC 1991 which states:

Sec. 39. *Qualifications*. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sanggunian bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

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(c) Candidates for the position of Mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day. [italics ours]

Notably, Section 74 of the OEC does not require any negative qualification except only as expressly required therein. A specific negative requirement refers to the representation that the would-be candidate is ***not*** a permanent resident nor an immigrant in another country. This requirement, however, is in fact simply part of the positive requirement of residency in the locality for which the CoC is filed and, in this sense, it is not strictly a negative requirement. **Neither does Section 74 require any statement that the would-be candidate does not possess any ground for disqualification specifically enumerated by law, as disqualification is a matter that the OEC and LGC 1991 separately deal with, as discussed below. Notably, Section 74 does not *require* a would-be candidate to state that he has**

***not* served for three consecutive terms in the same elective position immediately prior to the present elections**.

With the accomplishment of the CoC and its filing, a political aspirant officially acquires the status of a candidate and, at the very least, the prospect of holding public office; he, too, formally opens himself up to the complex political environment and processes. The Court cannot be more emphatic in holding "that **the importance of a valid certificate of candidacy rests at the very core of the electoral process.**"[27]

Pertinent laws[28] provide the specific periods when a CoC may be filed; when a petition for its cancellation may be brought; and the effect of its filing. These measures, among others, are in line with the State policy or objective of ensuring "equal access to opportunities for public service,"[29] bearing in mind that the limitations on the privilege to seek public office are within the plenary power of Congress to provide.[30]

The Concept of Disqualification and its Effects.

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules.[31] It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens may be **deprived of the right to be a candidate or may lose the right**

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[27] *Miranda v. Abaya*, 370 Phil. 642, 658 (1999). See also *Bautista v. Commission on Elections*, 359 Phil. 1 (1998).

[28] Section 13 of R.A. No. 9369, COMELEC Resolution No. 8678 and Section 78 of OEC.

[29] 1987 Constitution, Article II, Section 26.

[30] See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-103.

[31] *Merriam-Webster's 11th Collegiate Dictionary*, p. 655.

to be a candidate (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him ***as an individual***, ***separately from the general qualifications that must exist for a citizen to run for a local public office***. Notably, **the breach of the three-term limit** is a trait or condition that can possibly apply *only* to those who have previously served for three consecutive terms in the same position sought immediately prior to the present elections.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.[32]

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions**;** (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been

[32] If at all, only two grounds for disqualification under the Local Government Code ***may*** as well be considered for the cancellation of a CoC, *viz.*: those with dual citizenship and permanent residence in a foreign country, or those who have acquired the right to reside abroad and continue to avail of the same right after January 1, 1992. It may be argued that these two disqualifying grounds likewise go into the eligibility requirement of a candidate, as stated under oath by a candidate in his CoC.

sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

a. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

b. Those removed from office as a result of an administrative case;

c. Those convicted by final judgment for violating the oath of allegiance to the Republic;

d. Those with dual citizenship;

e. Fugitives from justice in criminal or non-political cases here or abroad;

f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

g. The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of "disqualification" is that under Section 68 of the OEC, it **refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the **cancellation of a candidate's CoC, the law considers the cancellation from the point of view of the requirements that every citizen who wishes to run for office must commonly satisfy**. Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate ***and*** his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified.

Distinctions among (i) denying due course to or cancellation of a CoC, (ii) disqualification, and (iii) quo warranto

The nature of the eligibility requirements for a local elective office and the disqualifications that may apply to candidates necessarily create distinctions on the remedies available, on the effects of lack of eligibility and on the application of disqualification. The remedies available are essentially: the **cancellation of a CoC**, **disqualification from candidacy or from holding office**, and ***quo warranto***, which are distinct remedies with varying applicability and effects. For ease of presentation and understanding, their availability, grounds and effects are topically discussed below.

***As to the grounds*:**

In the **denial of due course to or cancellation of a CoC**, the ground is essentially lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office;[33] the governing provisions are *Sections 78 and 69 of the OEC*.[34]

In a **disqualification case**, as mentioned above, the grounds are traits, characteristics or acts of disqualification,[35] individually applicable to a candidate, as provided under Sections 68 and 12 of the OEC; Section 40 of LGC 1991; and, as discussed below, Section 8, Article X of the Constitution. As previously discussed, the grounds for disqualification are different from, and have nothing to do with, a candidate's CoC although they may result in disqualification from candidacy whose immediate effect **upon finality before the elections** is the same as a cancellation. If they are cited in a petition filed before the elections, they remain as disqualification grounds and carry effects that are distinctly peculiar to disqualification.

In a *quo warranto* petition, the grounds to oust an elected official from his office are ineligibility and disloyalty to the

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[33] *Fermin v. Commission on Elections*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-794.

[34] See Section 7 of R.A. No. 6646.

[35] Sections 68 and 12 of OEC cover these acts: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) over spending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Republic of the Philippines. This is provided under Section 253 of the OEC and governed by the Rules of Court as to the procedures. While *quo warranto* and cancellation share the same ineligibility grounds, **they differ as to the time these grounds are cited.** A cancellation case is brought before the elections, while a *quo warranto* is filed after and may still be filed even if a CoC cancellation case was not filed before elections, *viz.:*

> The only difference between the two proceedings is that, under section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under Section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office.[36]

Note that the question of what would constitute acts of disqualification – under Sections 68 and 12 of the OEC and Section 40 of LGC 1991 – is best resolved by directly referring to the provisions involved. On the other hand, what constitutes a violation of the three-term limit rule under the Constitution has been clarified in our case law.[37] The approach is not as straight forward in a petition to deny due course to or cancel a CoC and also to a *quo warranto* petition, which similarly covers the ineligibility of a candidate/elected official. In *Salcedo II v. COMELEC*,[38] we ruled that —

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[36] *Salcedo II v. COMELEC*, 371 Phil. 377, 387 (1999), citing *Aznar v. Commission on Elections*, 185 SCRA 703 (1990).

[37] *Lonzanida v. Commission on Elections*, 311 SCRA 602 [1999]; *Borja v. Commission on Elections*, 295 SCRA 157 (1998); *Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002; *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601; *Montebon v. Commission on Elections*, G.R. No. 180444, April 9, 2008, 551 SCRA 50; *Aldovino v. Commission on Elections*, G.R. No. 184836, December 23, 2009.

[38] *Supra* note 36, at 386-389.

[I]n order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the **false representation** mentioned therein pertain to a **material matter** for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.

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Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to **qualifications for elective office**. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. [emphases ours, citation omitted]

Thus, in addition to the failure to satisfy or comply with the eligibility requirements, a material misrepresentation must be present in a cancellation of CoC situation. The law apparently does not allow material divergence from the listed requirements to qualify for candidacy and enforces its edict by requiring positive representation of compliance under oath. Significantly, where disqualification is involved, the mere existence of a ground appears sufficient and a material representation assumes no relevance.

***As to the period for filing*:**

The period to file a petition to deny due course to or cancel a CoC depends on the provision of law invoked. If the petition is filed under **Section 78 of the OEC**, the petition must be filed within twenty-five (25) days from the filing of the CoC.[39] However, if the petition is brought under **Section 69** of the

[39] *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, 765-766.

same law, the petition must be filed within five (5) days from the last day of filing the CoC.[40]

On the other hand, the period to file a **disqualification case** is at any time before the proclamation of a winning candidate, as provided in COMELEC Resolution No. 8696.[41] **The three-term limit disqualification, because of its unique characteristics, does not strictly follow this time limitation** and is discussed at length below. At the very least, it should follow the temporal limitations of a *quo warranto* petition which must be filed within ten (10) days from proclamation.[42] The constitutional nature of the violation, however, argues against the application of this time requirement; the *rationale* for the rule and the role of the Constitution in the country's legal order dictate that a petition should be allowed while a consecutive fourth-termer is in office.

***As to the effects of a successful suit*:**

A candidate whose CoC was **denied due course or cancelled** is not considered a candidate at all. Note that the law fixes the period within which a CoC may be filed.[43] After this period,

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[40] Section 5(a) of R.A. No. 6646.

[41] Section 4(B) of COMELEC Resolution No. 8696 reads:

> SEC. 4. Procedure in filing petitions. - For purposes of the preceding sections, the following procedure shall be observed:
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> xxx xxx xxx
>
> B. PETITION TO DISOUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISOUALIFY FOR LACK OF OUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION
>
> 1. A verified petition to disqualify a candidate pursuant to Section 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation[.]

[42] Section 253 of OEC.

[43] Section 15 of R.A. No. 9369.

generally no other person may join the election contest. A notable exception to this general rule is the rule on substitution: when an official candidate of a registered political party dies, withdraws or is disqualified for any cause after the last day for filing a CoC, the law allows the substitution of the dead, withdrawing or disqualified candidate, provided that he or she had a valid and subsisting CoC at the time of death, withdrawal or substitution. This proviso is necessary since the entry of a new candidate after the regular period for filing the CoC is exceptional. Unavoidably, a "candidate" **whose CoC has been cancelled or denied due course cannot be substituted for lack of a CoC**, to all intents and purposes.[44] Similarly, a successful *quo warranto* suit results in the ouster of an already elected official from office; substitution, for obvious reasons, can no longer apply.

On the other hand, a candidate who was **simply disqualified** is merely prohibited from continuing as a candidate or from assuming or continuing to assume the functions of the office;[45] substitution can thus take place before election under the terms of Section 77 of the OEC.[46] **However, a three-term candidate with a valid and subsisting CoC cannot be substituted *if* the basis of the substitution is his disqualification on account of his three-term limitation**. **Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election where the three-term official emerged as winner.** As in a *quo warranto*, any substitution is too late at this point.

***As to the effects of a successful suit on the right of the second placer in the elections*:**

In any of these three remedies, the doctrine of rejection of the second placer applies for the simple reason that –

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[44] *Miranda v. Abaya*, *supra* note 27, at 658-660.

[45] See: Section 72, OEC; Section 6, R.A. No. 6646.

[46] Section 77 of OEC expressly allows substitution of a candidate who is "disqualified for any cause."

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under such circumstances.[47]

With the disqualification of the winning candidate and the application of the doctrine of rejection of the second placer, the **rules on succession** under the law accordingly apply.

As an **exceptional situation**, however, the candidate with the second highest number of votes (*second placer*) may be validly proclaimed as the winner in the elections should the winning candidate be **disqualified** by final judgment ***before* the elections**, as clearly provided in Section 6 of R.A. No. 6646.[48] The same effect obtains when the electorate is fully aware, in fact and in law and within the realm of notoriety, of the disqualification, yet they still voted for the disqualified candidate. In this situation, the electorate that cast the plurality of votes in favor of the notoriously disqualified candidate is simply deemed to have waived their right to vote.[49]

In a **CoC cancellation** proceeding, the law is silent on the legal effect of a judgment cancelling the CoC and does not also provide any temporal distinction. Given, however, the formal initiatory role a CoC plays and the standing it gives to a political aspirant, the cancellation of the CoC based on a finding of its invalidity effectively results in a vote for an *inexistent* "candidate" or for one who is deemed not to be in the ballot. Although legally a misnomer, the "second placer" should be proclaimed the winner

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[47] *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 424.

[48] *Cayat v. Commission on Elections*, G.R. Nos. 163776 and 165736, April 24, 2007, 522 SCRA 23, 43-47; Section 6 of R.A. No. 6646.

[49] *Grego v. Commission on Elections*, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

as the candidate with the highest number of votes for the contested position. **This same consequence should result if the cancellation case becomes final after elections**, as the cancellation signifies non-candidacy from the very start, *i.e.*, from before the elections.

Violation of the three-term limit rule

a. The Three-Term Limit Rule.

The three-term limit rule is a creation of Section 8, Article X of the Constitution. This provision fixes the maximum limit an elective local official can consecutively serve in office, and at the same time gives the command, in no uncertain terms, that *no such official shall serve for more than three consecutive terms*. Thus, a three-term local official is barred from serving a fourth and subsequent consecutive terms.

This bar, as a constitutional provision, must necessarily be read into and interpreted as a component part of the OEC under the legal reality that **neither this Code nor the LGC provides for the three-term limit rule's operational details; it is not referred to as a ground for the cancellation of a CoC nor for the disqualification of a candidate, much less are its effects provided for.** Thus, the need to fully consider, reconcile and harmonize the terms and effects of this rule on elections in general and, in particular, on the circumstances of the present case.

b. Is the Rule an Eligibility Requirement or a Disqualification?

In practical terms, the question of whether the three-term limit rule is a matter of "eligibility" that must be considered in the filing of a CoC translates to the need to state in a would-be candidate's CoC application that he is eligible for candidacy because he has not served for three consecutive terms immediately before filing his application.

The wording of Section 8, Article X of the Constitution, however, does not justify this requirement as Section 8 simply sets a limit on the number of consecutive terms an official can serve. It does not refer to elections, much less does it

bar a three-termer's candidacy. As previously discussed, Section 74 of the OEC does not expressly require a candidate to assert the *non-possession* of any disqualifying trait or condition, much less of a candidate's observance of the three-term limit rule. **In fact, the assertion of a would-be candidate's eligibility, as required by the OEC, could not have contemplated making a three-term candidate ineligible *for candidacy* since that disqualifying trait began to exist only later under the 1987 Constitution**.

What Section 8, Article X of the Constitution indisputably mandates is solely a bar against serving for a fourth consecutive term, not a bar against candidacy. Of course, **between the filing of a CoC (that gives an applicant the status of a candidate) and assumption to office as an election winner is a wide expanse of election activities whose various stages our election laws treat in various different ways. Thus, if candidacy will be aborted from the very start (*i.e.*, at the initial CoC-filing stage), what effectively takes place – granting that the third-termer possesses all the eligibility elements required by law – is a shortcut that is undertaken on the theory that the candidate cannot serve in any way if he wins a fourth term.**

I submit that while simple and efficient, **essential legal considerations should dissuade the Court from using this approach**. **To make this shortcut is to incorporate into the law, by judicial fiat, a requirement that is not expressly there.** In other words, such shortcut may go beyond allowable interpretation that the Court can undertake, and cross over into prohibited judicial legislation. Not to so hold, on the other hand, does not violate the three-term limit rule even in spirit, since its clear and undisputed mandate is to disallow serving for a fourth consecutive term; this objective is achieved when the local official does not win and can always be attained by the direct application of the law if he does win.

Another reason, and an equally weighty one, is that a shortcut would run counter to **the concept of commonality that characterizes the eligibility requirements**; it would allow the

introduction of an element that does not apply to all citizens as an entry qualification. Viewed from the prism of the general distinctions between eligibility and disqualification discussed above, the three-term limit is unavoidably a restriction that applies only to local officials who have served for three consecutive terms, not to all would-be candidates at large; it applies only to *specific individuals* who may have otherwise been eligible were it not for the three-term limit rule and is thus a defect that attaches only to the candidate and not to his CoC. In this sense, it cannot but be a disqualification and at that, a very specific one.

That the prohibited fourth consecutive term can only take place after a three-term local official wins his fourth term signifies too that the prohibition (and the resulting disqualification) only takes place after elections. This circumstance, to my mind, supports the view that the three-term limit rule does not at all involve itself with the matter of candidacy; it only regulates service beyond the limits the Constitution has set. **Indeed, it is a big extrapolative leap for a prohibition that applies after election, to hark back and affect the initial election process for the filing of CoCs.**

Thus, on the whole, I submit that the legally sound view is ***not*** to bar a three-termer's candidacy for a fourth term if the three-term limit rule is the only reason for the bar. In these lights, the three-term limit rule – as a bar against a fourth consecutive term – is effectively a disqualification against such service rather than an eligibility requirement.[50]

c. Filing of Petition and Effects.

[50] Separate from these considerations is the possibility that the candidacy of a third-termer may be considered a nuisance candidate under Section 69 of the Omnibus Election Code. Nuisance candidacy, by itself, is a special situation that has merited its own independent provision that calls for the denial or cancellation of the CoC if the bases required by law are proven; thus, it shares the same remedy of cancellation for material misrepresentation on the eligibility requirements. The possibility of being a nuisance candidate is not discussed as it is not in issue in the case.

As a disqualification that can only be triggered after the elections, it is not one that can be implemented or given effect before such time. The reason is obvious; before that time, the gateway to the 4th consecutive term has not been opened because the four-term re-electionist has not won. This reality brings into sharp focus the timing of the filing of a petition for disqualification for breach of the three-term limit rule. Should a petition under the three-term limit rule be allowed only after the four-term official has won on the theory that it is at that point that the Constitution demands a bar?

The timing of the filing of the petition for disqualification is a matter of procedure that primarily rests with the COMELEC. Of course, a petition for disqualification cannot be filed against one who is ***not yet*** a candidate as only candidates (and winners) can be disqualified. Hence, the filing should be done after the filing of the CoC. On the backend limitation of its filing, I believe that the petition does not need to be hobbled by the terms of COMELEC Resolution No. 8696[51] because of the **special nature and characteristics of the three-term limit rule** – *i.e.*, the constitutional breach involved; the fact that it can be effective only after a candidate has won the election; and the lack of specific provision of the election laws covering it.

To be sure, a constitutional breach cannot be allowed to remain unattended because of the procedures laid down by administrative bodies. While *Salcedo* considers the remedy of *quo warranto* as almost the same as the remedy of cancellation on the question of eligibility, the fact that the remedies can be availed of only at particular periods of the election process signifies more than temporal distinction.

From the point of view of eligibility, one who merely seeks to hold public office through a valid candidacy cannot wholly be treated in the same manner as one who has won and is at the point of assuming or serving the office to which he has been elected; the requirements **to be eligible as a candidate** are defined by the election laws and by the local government code, but beyond

[51] *Supra* note 41.

these are **constitutional restrictions on eligibility to serve**. The three-term limit rule serves as the best example of this fine distinction; a local official who is allowed to be a candidate under our statutes but who is effectively in his fourth term should be considered *ineligible to serve* if the Court were to give life to the constitutional provision, couched in a strong prohibitory language, that "no such official shall serve for more than three consecutive terms."

A possible legal stumbling block in allowing the filing of the petition before the election is the lack of a cause of action or prematurity at that point. If disqualification is triggered only after a three-termer has won, then it may be argued with some strength that a petition, filed against a respondent three-term local official before he has won a fourth time, has not violated any law and does not give the petitioner the right to file a petition for lack of cause of action or prematurity.[52]

I take the view, however, that the petition does not need to be immediately acted upon and can merely be docketed as a cautionary petition reserved for future action if and when the three-term local official wins a fourth consecutive term. If the parties proceed to litigate without raising the prematurity or lack of cause of action as objection, a ruling can be deferred until after the cause of action accrues; if a ruling is entered, then any decreed disqualification cannot be given effect and implemented until a violation of the three-term limit rule occurs.

As a last point on the matter of substitution, a candidate with a valid and subsisting CoC can only be validly substituted on the basis of a withdrawal before the elections, or by reason of death. Disqualification that is based on a breach of the three-term limit rule cannot be invoked as this disqualification can only take place after election. As in a *quo warranto* situation, any substitution is too late at this point.

I shall consider the case on the basis of these positions.

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[52] See comments at footnote 49 on the possibility of using the nuisance candidate provision under Section 69 of the OEC.

Castillo's Petition is Properly a Petition for Disqualification against Ramon for Possessing some Grounds for Disqualification

On the basis of my views on the effect of the three-term limit rule, I disagree with the *ponencia's* conclusion that Castillo's petition is one for the cancellation or denial of due course of Ramon's CoC. I likewise so conclude after examining Castillo's petition, its allegations and the grounds it invoked.

As a rule, the nature of the action is determined by the allegations in the complaint or petition. The cause of action is not what the title or designation of the petition states; the acts defined or described in the body of the petition control. The designation or caption and even the prayer, while they may assist and contribute their persuasive effect, cannot also be determinative of the nature or cause of action for they are not even indispensable parts of the petition.[53]

In this sense, any question on the nature of Castillo's petition against Ramon cannot ignore the pertinent allegations of the petition, and they state:

4. Respondent was successively elected mayor of Lucena City in 2001, 2004, and 2007 local elections based on the records of the Commission on Elections of Lucena City and had fully served the aforesaid three (3) terms without any voluntary and involuntary interruption.

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7. Respondent, knowing well that he was elected for and had fully served three (3) consecutive terms as a city mayor of Lucena, he still filed his Certificate of Candidacy for City Mayor of Lucena for this coming 10 May 2010 national and local elections;

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[53] See *Sumulong v. Court of Appeals*, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 385-386.

8. Under the Constitution and existing Election laws, New Local Government Code of the Philippines, and jurisprudence the respondent **is no longer entitled and is already disqualified to be a city mayor for the fourth consecutive term**[.] [emphasis supplied]

These allegations, on their face, did not raise any of the specified grounds for cancellation or denial of due course of a CoC under Sections 69 and 78 of the OEC. Specifically, Castillo's petition did not allege that Ramon was a nuisance candidate or that he had committed a misrepresentation on a material fact in his CoC; the petition failed to allege any deliberate attempt, through material misrepresentation, to mislead, misinform or deceive the electorate of Lucena City as to Ramon's qualifications for the position of Mayor. More importantly, and as previously discussed, the non-possession of any disqualifying ground, much less of a *potential* breach of the three-term limit rule, is not among the matters of qualification or eligibility that a candidate is required to assert in his CoC.

Castillo's allegations simply articulate the fact that Ramon had served for three consecutive terms and the legal conclusion that the three-term limit rule under the Constitution and LGC 1991 disqualifies him from running for a fourth consecutive term. Under these allegations, Castillo's petition cannot come within the purview of Section 78 of the OEC; Ramon's status as a three-term candidate is a ground to disqualify him (as precautionary measure before elections) for possessing a ground for disqualification under the Constitution and the LGC, specifically, for running for the same office after having served for three continuous terms.

From the given facts and from the standards of strict legality based on my discussions above, I conclude that the COMELEC was substantially correct in treating the case as one for disqualification – that is, *without cancelling his CoC* - in its April 19, 2010 Resolution and in ruling for disqualification, subject to my reservation about prematurity and the existence of a ripe cause of action. This reservation gathers strength in my mind as I consider that most of the developments in the case took place before the May 10, 2010 elections under the

standards of Section 8, Article X of the Constitution. Brought to its logical end, this consideration leads me to conclude that while the COMELEC might have declared Ramon's disqualification to be final, its declaration was ineffectual as no disqualification actually ever took effect. None could have taken place as the case it ruled upon was not ripe for a finding of disqualification; Ramon, although a three-term local official, had not won a fourth consecutive term and, in fact, could not have won because he gave way to his wife in a manner not amounting to a withdrawal.

Ruby's Substitution of Ramon is Invalid not because Ramon's CoC was cancelled but because of its non-conformity with the Conditions Required by Section 77 of the OEC

As a rule, a CoC must be filed only within the timelines specified by law. This temporal limitation is a mandatory requirement to qualify as a candidate in a national or local election.[54] It is only when a candidate with a valid and subsisting CoC is *disqualified, dies* or *withdraws* his or her CoC before the elections that the remedy of substitution under Section 77 of the OEC is allowed. Section 77 states:

> Section 77. *Candidates in case of death, disqualification or withdrawal of another.* - **If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified.** The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur

[54] Section 73 of the OEC states:

> Section 73. *Certificate of Candidacy* – No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed…. [italics supplied]

between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission. [italics supplied, emphasis and underscoring ours]

In the present case, the grounds that would give rise to the substitution had to be present for Ruby's substitution to be valid. Specifically, she had to show that either Ramon had died, had withdrawn his valid and subsisting CoC, or had been disqualified for any cause. All these are best determined by considering the antecedents of the present case. To recall:

1. On April 19, 2010, the Comelec First Division disqualified Ramon in SPA No. 09-929 (DC). The Resolution did not contain any order to deny due course or to cancel Ramon's CoC;
2. On April 21, 2010, Ramon filed a *Verified Motion for Reconsideration* seeking a reversal of the April 19, 2010 Resolution;
3. On May 4, 2010, at exactly 9:00 a.m., Ramon filed an *Ex-Parte Manifestation of the Pending Motion for Reconsideration* dated May 3, 2010 praying that the COMELEC issue an "Order to NOTE the instant Manifestation and DEEM the Resolution promulgated on April 19, 2010 as final and executory";
4. On the same day at 4:30, Ruby filed her CoC for Mayor of Lucena City in substitution of her husband, Ramon;
5. In an Order dated May 5, 2010, the COMELEC *en banc* issued an Order in response to Ramon's Manifestation which stated: "(a) To NOTE this instant Manifestation; and (b) To consider the April 19, 2010 Resolution of the Commission First Division final and executory";
6. On the May 10, 2010 elections, Ramon garnered the highest number of votes with 44,099 votes, while Castillo garnered only 39,615 votes;

7. Three days after the elections or on May 13, 2010, the COMELEC *en banc* issued Resolution No. 8917 that gave due course to Ruby's CoC. This Resolution was premised on the Memorandum of the Law Department dated May 8, 2010 which erroneously stated that Ruby filed her CoC on May 5 not May 4, 2010; and

8. On the basis of Resolution No. 8917, the City Board of Canvassers proclaimed Ruby as the duly elected mayor of Lucena City.[55]

All these, of course, will have to be viewed from the prism of the three-term limit rule.

Substitution refers to an exceptional situation in an election scenario where the law leans backwards to allow a registered party to put in place a replacement candidate when the death, withdrawal or disqualification of its original candidate occurs. The question that arises under the bare provisions of Section 77 of the OEC is how the COMELEC should handle the law's given conditions and appreciate the validity of a substitution. The approaches to be made may vary on a case-to-case basis depending on the attendant facts, but a failsafe method in an election situation is to give premium consideration not to the candidates or their parties, but to the electorate's process of choice and the integrity of the elections. In other words, in a legal or factual equipoise situation, the conclusion must lean towards the integrity of the electoral process.

Death as basis for substitution obviously does not need to be considered, thus leaving withdrawal and disqualification as grounds for the validity of Ruby's substitution.

On the matter of withdrawal, two significant developments could possibly serve as indicators of withdrawal and should be examined for their legal effects.

The ***first*** development relates to the aftermath of the Court's ruling in *Aldovino* regarding the interruption of service for

[55] *Rollo* (G.R. No. 196804), pp. 56-59.

purposes of the three-term limit rule. Although the *Aldovino* ruling still had to lapse to finality, Ramon almost immediately manifested before the COMELEC First Division his recognition that *he was disqualified and asked for a ruling*. The requested ruling, of course, was on the case that Castillo had filed. This ruling did not come until April 19, 2010 when the COMELEC First Division granted Castillo's petition, to which Ramon responded with a verified motion for reconsideration.

A significant aspect (although a negative one) of this development is that Ramon never indicated his clear intention to withdraw his CoC. Despite the *Aldovino* ruling, he only manifested his recognition that he was disqualified and had asked for a ruling on Castillo's petition. To be sure, he could have made a unilateral withdrawal with or without any intervention from the COMELEC First Division. The reality, however, was that he did not; he did not withdraw either from his disqualification case nor his CoC, pursuant to Section 73 of the OEC; he opted and continued to act within the confines of the pending case.

A question that may possibly be asked is whether Ramon's Manifestation recognizing his disqualification can be considered a withdrawal. The short answer, in my view, is that it cannot be so considered. Withdrawal and disqualification are separate grounds for substitution under Section 77 of the OEC and one should not be confused with the other. Recognition of disqualification, too, without more, cannot be considered a withdrawal. Disqualification results from compulsion of law while withdrawal is largely an act that springs from the candidate's own volition. Ramon's obvious submission to the COMELEC First Division, by asking for a ruling, cannot in any sense be considered a withdrawal.

The ***second*** occasion was in early May 2010 when he withdrew, through a Manifestation, his motion for reconsideration of the First Division's ruling finding him disqualified for violation of the three-term limit rule. To recall, he made his *ex parte* manifestation of withdrawal in the morning of May 4, 2010, while his wife filed her CoC in substitution in the afternoon of

the same day, on the apparent theory that his acceptance of the First Division disqualification ruling qualified her for substitution under Section 77 of the OEC.

I cannot view these moves as indicative of withdrawal because the parties' main basis, as shown by their moves, was to take advantage of a final ruling decreeing disqualification as basis for Ruby's substitution. Plainly, no withdrawal of the CoC was ever made and no withdrawal was also ever intended as they focused purely on the effects of Ramon's disqualification. This intent is evident from their frantic efforts to secure a final ruling by the COMELEC *en banc* on Ramon's disqualification.

But neither can I recognize that there was an effective disqualification that could have been the basis for a Section 77 substitution. As repeatedly discussed above, the constitutional prohibition and the disqualification can only set in after election, when a three-term local official has won for himself a fourth term. Quite obviously, Ramon – without realizing the exact implications of the three–term limit rule – opted for a disqualification as his mode of exit from the political scene. This is an unfortunate choice as he could not have been disqualified (or strictly, his disqualification could not have taken effect) until after he had won as Mayor in the May 2010 elections – too late in time if the intention was to secure a substitution for Ruby. Additionally, there was no way that Ramon could have won as he had opted out of the race, through his acceptance of an ineffectual disqualification ruling, in favor of his wife, Ruby. I hark back, too, to the reason I have given on why the constitutional three-term limit rule cannot affect, and does not look back to, the candidate's CoC which should remain valid if all the elements of eligibility are otherwise satisfied.

Whatever twists and turns the case underwent through the series of moves that Ramon and his wife made after the First Division's April 19, 2010 ruling cannot erase the legal reality that, at these various points, no disqualification had ripened and became effective. To repeat, the cause for disqualification is the election of the disqualified candidate to a fourth term –

a development that never took place. Without a disqualified candidate that Ruby was replacing, no substitution pursuant to Section 77 of the OEC could have taken place.[56] This reality removes the last ground that would have given Ruby the valid opportunity to be her husband's substitute. To note an obvious point, the CoC that Ruby filed a week before the May 10, 2010 elections could not have served her at all as her filing was way past the deadline that the COMELEC set.

To return to the immediate issue at hand and as previously discussed, a substitution under Section 73 of the OEC speaks of an exceptional, not a regular, situation in an election and should be strictly interpreted according to its terms. In the clearest and simplest terms, without a dead, withdrawing or disqualified candidate of a registered party, there can be no occasion for substitution. This requirement is both temporal and substantive. In the context of this case and in the absence of a valid substitution of Ramon by Ruby, votes for Ramon appearing in the ballots on election day could not have been counted in Ruby's favor.[57]

With a fatally flawed substitution, Ruby was not a candidate.

In view of the invalidity of Ruby's substitution, her candidacy was fatally flawed and could not have been given effect. Her CoC, standing by itself, was filed late and cannot be given recognition. Without a valid CoC, either by substitution or by independent filing, she could not have been voted for, for the position of Mayor of Lucena City. Thus, the election took place with only one valid candidate standing – Castillo – who should now be proclaimed as the duly elected Mayor.

The *ponencia* justifies the Vice-Mayor's succession to the office of the Mayor in this wise:

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[56] See the analogous ruling of *Miranda v. Abaya*, 370 Phil. 642 (1999) on the principles of valid substitution.

[57] See the related case of *Cayat v. COMELEC*, G.R. No. 163776, April 24, 2007, 523 SCRA 23.

The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (a) the candidate who obtained the highest number of votes is disqualified; and (b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of votes in favor of the ineligible candidate. xxx But the exception did not apply in favor of Castillo simply because the second element was absent. xxx

On the other hand, Barbara Ruby was properly disqualified by the COMELEC *En Banc* from assuming the position of Mayor of Lucena City. She was not a substitute candidate because Ramon's disqualification was confirmed only after the elections.

The *ponencia*'s reasoning would have been sound had Ruby been a candidate, who for one reason or another simply cannot assume office. **The harsh legal reality however is that she never was and never became a candidate** - a status which must be present before the doctrine of rejection of second placer may apply - either through the ordinary method of filing within the period allowed by law or through the extraordinary method of substitution. Ruby's status is comparable to (or even worse than) a candidate whose CoC was cancelled after the elections. As previously discussed, the cancellation of a CoC signifies non-candidacy from the very start, *i.e.*, before the elections, which entitles the "second placer" to assume office. The same result should obtain in this case.

From the perspective of Vice Mayor Alcala's intervention, Ruby did not validly assume the mayoralty post and could not have done so as she was never a candidate with a valid CoC. To recall my earlier discussions, it is only the CoC that gives a person the status of being a candidate. No person who is not a candidate can win. Thus, Ruby – despite being seated – never won. In the absence of any permanent vacancy occurring in the Office of the Mayor of Lucena City, no occasion arises for the application of the law on succession under Section 44 of the Local Government

Code[58] and established jurisprudence.[59] **Thus, I dissent as the petition of Vice-Mayor Roderick Alcala should have failed.**

CONCURRING AND DISSENTING OPINION

MENDOZA, *J.*:

The subject consolidated petitions for *certiorari* seek to annul and set aside the *En Banc* Resolution of the Commission on Elections *(Comelec)* in SPC No. 10-024, dated May 20, 2011, which, among others, ordered the respondent Vice-Mayor to succeed as Mayor of Lucena City, pursuant to Section 44 of the Local Government Code.

From the records, it appears that:

1] On **December 1, 2009**, Ramon Y. Talaga *(Ramon)* and Philip M. Castillo *(Castillo)* filed their respective Certificates of Candidacy *(CoC)* before the Commission on Elections *(Comelec)*.

2] On **December 5, 2009**, Castillo filed the initiatory pleading, a petition, docketed as SPA No. 09-029 (DC) and entitled, ***"In the***

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[58] Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor and Vice-Mayor.* – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor shall become the governor or mayor.

xxx xxx xxx

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

[59] See *Gonzales v. Comelec* (G.R. No. 192856, March 8, 2011, 644 SCRA 761, 800) where the Court held that "the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides. The second place is just that, a second placer – he lost in the elections and was repudiated by either the majority or plurality of voters."

Matter of the Petition To Deny Due Course or to Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor For Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena," praying as follows:

> WHEREFORE, premises considered, it is respectfully prayed that **the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same and that he be declared as a disqualified candidate** under the existing Election Laws and by the provisions of the New Local Government Code. [Emphasis supplied]

3] On **December 30, 2009**, Ramon filed a *Manifestation with Motion to Resolve SPA No. 09-029 (DC)* wherein he insisted that there was no misrepresentation on his part constituting a ground for a denial of due course to his CoC or cancellation thereof, but in view of the ruling in *Aldovino*,[1] he acknowledged that he was indeed **not eligible** and **disqualified** to run as Mayor of Lucena City, praying that

> WHEREFORE, it is most respectfully prayed that the instant petition be SUBMITTED for decision and that **he be declared as DISQUALIFIED** to run for the position of Mayor of Lucena City in view of the new ruling laid down by the Supreme Court. [Emphasis supplied]

4] On **April 19, 2010**, the Comelec First Division promulgated its resolution disqualifying Ramon from running as Mayor of Lucena City in the May 10, 2010 local elections, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant **Petition** is hereby **GRANTED.** Accordingly, **Ramon S. Talaga, Jr. is hereby DISQUALIFIED** to run for Mayor of Lucena City for the 10 May 2010 National and Local Elections. [Emphases supplied]

5] On **April 21, 2010**, Ramon filed a *Verified Motion for Reconsideration* in SPA No. 09-029.

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[1] *Aldovino , Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 235, where it was ruled that preventive suspension, being a mere temporary incapacity, was not a valid ground for avoiding the three-term limit rule.

6] On **May 4, 2010**, at **9:00 o'clock** in the morning, Ramon filed an *Ex Parte Manifestation of Withdrawal of the Pending Motion for Reconsideration*.

7] On the same day, **May 4, 2010**, at 4**:30 o'clock** in the afternoon, the wife of Ramon, Barbara Ruby C. Talaga *(Barbara Ruby)*, filed a Certificate of Candidacy for Mayor of Lucena City, attaching thereto the Certificate of Nomination and Acceptance (CONA) issued by the Lakas-Kampi-CMD, the party that had nominated Ramon.

8] On **May 5, 2010**, the Comelec *En Banc*, in SPC No. 10-024, issued an Order declaring the April 19, 2010 Resolution disqualifying Ramon as having become final and executory, the decretal portion of which reads:

> ... the Commission hereby orders as follows:
>
> 1] To NOTE the instant Manifestation; and
>
> 2] To consider the April 19, 2010 Resolution of the Commission First Division final and executory.
>
> SO ORDERED.

9] On **May 10, 2010**, the National and Local Elections were successfully conducted. The name of Ramon remained printed on the ballots but the votes cast in his favor were counted in favor of Barbara Ruby as his substitute candidate.

10] On **May 11, 2010**, Castillo filed before the Board of Canvassers of Lucena City a *Petition to Suspend Proclamation* praying for the suspension of the proclamation of Ramon or Barbara Ruby as the winning candidate.

11] On **May 12, 2010**, at around 5:17 o'clock in the afternoon, per City/Municipal Certificate of Canvass, Barbara Ruby was credited with 44,099 votes while Castillo garnered 39,615 votes.

12] On **May 13, 2010**, the Comelec, in Resolution No. 8917, gave due course to the CoC of Barbara Ruby as substitute candidate.

13] On the same day, **May 13, 2010**, the Board of Canvassers of Lucena City did not act on Castillo's Petition to Suspend Proclamation and proclaimed Barbara Ruby as the winning candidate and elected Mayor of Lucena City.

14] Aggrieved, on May 20, 2010, Castillo filed his *Petition (For Annulment of Proclamation of Barbara Ruby C. Talaga as the Winning Candidate for Mayor of Lucena City, Quezon)* with the Comelec, which was docketed as SPC No. 10-024, arguing 1] that Barbara Ruby could not substitute Ramon because his CoC had been cancelled and denied due course; and 2] that Barbara Ruby could not be considered a candidate because the Comelec *En Banc* had approved her substitution three days after the elections. Hence, the votes cast for Ramon should be considered stray.

15] On June 18, 2010, Barbara Ruby filed her *Comment on the Petition for Annulment of Proclamation* contending that the substitution was valid on the ground that the Comelec *En Banc* did not deny due course to or cancel Ramon's CoC, despite a declaration of disqualification as there was no finding of misrepresentation.

16] On **July 26, 2010,** Roderick Alcala *(Alcala),* the elected Vice Mayor of Lucena City filed a *Motion for Leave to Admit Attached Petition in Intervention* and a *Petition in Intervention*, asserting that he should assume the position of Mayor because Barbara Ruby's substitution was invalid and Castillo lost in the elections.

17] On **January 11, 2011**, the Comelec Second Division dismissed the petition of Castillo and the motion to intervene of Alcala. It reasoned out, among others, that Resolution No. 8917 (allowing the substitution) became final and executory when Castillo failed to act after receiving a copy thereof.

18] Not in conformity, both Castillo and Alcala filed their respective motions for reconsideration of the January 11, 2011 Resolution of the Comelec Second Division for being contrary to law and jurisprudence.

Castillo argued 1] that the determination of the candidacy of a person could not be made after the elections and then given retroactive effect; and 2] that the CoC of Ramon was in reality cancelled and denied due course which consequently barred him from being substituted as a candidate. Accordingly, he prayed that the votes cast in favor of both Ramon and Barbara Ruby be considered stray and that he be proclaimed winner, being the qualified candidate with the highest number of votes.

Alcala, in advocacy of his position, argued that 1] Resolution 8917 was based on erroneous set of facts; and 2] there was no valid

reason for the substitution as there was no withdrawal, disqualification or death of another candidate.

Barbara Ruby, in her defense, countered that the ruling of the Comelec Second Division was in accord with law and jurisprudence and that doubts as to the validity of the substitution should be resolved in her favor as she received the mandate of the people of Lucena City.

19] On **May 20, 2011,** acting on the motions for reconsideration, the **Comelec *En Banc*** *reversed* the January 11, 2011 Resolution of the Comelec Second Division reasoning out that 1] Resolution 8917 was issued without any adversarial proceedings as the interested parties were not given the opportunity to be heard; 2] Resolution 8917 was based on erroneous set of facts because Barbara Ruby filed her Certificate of Candidacy on **May 4, 2010** at 4:30 o'clock in the afternoon, before the Comelec acted on Ramon's withdrawal of his motion for reconsideration on **May 5, 2010,** and so premature; and 3] Barbara Ruby's Certificate of Candidacy was filed out of time because she was just another candidate, not a substitute.

It also ruled that Barbara Ruby being disqualified, the law on succession under Section 44 of the Local Government Code should apply.

Accordingly, the Comelec *En Banc* decreed:

WHEREFORE, judgment is hereby rendered:

1. REVERSING and SETTING ASIDE the January 11, 2011 Resolution of the Second Division;

2. GRANTING the petition-in-intervention of Roderick Alcala;

3. ANNULLING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefor;

4. Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;

5. In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor

is ORDERED to succeed as Mayor as provided under Section 44 of the Local Government Code;

6. DIRECTING the Clerk of Court of the Commission to furnish copies of this Resolution to the Office of the President of the Philippines, the Department of Interior and Local Government, the Department of Finance and the Secretary of the Sangguniang Panglungsod of Lucena City.

Let the Department of Interior and Local Government and the Regional Election Director of Region IV of COMELEC implement this resolution.

SO ORDERED.

Hence, these consolidated petitions of Castillo and Barbara Ruby.

In their respective petitions, both Barbara Ruby and Castillo pray, among others, that she or he be declared as the winning candidate in the May 10, 2010 mayoralty election in Lucena City.

II – ***Nature of Petition under Section 78***

As the records indicate, the controversy stemmed from the initiatory pleading filed by Castillo in SPA No. 09-029 (DC) entitled, ***"In the Matter of the Petition To Deny Due Course or to Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor For Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena,"*** a petition filed under **Section 78** of the the Omnibus Election Code (Batas Pambansa Blg. 881) which reads:

Section 78. *Petition to deny due course to or cancel a certificate of candidacy.*— A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any **material representation** contained therein as required under **Section 74** hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided,

after due notice and hearing, not later than fifteen days before the election.

A certificate of candidacy is a formal requirement for eligibility to public office.[2] **Section 73** of the Omnibus Election Code provides that no person shall be eligible for any elective public office unless he files a sworn certificate of candicacy within the period fixed therein. **Section 74** thereof provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. In the case of *Sinaca v. Mula*,[3] the Court had an occasion to elaborate on the nature of a CoC in this wise:

> A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Thus, when Ramon filed his CoC before the COMELEC, he pronounced before the electorate his intention to run for the mayoralty post and declared that he was "eligible" for the said office.

A petition filed under Section 78 of the Omnibus Election Code is one of two remedies by which the candidacy of a person can be questioned. The other is a petition under Section 68.[4] In *Mitra v. Comelec*,[5] the nature of a petition under Section 78 was further explained as follows:

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[2] *Bellosillo, Marquez and Mapili*, Effective Litigation & Adjudication of Election Contests, 2012 Ed., p. 47.

[3] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.

[4] *Gonzales v. Comelec*, G.R. No. 192856, March 8, 2011, 644 SCRA 761.

[5] G.R. No. 191938, July 2, 2010, 622 SCRA 744.

Section 74, in relation to **Section 78,** of the Omnibus Election Code (OEC) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate's stated facts in the COC be true, under pain of the COC's denial or cancellation if any false representation of a material fact is made. To quote these provisions:

> SEC. 74. Contents of certificate of candidacy. — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is **eligible** for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and **that the facts stated in the certificate of candidacy are true to the best of his knowledge.**
>
> xxx xxx xxx
>
> SEC. 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing not later than fifteen days before the election.

The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate

similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.

The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: **a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.** [Emphases supplied]

A- *A Petition to Deny Due Course or to Cancel a CoC under Section 78 is different from a Disqualification Case and a Quo Warranto Case*

In *Fermin v. Comelec*,[6] it was stressed that "a 'Section 78' petition ought not to be interchanged or confused with a 'Section 68' petition. *They are different remedies, based on different grounds, and resulting in different eventualities."* In the said case, it was written:

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also **have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the**

[6] G.R. No. 179695, December 18, 2008, 574 SCRA 782.

person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all.

In *Fermin*, a petition to deny due course or to cancel a certificate of candidacy was also distinguished from a petition for *quo warranto* as follows:

> Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is ***not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for.*** It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate**. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed **before** proclamation, while a petition for ***quo warranto*** is filed **after** proclamation of the wining candidate. [Emphases in the original]

Also as can be gleaned from the foregoing, it was clearly stressed in *Fermin* that the denial of due course to, or the cancellation of, the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that was false.

When it was stated in *Fermin* that the false material representation "may relate to the qualifications required of the public office he/she is running for," it simply meant that it could cover one's qualifications. It was not, however, restricted to qualifications only. When word "may" was used, it meant that it could relate to, or cover, any other material misrepresentation as to eligibility. Certainly, when one speaks of eligibility, it is understood that a candidate must have all the constitutional

and statutory qualifications[7] and none of the disqualifications.[8] "*Eligible x x x relates to the capacity of holding as well as that of being elected to an office.*"[9] "*Ineligibility*" has been defined as a "*disqualification or legal incapacity to be elected to an office* or appointed to a particular position."[10]

B - A person whose certificate is cancelled or denied due course under Section 78 cannot be treated as a candidate at all

A cancelled certificate of candidacy cannot give rise to a valid candidacy, and much less to valid votes.[11] Much in the same manner as a person who filed no certificate of candidacy at all and a person who filed it out of time, a person whose certificate of candidacy is cancelled or denied due course is no candidate at all.[12] The Court has been consistent on this. In *Fermin*, in comparing a petition under Section 78 with a petition under Section 68, it was written: "While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all." Thus, whether or not his CoC was cancelled before or after the election is immaterial, his votes would still be considered stray as his certificate was void from the beginning.

C - *A candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.*

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[7] Sections 39 and 6 of Article VI and Sections 2 and 3 of Article VII of the 1987 Constitution and Section 39 of the LGC.

[8] Sections 12 and 68 of the OEC and Section 40 of the LGC.

[9] *Bouvier's Law Dictionary*, Vol. I, Eighth ed., p. 1002.

[10] *Black's Law Dictionary*, Fifth ed., p. 698; and *Bouvier's Law Dictionary*, Vol. I, Eighth ed., p. 1552.

[11] *Bautista v. Comelec*, G.R. No. 133840, November 13, 1998, 298 SCRA 480.

[12] *Miranda v. Abaya*, 370 Phil. 642 (1999). See also *Gador v. Comelec*, 184 Phil. 39 (1980).

Granting arguendo that the petition is considered as one for disqualification, still, he cannot be voted for and the votes for him cannot be counted if he was disqualified by final judgment before an election. In Section 6 of R.A No. 6646 or The Electoral Reforms Law of 1987, it is clearly provided that a candidate **disqualified by final judgment before** an election cannot be voted for, and votes cast for him shall **not be counted**. This provision of law was applied in the case of *Cayat v. Comelec*,[13] where it was written:

> The law expressly declares that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This is a mandatory provision of law. Section 6 of Republic Act No. 6646, The Electoral Reforms Law of 1987, states:
>
> Sec. 6. Effect of Disqualification Case.— Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.
>
> Section 6 of the Electoral Reforms Law of 1987 covers two situations. The first is when the disqualification becomes final **before** the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final **after** the elections, which is the situation covered in the second sentence of Section 6.
>
> The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: **a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.** The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 votes

[13] G.R. No. 163776, April 24, 2007, 522 SCRA 23.

cast in Cayat's favor are **stray.** Cayat was never a candidate in the 10 May 2004 elections. Palileng's proclamation is proper because he was the sole and only candidate, second to none.

D - *A candidate whose CoC has been cancelled or denied due course cannot be substituted.*

Section 77[14] of the Omnibus Election Code enumerates the instances wherein substitution may be allowed: They are death, disqualification and withdrawal of another. **A candidate whose CoC has been cancelled or denied due course cannot be substituted**. This was the clear ruling in *Miranda v. Abaya*,[15] where it was written:

> It is at once evident that the importance of a valid certificate of candidacy rests at the very core of the electoral process. It cannot be taken lightly, lest there be anarchy and chaos. Verily, this explains why the law provides for grounds for the **cancellation and denial of due course to certificates of candidacy.**
>
> After having considered the importance of a certificate of candidacy, it can be readily understood why in *Bautista* we ruled that a person with a cancelled certificate is no candidate at all. Applying this principle to the case at bar and considering that **Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, there demonstrably cannot be any possible substitution of a person**

[14] **Section 77.** *Candidates in case of death, disqualification or withdrawal of another*. - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

[15] 370 Phil. 642 (1999).

whose certificate of candidacy has been cancelled and denied due course. [Emphases supplied]

III – *An assiduous assessment of the factual situation leads to the conclusion that Petitioner Castillo should have been proclaimed mayor-elect of Lucena City*

I **concur** with the majority that Ramon, having served as mayor of Lucena City for ***three consecutive terms,*** was ***ineligible*** to run again for the same position in the May 10, 2012 election as his candidacy was proscribed by no less than the Constitution. Section 8, Article X of the 1987 Constitution provides:

> **Section 8.** The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than **three consecutive terms**. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

In line therewith, Section 43 of the Local Government Code provides:

> Sec. 43. Term of Office.
>
> xxx xxx xxx.
>
> (b) No local elective official shall serve for more than **three consecutive terms** in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

In *Lonzanida v. Commission on Elections*,[16] the Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post; and 2) that he has fully served three consecutive terms. In *Aldovino v. Comelec*,[17] the Court stressed that "preventive suspension,

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[16] 370 Phil. 625 (1999).

[17] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

by its nature, does not involve an effective interruption of a term and should therefore not be a reason to avoid the three-term limitation."

Contending that Ramon was ineligible and must be disqualified to run again as Mayor, Castillo filed before the Comelec a petition entitled, *"In the Matter of the Petition To Deny Due Course or to Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor For Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena,"* praying "that the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same and that he be declared as a disqualified candidate under the existing Election Laws and by the provisions of the New Local Government Code."

Evidently, the petition filed was pursuant to Section 78 of the Omnibus Election Code. On December 30, 2009, Ramon filed a Manifestation with Motion to Resolve SPA No. 09-029 (DC) wherein he acknowledged that he was indeed *not eligible* and *disqualified* to run as Mayor of Lucena City. On April 19, 2010, the Comelec First Division promulgated its Resolution "**granting the petition of Castillo** and **disqualifying Ramon** to run for Mayor of Lucena City for the May 10, 2010 National and Local Elections."

Specious, if not ludicrous, is the argument that there was nothing in the resolution from which it can be deduced that the Comelec First Division cancelled, or denied due course to, Ramon's CoC. Such argument strains or tasks one's credulity too much. Common sense dictates that when the Comelec First Division granted the petition of Castillo, it, in effect, **granted his prayer** which reads:

> WHEREFORE, premises considered, it is respectfully prayed that **the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same and that he be declared as a disqualified candidate** under the existing Election Laws and by the provisions of the New Local Government Code. [Emphasis supplied]

Needless to state, the Comelec considered Ramon as having made *material misrepresentation* as he was manifestly **not eligible**, having served as mayor of Lucena City for three consecutive terms. It could not have been otherwise. A candidate who states in his CoC that he is "eligible," despite having served the constitutional limit of three consecutive terms, is clearly committing a *material misrepresentation*, warranting not only a cancellation of his CoC but also a proscription against substitution.

As held in *Bautista*,[18] *Miranda*,[19] *Gador*,[20] *and Fermin*,[21] a person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all and his votes will be considered as stray as his certificate was void from the beginning. Also in *Cayat*,[22] assuming that this is a disqualification case, the rule is that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.

Accordingly, when his CoC was denied due course or cancelled, Ramon was never considered a candidate at all from the beginning.

Indeed, on April 21, 2010, Ramon filed a *Verified Motion for Reconsideration*, but on May 4, 2010, at 9:00 o'clock in the morning, he filed an *Ex Parte Manifestation of Withdrawal of the Pending Motion for Reconsideration*. His motion, in effect, rendered the April 19, 2010 Resolution of the Comelec First Division as **final and executory** pursuant to Section 13, Rule 18 of the 1993 COMELEC Rules of Procedure, which reads:

Sec. 13. Finality of Decisions or Resolutions. - (a) In ordinary actions, special proceedings, provisional remedies and special reliefs;

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[18] *Supra* note 11.

[19] *Supra* note 12.

[20] *Supra* note 12.

[21] *Supra* note 6.

[22] G.R. No. 163776, April 24 2007, 522 SCRA 23.

a decision or resolution of the Commission *en banc* shall become final and executory after thirty (30) days from its promulgation.

(b) In Special Actions and Special Cases, a decision or resolution of the Commission *en banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

The reason is that a motion for reconsideration once withdrawn has the effect of cancelling such motion as if it was never filed. In *Rodriguez v. Aguilar*,[23] it was written:

Upon the withdrawal by respondent of his Motion for Reconsideration, it was as if no motion had been filed. Hence, the **Order of the trial court under question became final and executory 15 days from notice by the party concerned.**

In the same manner that the withdrawal of an appeal has the effect of rendering the appealed decision final and executory, the withdrawal of the Motion for Reconsideration in the present case had the effect of rendering the dismissal Order final and executory. By then, there was no more complaint that could be amended, even for the first time as a matter of right.

Although the April 19, 2010 Resolution became final and executory on April 24, 2010, it has no effect on Ramon's candidacy or his purported substitute because his certificate was void from the beginning. The date of the finality of the denial of due course or cancellation of a CoC has no controlling significance because, as consistently ruled in *Bautista*,[24] *Miranda*,[25] *Gador*,[26] *and Fermin*,[27] "**the person whose certificate**

[23] G.R. No. 159482, 505 Phil. 468 (2005).

[24] *Supra* note 11.

[25] *Supra* note 12.

[26] *Supra* note 12.

[27] *Supra* note 6.

is cancelled or denied due course under Section 78 is not treated as a candidate at all."

No substitution in case of cancellation or denial of due course of a CoC

As Ramon was never a candidate at all, his *substitution by Barbara Ruby was legally ineffectual.* This was the clear ruling in the case of *Miranda v. Abaya*,[28] where it was ruled that "considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, ***there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course***."

There being no valid substitution, the candidate with the highest number of votes should be proclaimed as the duly elected mayor

As there was no valid substitution, Castillo, the candidate with the highest number of votes is entitled to be, and should have been, proclaimed as the duly elected mayor. The reason is that he is the **winner**, not the loser. He was the one who garnered the highest number of votes among the recognized legal candidates who had valid CoCs. Castillo was **not the second placer.** He was the **first placer.**

On this score, I have to digress from the line of reasoning of the majority and register my **dissent.**

The ruling in *Cayat* is applicable because, although the petition therein was for disqualification, the CoC of Cayat was cancelled. At any rate, even granting that it is not exactly at all fours, the undisputed fact is that Castillo's petition is one under Section 78. That being the case, the applicable rule is that enunciated in *Bautista*,[29] *Miranda*,[30]

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[28] *Supra* note 9.

[29] *Supra* note 11.

[30] *Supra* note 12.

Gador,[31] *and Fermin*[32] — "**the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all.**" The votes cast for him and those for his purported substitute could only be considered as stray and could not be counted.

The Second Placer Doctrine

The second placer doctrine applies only in case of a vacancy caused by a disqualification under Section 12 and Section 68 of the OEC and Section 40 of the LGC or *quo warranto* petition under Section 253. When a winning candidate is **disqualified** under Section 12 and Section 68 of the OEC and Section 40 of the LGC or **unseated** under Section 253, a **vacancy is created** and **succession** under Section 44 of the the Local Government Code[33] becomes operable. Section 44 provides:

CHAPTER II
Vacancies and Succession

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor*. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

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[31] *Supra* note 12.

[32] *Supra* note 6.

[33] Republic Act No. 7160; An Act Providing for a Local Government Code of 1991.

(c) A tie between or among the highest ranking *sanggunian* members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a **permanent vacancy arises** when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify,** dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in the Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

As stated therein, one of the causes for a vacancy is when a winning candidate fails to qualify or is disqualified. The vacancy is created when a first placer is disqualified *after* the elections. This is very clear because *before* an election, there is no first placer to speak of.

As the CoC of Ramon was cancelled, he was not a candidate at all. As he was not a candidate, he could not be considered a first placer. The first placer was the bona fide candidate who garnered the highest number of votes among the legally recognized candidates – Castillo.

As Ramon was not a candidate, his purported substitute, Barbara Ruby, was not a bona fide candidate. There is, therefore, **no vacancy**, the only situation which could start the ball rolling for the operation of the rule of succession under Rule 44 of the Local Government Code.

Granting arguendo that Castillo was the second placer, the doctrine would still not apply

Granting arguendo that Castillo was a second placer, the rejection of the second placer doctrine, first enunciated in *Labo*

v. Comelec,[34] would still not apply in this situation. In *Labo* and similarly situated cases, it was ruled that "the subsequent disqualification of a candidate who obtained the highest number of votes does not entitle the candidate who garnered the second highest number of votes to be declared the winner." The *Labo* ruling, however, is not applicable in the situation at bench for two reasons: ***First,*** Ramon was not a candidate as he was disqualified by final judgment before the elections; and ***Second,*** the situation at bench constitutes a clear exception to the rule as stated in *Labo v. Comelec*,[35] *Cayat v. Comelec*[36] and *Grego v. Comelec*.[37]

On the first ground, in *Cayat*, it was ruled that *Labo* is applicable only when there is "no final judgment of disqualification before the elections." Specifically, *Cayat* reads:

> *Labo, Jr. v. COMELEC*, which enunciates the doctrine on the rejection of the second placer, **does not apply to the present case because in Labo there was no final judgment of disqualification before the elections.** The doctrine on the rejection of the second placer was applied in Labo and a host of other cases because the judgment declaring the candidate's disqualification in Labo and the other cases had not become final before the elections. To repeat, **Labo and the other cases applying the doctrine on the rejection of the second placer have one common essential condition — the disqualification of the candidate had not become final before the elections**. This essential condition does not exist in the present case. [Emphases supplied]

In this case, the cancellation of Ramon's CoC because of his disqualification became final before the May 10, 2010 National and Local Elections.

The only other instance that a second placer is allowed to be proclaimed instead of the first placer is when the exception laid

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[34] 257 Phil. 1 (1989).

[35] *Id.*

[36] G.R. No. 163776, April 24, 2007, 522 SCRA 23.

[37] G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

down in *Labo v. Comelec, Cayat v. Comelec* and *Grego v. Comelec* is applicable. In *Grego*, it was held that "the exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate."

In this case, the two assumptions have been satisfied: 1] the cancellation of Ramon's CoC became final before the May 10, 2010 National and Local Elections and 2] the electorate was conscious of the circumstances surrounding Ramon's candidacy and subsequent disqualification. The fact that Ramon was a renowned political figure in Lucena City, owing to his three (3) consecutive terms as mayor therein, cannot be denied. Verily, the people of Lucena City were fully aware of the circumstances of his candidacy, but still voted for Ramon despite his notorious ineligibility for the post.

The gratuitous presumption that the votes for Ramon were cast in the sincere belief that he was a qualified candidate is negated by the electorate's awareness that Ramon had long-served as mayor of the city for almost a decade. This cannot be classified as an innocuous mistake because the proscription was prescribed by the Constitution itself. Indeed, voting for a person widely known as having reached the maximum term of office set by law was a risk which the people complacently took. Unfortunately, they misapplied their franchise and squandered their votes when they supported the purported substitute, Barbara Ruby. Thus, the said votes could only be treated as stray, void, or meaningless.

In view of all the foregoing, I vote that the petition of Barbara Ruby be **DENIED** and the petition of Castillo be **GRANTED**.

SEPARATE OPINION

REYES, *J.*:

I concur with the *ponencia's* conclusion that Section 44 of the Local Government Code (LGC) should be applied in filling the permanent vacancy created in the office of the mayor. However, I hold a different view on the nature of the petition filed to challenge the candidacy of Ramon Talaga (Ramon).

The petition filed against Ramon is one for disqualification and not for cancellation of certificate of candidacy (COC).

It is well to remember that Philip Castillo (Castillo) challenged Ramon's candidacy by filing a petition which seeks to deny due course or cancel the COC of the latter on the ground that he had already served three (3) consecutive terms as City Mayor of Lucena. I am of the view that the petition must be treated as one for disqualification since the ground used to support the same, *i.e.* the violation of the three-term limit, is a disqualifying circumstance which prevents a candidate from pursuing his candidacy.

Indeed, the violation of the three-term limit is not specifically enumerated as one of the grounds for the disqualification of a candidate under Sections 12 and 68 of the Omnibus Election Code (OEC) or Section 40 of the LGC. Similarly, however, the same ground is not particularly listed as a ground for petition for cancellation of COC under Section 78 of the OEC, in relation to Section 74 thereof. The mentioned provisions read:

> Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.* – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

Sec. 74. *Contents of certificate of candidacy.*— The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

The debate in the categorization of the violation of the three-term limit stemmed from the statement of the candidate in his COC that "he is eligible to the office he seeks to be elected to." The *ponencia* took this statement to embrace the candidate's express declaration that he had not served the same position for three (3) consecutive terms. With all due respect, I believe it is reading beyond the plain meaning of the statement. The COC is a declaration by the candidate of his eligibility specifically that he possesses all the qualifications required by the office. The candidate is, in effect, declaring that he possesses the minimum or basic requirements of the law for those intending to run for public office. These requirements are stated in the following provisions of the Constitution and the LGC:

Sections 3 and 6 of Article VI of the Constitution:

Sec. 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

Sec. 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least twenty-five years of age, able to read

and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

Sections 2 and 3 of Article VII of the Constitution:

Sec. 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Sec. 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

xxx xxx xxx

Section 39 of the LGC:

Sec. 39. Qualifications. - *(a)* An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

xxx xxx xxx

(c) Candidates for the position of Mayor or Vice-Mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

Basically, the qualifications for running for public office relate to age, residence, citizenship and status as registered voter. These facts are material as they are determinative of the fitness of the candidate for public office. In imposing these qualifications, the law seeks to confine the right to participate in the electoral race to individuals who have reached the age when they can seriously reckon the significance of the responsibilities they wish

to assume and who are, at the same time, familiar with the current state and pressing needs of the community.

Thus, when a candidate declares in his COC that he is eligible to the office for which he seeks to be elected, he is attesting to the fact that he possesses all the qualifications to run for public office. It must be deemed to refer only to the facts which he expressly states in his COC, and not to all other facts or circumstances which can be conveniently subsumed under the term "eligibility" for the simple reason that they can affect one's status of candidacy. To hold the contrary is to stretch the concept of "eligibility" and, in effect, add a substantial qualification before an individual may be allowed to run for public office.

On the other hand, the grounds for disqualification pertain to acts committed by an aspiring local servant, or to a circumstance, status or condition which renders him unfit for public service. Possession of any of the grounds for disqualification forfeits the candidate of the right to participate in the electoral race notwithstanding the fact he has all the qualifications required under the law for those seeking an elective post.

The violation of the three-term limit is a circumstance or condition which bars a candidate from running for public office. It is thus a disqualifying circumstance which is properly a ground for a petition for disqualification.

Section 44 of the LGC was properly applied in filling the permanent vacancy in the office of the mayor.

I agree with the *ponencia's* conclusion that Roderick Alcala (Alcala), the duly-elected Vice-Mayor should succeed to the office of the mayor. Section 44 of the LGC clearly states:

> Sec. 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor*. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

The Commission on Elections (COMELEC) *en banc* affirmed Ramon's disqualification on May 5, 2010. This eventuality could have given Castillo, the candidate who received the second highest number of votes, the right to be proclaimed to the office of the mayor. However, it must be noted that the COMELEC gave due course to Barbara Ruby Talaga's (Barbara) COC as substitute candidate for Ramon and was even proclaimed Mayor of Lucena City. It was only *after* the elections that a petition was filed to challenge Barbara's eligibility and was ruled upon by the COMELEC. Specifically, on January 11, 2011, the COMELEC Second Division dismissed the petition and the petition-in-intervention filed by Alcala. However, on May 20, 2011, the COMELEC *en banc* issued a Resolution, reversing the ruling of the Second Division, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered:
>
> 1. REVERSING and SETTING ASIDE the January 11, 2011 Resolution of the Second Division;
> 2. GRANTING the petition-in-intervention of Roderick A. Alcala;
> 3. ANNULLING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefore;
> 4. Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;
> 5. In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor as provided under Section 44 of the LGC;
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> xxx xxx xxx

Upon the finality of the foregoing resolution, a permanent vacancy was created in the office of the mayor which therefore must be filled in accordance with Section 44 of the LGC.

Castillo, the candidate who received the second highest number of votes, cannot be deemed to have won the elections. It is well-settled that the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides.[1] The lone instance when the second placer can take the stead of a disqualified candidate was pronounced in *Labo v. COMELEC*,[2] *viz*:

> [I]f the electorate fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected.

Based on the circumstances obtaining in this case, Barbara's disqualification was not notoriously known in Lucena City since the COMELEC was only able to rule on her disqualification after the elections. Thus, during the election day, the electorate reasonably assumed that Barbara is a qualified candidate and that the votes they cast in her favor will not be misapplied. Little did they know that the candidate they voted for will eventually be disqualified and ousted out of office.

In view of the foregoing, I vote to **DISMISS** the petitions.

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[1] *Gonzales v. COMELEC*, G.R. No. 192856, March 8, 2011, 644 SCRA 761.

[2] G.R. No. 105111, July 3, 1992, 211 SCRA 297.

DISSENTING OPINION

ABAD, *J.*:

I must disagree with the majority opinion penned by Justice Lucas P. Bersamin.

The Facts and the Case

On December 1, 2009 Ramon Talaga and Philip Castillo filed their respective certificates of candidacy (COC) for the position of mayor of Lucena City in the scheduled May 10, 2010 elections.[1] Four days later on December 5, 2009 Castillo filed a petition[2] before the Commission of Elections (COMELEC) for denial or cancellation of Ramon Talaga's COC, alleging that the latter had already served three consecutive terms as mayor and was, consequently, disqualified to run for another term.[3]

Ramon countered that the three-term limit rule did not apply to him since the Sandiganbayan preventively suspended him from office during his second and third terms[4] in connection with Criminal Case 27738. In support of his contention, Ramon cited the COMELEC resolution in *Aldovino v. Asilo*[5] which held that the terms during which an elected official was preventively suspended should not be counted for purposes of applying the three-term limit rule. Parenthetically, the cited COMELEC resolution was still pending consideration by the Supreme Court in *G.R. 184836*, entitled "*Aldovino, Jr. v. Commission on Elections*."[6]

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[1] *Rollo*, G.R. No. 196804, pp. 218, 220.

[2] Docketed as SPA 09-029 (DC); *id*. at 88-91.

[3] *Id*.

[4] For the periods of October 13 to November 14, 2005 and September 4 to October 30, 2009; *id*. at 229.

[5] Issued by the COMELEC's Second Division on November 28, 2007 and affirmed by the COMELEC *En Banc* on October 7, 2008.

[6] December 23, 2009, 609 SCRA 234.

Eventually, on December 23, 2009 the Supreme Court reversed and set aside the COMELEC resolution in *Aldovino* that Ramon invoked.[7] The Court held that preventive suspension does not constitute interruption of a term or loss of office. Such suspension amounts to a mere temporary incapacity of an elected official to perform the service demanded by his office. Thus, preventive suspension is not a valid ground for avoiding the three-term limit rule.

In view of the Supreme Court decision in *Aldovino*, on December 30, 2009 Ramon filed with the COMELEC a manifestation with motion to resolve,[8] conceding the fact of his disqualification for a fourth term. Acting on his motion, on April 19, 2010 the COMELEC First Division issued a resolution, granting Castillo's petition and disqualifying Ramon.[9]

Ramon filed a motion for reconsideration of the COMELEC First Division's April 19, 2010 resolution[10] but, before the COMELEC *En Banc* could act on his motion, he filed at 9:00 a.m. on May 4, 2010 an *ex parte* manifestation withdrawing the motion.[11] At 4:30 p.m. on the same date, Barbara Ruby Talaga (Ruby) filed a COC for mayor of Lucena City in substitution of her husband Ramon. She attached a Certificate of Nomination and Acceptance (CONA) from Lakas-Kampi-CMD, the party that nominated Ramon.[12]

Meanwhile, acting on Ramon's *ex parte* manifestation, the COMELEC *En Banc* issued an order on May 5, 2010, declaring the Division's April 19, 2010 resolution that disqualified him final and executory.[13] Three days later or on May 8, 2010, the

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[7] *Id*. at 266.

[8] *Rollo*, G.R. No. 196804, pp. 98-101.

[9] *Id*. at 102-105.

[10] *Id*. at 106-124.

[11] *Id*. at 126.

[12] *Id*. at 130-131.

[13] *Id*. at 133-134.

COMELEC Law Department wrote a memorandum to the COMELEC *En Banc*, recommending that Ruby's COC be given due course.[14]

In the meantime, the automated elections took place two days later on May 10, 2010. Inevitably, although it was Ramon's name that was on the pre-printed ballot, the votes cast for that name were counted for Ruby, his substitute candidate. She got 44,099 votes as against Castillo's 39,615 votes.

Castillo promptly filed a petition before the City Board of Canvassers (CBOC) asking for the suspension of Ruby's proclamation on the ground that the issue of her substitution of her husband was still pending before the COMELEC.[15] As it happened, acting on the COMELEC Law Department's memorandum, on May 13, 2010 the COMELEC *En Banc* issued Resolution 8917, giving due course to Ruby's COC and CONA and directing her inclusion in the certified list of candidates. In view of this, the CBOC proclaimed Ruby winner in the mayoralty race.[16]

On May 20, 2010 Castillo filed with the COMELEC's Second Division a petition for annulment of Ruby's proclamation in SPC 10-024, alleging that she could not substitute Ramon, whose COC had been cancelled and denied due course. Citing *Miranda v. Abaya*,[17] Castillo pointed out the denial or cancellation of Ramon's COC made it impossible for Ruby to substitute him since, to begin with, he did not have a valid candidacy. And Ruby could not be considered a candidate since the COMELEC approved her substitution three days after the elections. Castillo concluded that the votes for Ramon should be considered stray.[18]

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[14] *Id.* at 176-179.

[15] *Id.* at 135-138.

[16] *Id.* at 142-145.

[17] 370 Phil. 642 (1999).

[18] *Rollo,* G.R. No. 196804, pp. 185-214.

In her comment on the petition before the COMELEC,[19] Ruby insisted that she validly substituted her husband since the COMELEC *En Banc* in fact approved through Resolution 8917 its Law Department's finding that Ramon was disqualified. The *En Banc* had no occasion to deny due course to or cancel Ramon's COC. Notably, Castillo failed to appeal Resolution 8917. Further, the COMELEC First Division's April 19, 2010 resolution merely declared Ramon disqualified from running for a fourth term. It made no finding that he committed misrepresentation, the ground for denial or cancellation of his COC.

Ruby also insisted that the COMELEC did not have to approve her substitution of Ramon since the law even allowed a substitute to file his COC before the Board of Election Inspectors (BEI) if the cause for substitution occurs immediately prior to election day. Section 12 of Republic Act (R.A.) 9006 is also explicit that, in case of valid substitution, the rule considering votes cast for a substituted candidate as stray votes shall not apply if the substitute candidate has the same family name as the one he replaces. Thus, votes cast for Ramon were properly counted in her favor.

On July 26, 2010 respondent Roderick A. Alcala (Alcala), the elected vice-mayor of Lucena City, sought to intervene in the case. He claimed that, since Ruby's substitution was invalid and Castillo clearly lost the elections, he should assume the post of mayor under the rules of electoral succession.[20]

In a resolution dated January 11, 2011,[21] the COMELEC's Second Division dismissed Castillo's petition and Alcala's petition-in-intervention. It held, *first*, that COMELEC *En Banc's* Resolution 8917, which had become final and executory, already settled the issue of Ruby's substitution; *second*, that the *Miranda v. Abaya*[22] ruling did not apply since Castillo's petition cited

[19] *Id.* at 283-298.

[20] *Id.* at 305-318.

[21] *Id.* at 361-375.

[22] *Supra* note 17.

no material misrepresentation that could be ground for cancellation of Ramon's COC; and, *third*, the Omnibus Election Code does not require the COMELEC to first approve a substitution before it can take effect.

Upon Castillo and Alcala's motion for reconsideration, however, on May 20, 2011 the COMELEC *En Banc* issued a resolution,[23] reversing the Second Division's ruling. The *En Banc* held a) that Resolution 8917 could not attain finality since the COMELEC issued it merely as an incident of its ministerial duty to receive COCs of substitute candidates; and b) that COMELEC issued Resolution 8917 without hearing the interested parties on the issue of substitution.

Further, the COMELEC *En Banc* found that Resolution 8917 was based on the wrong facts. Ruby filed her COC at 4:30 p.m. on May 4, 2010, not on May 5 as the resolution stated. The COMELEC resolved to disqualify Ramon with finality only on May 5. Consequently, Ruby could not have properly substituted Ramon; she simply became an additional candidate who filed her COC out of time. Thus, said the *En Banc*, Vice-Mayor Alcala should succeed to the position pursuant to Section 44 of the Local Government Code. Chairman Sixto S. Brillantes, Jr. dissented from the majority.

Ruby and Castillo assailed the COMELEC *En Banc's* resolution *via* these consolidated petitions for *certiorari* and prohibition. On June 21, 2011 the Court issued a *status quo ante* order in G.R. 196804.[24]

Issues Presented

Was Ramon merely disqualified from running for mayor or was his COC in fact cancelled or denied due course?

Did Ruby validly substitute Ramon as candidate for mayor of Lucena City?

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[23] *Rollo*, G.R. No. 196804, pp. 42-52.

[24] *Id.* at 506-507.

Discussion

There are two remedies available to prevent a candidate from running in an election: a petition for disqualification, and a petition to deny due course to or cancel a COC. The majority holds that, in resolving the case before it, the COMELEC had in fact denied due course to and cancelled Ramon's COC.

I disagree. Although Castillo denominated his petition as one for cancellation or denial of due course to Ramon's COC and sought the same relief, it did not raise any of the specified grounds for such action under Sections 69 and 78 of the Omnibus Election Code that read:

> Sec. 69. *Nuisance candidates*. – The Commission may *motu proprio* or upon verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said **certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office** for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.
>
> xxx xxx xxx
>
> Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that **any material representation contained therein as required under Section 74 hereof is false.** The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis supplied)

Section 69 refers to nuisance candidates. Section 78, on the other hand, treats of material misrepresentation in the COC. Castillo's petition made no claim that Ramon was a nuisance candidate or that he made some material misrepresentation in his COC. All that the petition raised against Ramon's candidacy

is the fact that he had already served three consecutive terms as mayor.

Castillo of course points out that by filing a COC for mayor after he had already served three consecutive terms, Ramon actually misrepresented the fact of his eligibility for that office, knowing that it was not the case. But this argument is unavailing because at the time Ramon filed his COC the COMELEC's official stand, supported by this Court's decision in *Borja, Jr. v. Commission on Elections*,[25] was that the terms during which an elected official was preventively suspended should not be counted for purposes of applying the three-term limit. It was only on December 23, 2009, nearly a month after Ramon filed his COC, that the Supreme Court reversed in *Aldovino, Jr. v. Commission on Elections* the election body's official stand. Thus, it cannot be said that Ramon knowingly misrepresented his eligibility when he filed his COC.

While Castillo denominated his petition as one to deny due course to or cancel Ramon's COC, and prayed for such remedies, the basic rule is that the nature of an action is governed by the allegations in the petition, not by its caption or prayer. We cannot rely simply on the fact that the COMELEC resolution granted the petition without making any qualifications. A closer reading of the resolution will show that Ramon was merely being disqualified for having served three consecutive terms. It made no mention of Ramon's COC as having been cancelled or denied due course, and indeed gave no grounds which would justify such a result. The ponencia cites *Miranda v. Abaya*[26] to justify its stand, but fails to note that in *Miranda* the Court found that there was blatant misrepresentation, which is in clear contrast to this case.

On the issue of substitution, the law specifically provides that a candidate who has been disqualified for any cause may be substituted by another. Section 77 of the Omnibus Election Code (Batas Pambansa 881) states:

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[25] 356 Phil. 467 (1998).

[26] *Supra* note 17.

Sec. 77. *Candidates in case of death, **disqualification** or withdrawal.* – If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is **disqualified for any cause**, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was **disqualified**. x x x (Emphasis supplied)

Castillo cites *Miranda v. Abaya*[27] as justification for rejecting the substitution of Ramon by Ruby. But the substitution that the Court did not allow in *Miranda* is the substitution of a candidate whose COC has been ordered cancelled on the grounds enumerated in Sections 69 and 78 of the Omnibus Election Code. The reasoning is that it is not possible to substitute such a person since he cannot be considered a candidate at all. Substitution presupposes the existence of a candidate to be substituted.

Miranda recognized that it is possible for a disqualified candidate to have a valid COC since the grounds for disqualification are distinct from the grounds for canceling or denying due course to a COC under Sections 69 and 78 of the Omnibus Election Code. Thus, it does not follow that a disqualified candidate necessarily filed an invalid COC. A disqualified candidate whose COC was neither canceled nor denied due course may be substituted under the proper circumstances provided by law.

Going to another point, it will be recalled that the COMELEC First Division disqualified Ramon from running for mayor on April 19, 2010 upon Castillo's petition. Ramon filed a motion for reconsideration which went up to the COMELEC *En Banc* but at 9:00 a.m. on May 4, 2010 he filed an *ex parte* manifestation withdrawing his motion for reconsideration. In the afternoon of the same day, Ruby filed her COC, admittedly before the COMELEC *En Banc* could act on Ramon's withdrawal of his motion for reconsideration. Only on the following day, May 5, did the COMELEC *En Banc* acknowledge the withdrawal and

[27] *Id.*

considered the First Division's April 19, 2010 resolution final and executory.[28]

The Office of the Solicitor General (OSG) joined Alcala and Castillo in claiming that Ruby did not validly substitute Ramon because at the time that she filed her COC, the COMELEC had not yet disqualified Ramon by final judgment as required by Section 77 of the Omnibus Election Code.

But Ramon's withdrawal of his motion for reconsideration in the morning of May 4, 2010 rendered the COMELEC First Division's April 19, 2010 resolution final and executory, even without the *En Banc's* formal action. The Court held in *Rodriguez, Jr. v. Aguilar, Sr.*[29] that a motion for reconsideration, once withdrawn, has the effect of canceling such motion as if it were never filed. The consequence of this is that the decision subject of the withdrawn motion for reconsideration *ipso facto* lapses into finality upon the expiration of period for appeal. Thus, in accordance with COMELEC Rules, the April 19, 2010 resolution became final and executory five days from its promulgation or on April 24, 2010.[30]

The May 5, 2010 COMELEC *En Banc* resolution merely confirmed the final and executory nature of the First Division's April 19, 2010 resolution. As correctly observed by Chairman Brillantes in his dissent, the withdrawal's effectivity cannot be made to depend on COMELEC approval because, if such were the case, substitution of candidates may be frustrated by either the commission's delay or inaction.

Castillo claims that, for the substitution of a candidate to be effective, the COMELEC must approve the same on or before election day.[31] Here, the COMELEC *En Banc* issued Resolution

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[28] *Rollo*, G.R. 196804, pp. 490-491, 527-529.

[29] 505 Phil. 468 (2005).

[30] Part IV, Rule 18, Section 13(b) in relation to Part V, B, Rule 25 of the 1993 COMELEC Rules of Procedure.

[31] *Rollo*, G.R. 197015, pp. 35-36.

8917 which approved Ruby's COC on May 13, 2010 or three days after the elections.

But no law makes the effectivity of a substitution hinge on prior COMELEC approval. Indeed, it would be illogical to require such prior approval since the law allows a substitute candidate to file his COC even up to mid-day of election day with any board of election inspectors in the political subdivision where he is a candidate. Surely, this rules out the possibility of securing prior COMELEC approval of the substitution. COMELEC Resolution 8917, which gave due course to Ruby's COC and directed her inclusion in the certified list of candidates, amounted to a mere formality since the substitution took effect when she filed her COC and the required CONA.

Finally, I would like to voice my concern regarding Justice Arturo D. Brion's view on the applicability of the three-term limit rule as a ground for disqualification. In his separate opinion, Justice Brion opines that a candidate who has already served three consecutive terms can only be disqualified after he has been proclaimed as the winner for a fourth term. His theory is that the Constitution merely prohibits an official from serving more than three consecutive terms; it does not prohibit him from running for a fourth term.

Such an interpretation, however, would cause confusion in the polls and make a mockery of the election process. It robs qualified candidates of the opportunity of being elected in a fair contest among qualified candidates. The candidacy of one who has already served three consecutive terms is worse than that of a nuisance candidate. Election laws should be interpreted in such a way as to best determine the will of the electorate, not to defeat it. The Supreme Court has on occasion upheld the disqualification of candidates who have already served three consecutive terms from running for another. Indeed in *Aldovino*, penned by no other than Justice Brion himself, the dispositive portion read: "The private respondent Wilfredo F. Asilo is declared DISQUALIFIED **to run**, and perforce to serve, as

Councilor of Lucena City for a prohibited fourth term."[32] (Emphasis supplied)

Thus, while Justice Brion likewise concludes that the action before the COMELEC was a petition for disqualification and not for the denial or cancelation of his COC, I cannot entirely agree with his reasoning.

WHEREFORE, I vote to GRANT the petition of Barbara Ruby Talaga in G.R. No. 196804, and DISMISS the petition of Philip M. Castillo in G.R. No. 197015 for lack of merit.

[32] *Supra* note 6, at 266-267.

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