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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 9604. March 20, 2013]

RODRIGO E. TAPAY and ANTHONY J. RUSTIA, *complainants, vs.* **ATTY. CHARLIE L. BANCOLO and ATTY. JANUS T. JARDER,** *respondents.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; THAT A LAWYER SHALL NOT DELEGATE TO ANY UNQUALIFIED PERSON THE PERFORMANCE OF TASK WHICH MAY ONLY BE PERFORMED BY A LAWYER; VIOLATED WHEN COUNSEL ALLOWED THE SECRETARY OF THE LAW OFFICE TO SIGN THE COMPLAINT. — Atty. Bancolo admitted that the Complaint he filed for a former client before the Office of the Ombudsman was signed in his name by a secretary of his law office. Clearly, this is a violation of Rule 9.01 of Canon 9 of the Code of Professional Responsibility, which provides: x x x A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing. x x x In *Republic v. Kenrick Development Corporation*, we held that the preparation and signing of a pleading constitute legal work involving the practice of law which is reserved exclusively for members of the legal profession. Atty. Bancolo's authority and duty to sign a pleading are personal to him. Although he may delegate the signing of a pleading to another lawyer, he may not delegate it to a non-

lawyer. Further, under the Rules of Court, counsel's signature serves as a certification that (1) he has read the pleading; (2) to the best of his knowledge, information and belief there is good ground to support it; and (3) it is not interposed for delay. Thus, by affixing one's signature to a pleading, it is counsel alone who has the responsibility to certify to these matters and give legal effect to the document.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from a Complaint filed by Rodrigo E. Tapay (Tapay) and Anthony J. Rustia (Rustia), both employees of the Sugar Regulatory Administration, against Atty. Charlie L. Bancolo (Atty. Bancolo) and Atty. Janus T. Jarder (Atty. Jarder) for violation of the Canons of Ethics and Professionalism, Falsification of Public Document, Gross Dishonesty, and Harassment.

The Facts

Sometime in October 2004, Tapay and Rustia received an Order dated 14 October 2004 from the Office of the Ombudsman-Visayas requiring them to file a counter-affidavit to a complaint for usurpation of authority, falsification of public document, and graft and corrupt practices filed against them by Nehimias Divinagracia, Jr. (Divinagracia), a co-employee in the Sugar Regulatory Administration. The Complaint[1] dated 31 August 2004 was allegedly signed on behalf of Divinagracia by one Atty. Charlie L. Bancolo of the Jarder Bancolo Law Office based in Bacolod City, Negros Occidental.

When Atty. Bancolo and Rustia accidentally chanced upon each other, the latter informed Atty. Bancolo of the case filed against them before the Office of the Ombudsman. Atty. Bancolo denied that he represented Divinagracia since he had yet to

[1] Docketed as OMB-V-C-04-0445-I and OMB-V-A-04-0429-I.

meet Divinagracia in person. When Rustia showed him the Complaint, Atty. Bancolo declared that the signature appearing above his name as counsel for Divinagracia was not his. Thus, Rustia convinced Atty. Bancolo to sign an affidavit to attest to such fact. On 9 December 2004, Atty. Bancolo signed an affidavit denying his supposed signature appearing on the Complaint filed with the Office of the Ombudsman and submitted six specimen signatures for comparison. Using Atty. Bancolo's affidavit and other documentary evidence, Tapay and Rustia filed a counter-affidavit accusing Divinagracia of falsifying the signature of his alleged counsel, Atty. Bancolo.

In a Resolution dated 28 March 2005, the Office of the Ombudsman provisionally dismissed the Complaint since the falsification of the counsel's signature posed a prejudicial question to the Complaint's validity. Also, the Office of the Ombudsman ordered that separate cases for Falsification of Public Document[2] and Dishonesty[3] be filed against Divinagracia, with Rustia and Atty. Bancolo as complainants.

Thereafter, Divinagracia filed his Counter-Affidavit dated 1 August 2005 denying that he falsified the signature of his former lawyer, Atty. Bancolo. Divinagracia presented as evidence an affidavit dated 1 August 2005 by Richard A. Cordero, the legal assistant of Atty. Bancolo, that the Jarder Bancolo Law Office accepted Divinagracia's case and that the Complaint filed with the Office of the Ombudsman was signed by the office secretary per Atty. Bancolo's instructions. Divinagracia asked that the Office of the Ombudsman dismiss the cases for falsification of public document and dishonesty filed against him by Rustia and Atty. Bancolo and to revive the original Complaint for various offenses that he filed against Tapay and Rustia.

In a Resolution dated 19 September 2005, the Office of the Ombudsman dismissed the criminal case for falsification of public document (OMB-V-C-05-0207-E) for insufficiency of evidence. The dispositive portion states:

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[2] Docketed as OMB-V-C-05-0207-E.

[3] Docketed as OMB-V-A-05-0219-E.

WHEREFORE, the instant case is hereby DISMISSED for insufficiency of evidence, without prejudice to the re-filing by Divinagracia, Jr. of a proper complaint for violation of RA 3019 and other offenses against Rustia and Tapay.

SO ORDERED.[4]

The administrative case for dishonesty (OMB-V-A-05-0219-E) was also dismissed for lack of substantial evidence in a Decision dated 19 September 2005.

On 29 November 2005, Tapay and Rustia filed with the Integrated Bar of the Philippines (IBP) a complaint[5] to disbar Atty. Bancolo and Atty. Jarder, Atty. Bancolo's law partner. The complainants alleged that they were subjected to a harassment Complaint filed before the Office of the Ombudsman with the forged signature of Atty. Bancolo. Complainants stated further that the signature of Atty. Bancolo in the Complaint was not the only one that was forged. Complainants attached a Report[6] dated 1 July 2005 by the Philippine National Police Crime Laboratory 6 which examined three other letter-complaints signed by Atty. Bancolo for other clients, allegedly close friends of Atty. Jarder. The report concluded that the questioned signatures in the letter-complaints and the submitted standard signatures of Atty. Bancolo were not written by one and the same person. Thus, complainants maintained that not only were respondents engaging in unprofessional and unethical practices, they were also involved in falsification of documents used to harass and persecute innocent people.

On 9 January 2006, complainants filed a Supplement to the Disbarment Complaint Due to Additional Information. They alleged that a certain Mary Jane Gentugao, the secretary of the Jarder Bancolo Law Office, forged the signature of Atty. Bancolo.

In their Answer dated 26 January 2006 to the disbarment complaint, respondents admitted that the criminal and

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[4] IBP Records (Vol. I), p. 14.

[5] Docketed as CBD Case No. 05-1612.

[6] Sub-Office Report No. 0008-2005.

administrative cases filed by Divinagracia against complainants before the Office of the Ombudsman were accepted by the Jarder Bancolo Law Office. The cases were assigned to Atty. Bancolo. Atty. Bancolo alleged that after being informed of the assignment of the cases, he ordered his staff to prepare and draft all the necessary pleadings and documents. However, due to some minor lapses, Atty. Bancolo permitted that the pleadings and communications be signed in his name by the secretary of the law office. Respondents added that complainants filed the disbarment complaint to retaliate against them since the cases filed before the Office of the Ombudsman were meritorious and strongly supported by testimonial and documentary evidence. Respondents also denied that Mary Jane Gentugao was employed as secretary of their law office.

Tapay and Rustia filed a Reply to the Answer dated 2 March 2006. Thereafter, the parties were directed by the Commission on Bar Discipline to attend a mandatory conference scheduled on 5 May 2006. The conference was reset to 10 August 2006. On the said date, complainants were present but respondents failed to appear. The conference was reset to 25 September 2006 for the last time. Again, respondents failed to appear despite receiving notice of the conference. Complainants manifested that they were submitting their disbarment complaint based on the documents submitted to the IBP. Respondents were also deemed to have waived their right to participate in the mandatory conference. Further, both parties were directed to submit their respective position papers. On 27 October 2006, the IBP received complainants' position paper dated 18 October 2006 and respondents' position paper dated 23 October 2006.

The IBP's Report and Recommendation

On 11 April 2007, Atty. Lolita A. Quisumbing, the Investigating Commissioner of the Commission on Bar Discipline of the IBP, submitted her Report. Atty. Quisumbing found that Atty. Bancolo violated Rule 9.01 of Canon 9 of the Code of Professional Responsibility while Atty. Jarder violated Rule 1.01 of Canon 1 of the same Code. The Investigating Commissioner recommended that Atty. Bancolo be suspended for two years from the practice

of law and Atty. Jarder be admonished for his failure to exercise certain responsibilities in their law firm.

In her Report and Recommendation, the Investigating Commissioner opined:

> x x x. In his answer[,] respondent Atty. Charlie L. Bancolo admitted that his signature appearing in the complaint filed against complainants' Rodrigo E. Tapay and Anthony J. Rustia with the Ombudsman were signed by the secretary. He did not refute the findings that his signatures appearing in the various documents released from his office were found not to be his. Such pattern of malpratice by respondent clearly breached his obligation under Rule 9.01 of Canon 9, for a lawyer who allows a non-member to represent him is guilty of violating the aforementioned Canon. The fact that respondent was busy cannot serve as an excuse for him from signing personally. After all respondent is a member of a law firm composed of not just one (1) lawyer. The Supreme Court has ruled that this practice constitute negligence and undersigned finds the act a sign of indolence and ineptitude. Moreover, respondents ignored the notices sent by undersigned. That showed patent lack of respect to the Integrated Bar of the Philippine[s'] Commission on Bar Discipline and its proceedings. It betrays lack of courtesy and irresponsibility as lawyers.
>
> On the other hand, Atty. Janus T. Jarder, a senior partner of the law firm Jarder Bancolo and Associates Law Office, failed to exercise certain responsibilities over matters under the charge of his law firm. As a senior partner[,] he failed to abide to the principle of "command responsibility" x x x.
>
> x x x x x x x x x
>
> Respondent Atty. Janus Jarder after all is a seasoned practitioner, having passed the bar in 1995 and practicing law up to the present. He holds himself out to the public as a law firm designated as Jarder Bancolo and Associates Law Office. It behooves Atty. Janus T. Jarder to exert ordinary diligence to find out what is going on in his law firm, to ensure that all lawyers in his firm act in conformity to the Code of Professional Responsibility. As a partner[,] it is his responsibility to provide efficacious control of court pleadings and other documents that carry the name of the law firm. Had he done that, he could have known the unethical practice of his law partner Atty. Charlie L. Bancolo. Respondent Atty. Janus T. Jarder failed to

perform this task and is administratively liable under Canon 1, Rule 1.01 of the Code of Professional Responsibility.[7]

On 19 September 2007, in Resolution No. XVIII-2007-97, the Board of Governors of the IBP approved with modification the Report and Recommendation of the Investigating Commissioner. The Resolution states:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent Atty. Bancolo's violation of Rule 9.01, Canon 9 of the Code of Professional Responsibility, Atty. Charlie L. Bancolo is hereby **SUSPENDED** from the practice of law for one (1) year.
>
> However, with regard to the charge against Atty. Janus T. Jarder, the Board of Governors RESOLVED as it is hereby RESOLVED to AMEND, as it is hereby AMENDED the Recommendation of the Investigating Commissioner, and APPROVE the **DISMISSAL** of the case for lack of merit.[8]

Tapay and Rustia filed a Motion for Reconsideration. Likewise, Atty. Bancolo filed his Motion for Reconsideration dated 22 December 2007. Thereafter, Atty. Jarder filed his separate Consolidated Comment/Reply to Complainants' Motion for Reconsideration and Comment Filed by Complainants dated 29 January 2008.

In Resolution No. XX-2012-175 dated 9 June 2012, the IBP Board of Governors denied both complainants' and Atty. Bancolo's motions for reconsideration. The IBP Board found no cogent reason to reverse the findings of the Investigating Commissioner and affirmed Resolution No. XVIII-2007-97 dated 19 September 2007.

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[7] IBP Records (Vol. III), pp. 4-6.

[8] *Id.* at 1.

The Court's Ruling

After a careful review of the records of the case, we agree with the findings and recommendation of the IBP Board and find reasonable grounds to hold respondent Atty. Bancolo administratively liable.

Atty. Bancolo admitted that the Complaint he filed for a former client before the Office of the Ombudsman was signed in his name by a secretary of his law office. Clearly, this is a violation of Rule 9.01 of Canon 9 of the Code of Professional Responsibility, which provides:

CANON 9

A LAWYER SHALL NOT, DIRECTLY OR INDIRECTLY, ASSIST IN THE UNAUTHORIZED PRACTICE OF LAW.

Rule 9.01 — A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

This rule was clearly explained in the case *of Cambaliza v. Cristal-Tenorio*,[9] where we held:

The lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law is founded on public interest and policy. Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. The purpose is to protect the public, the court, the client, and the bar from the incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained. Thus, the canons and ethics of the profession enjoin him not to permit his professional services or his name to be used in aid of, or to make possible the unauthorized practice of law by, any agency, personal or corporate. And, the law makes it a misbehavior on his part, subject to disciplinary action, to aid a layman in the unauthorized practice of law.

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[9] 478 Phil. 378, 389 (2004).

In *Republic v. Kenrick Development Corporation*,[10] we held that the preparation and signing of a pleading constitute legal work involving the practice of law which is reserved exclusively for members of the legal profession. Atty. Bancolo's authority and duty to sign a pleading are personal to him. Although he may delegate the signing of a pleading to another lawyer, he may not delegate it to a non-lawyer. Further, under the Rules of Court, counsel's signature serves as a certification that (1) he has read the pleading; (2) to the best of his knowledge, information and belief there is good ground to support it; and (3) it is not interposed for delay.[11] Thus, by affixing one's signature to a pleading, it is counsel alone who has the responsibility to certify to these matters and give legal effect to the document.

In his Motion for Reconsideration dated 22 December 2007, Atty. Bancolo wants us to believe that he was a victim of circumstances or of manipulated events because of his unconditional trust and confidence in his former law partner, Atty. Jarder. However, Atty. Bancolo did not take any steps to rectify the situation, save for the affidavit he gave to Rustia denying his signature to the Complaint filed before the Office of the Ombudsman. Atty. Bancolo had an opportunity to maintain his innocence when he filed with the IBP his Joint Answer (with Atty. Jarder) dated 26 January 2006. Atty. Bancolo, however, admitted that prior to the preparation of the Joint Answer, Atty. Jarder threatened to file a disbarment case against him if he did not cooperate. Thus, he was constrained to allow Atty. Jarder to prepare the Joint Answer. Atty. Bancolo simply signed the verification without seeing the contents of the Joint Answer.

In the Answer, Atty. Bancolo categorically stated that because of some minor lapses, the communications and pleadings filed against Tapay and Rustia were signed by his secretary, albeit with his tolerance. Undoubtedly, Atty. Bancolo violated the Code of Professional Responsibility by allowing a non-lawyer

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[10] 529 Phil. 876 (2006).

[11] RULES OF COURT, Rule 7, Section 3.

to affix his signature to a pleading. This violation is an act of falsehood which is a ground for disciplinary action.

The complainants did not present any evidence that Atty. Jarder was directly involved, had knowledge of, or even participated in the wrongful practice of Atty. Bancolo in allowing or tolerating his secretary to sign pleadings for him. Thus, we agree with the finding of the IBP Board that Atty. Jarder is not administratively liable.

In sum, we find that the suspension of Atty. Bancolo from the practice of law for one year is warranted. We also find proper the dismissal of the case against Atty. Jarder.

WHEREFORE, we **DISMISS** the complaint against Atty. Janus T. Jarder for lack of merit.

We find respondent Atty. Charlie L. Bancolo administratively liable for violating Rule 9.01 of Canon 9 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for one year effective upon finality of this Decision. He is warned that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Decision be attached to respondent Atty. Charlie L. Bancolo's record in this Court as attorney. Further, let copies of this Decision be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 169533. March 20, 2013]

GEORGE BONGALON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL INSTEAD OF *CERTIORARI* AS PROPER REMEDY FOR AFFIRMANCE OF CONVICTION, MUST BE FILED WITHIN THE 15-DAY REGLEMENTARY PERIOD. — At the outset, we should observe that the petitioner has adopted the wrong remedy in assailing the CA's affirmance of his conviction. His proper recourse from the affirmance of his conviction was an appeal taken in due course. Hence, he should have filed a petition for review on *certiorari*. Instead, he wrongly brought a petition for *certiorari*. x x x It is of no consequence that the petitioner alleges grave abuse of discretion on the part of the CA in his petition. The allegation of grave abuse of discretion no more warrants the granting of due course to the petition as one for *certiorari* if appeal was available as a proper and adequate remedy. At any rate, a reading of his presentation of the issues in his petition indicates that he thereby imputes to the CA errors of judgment. x x x Even if we were to treat the petition as one brought under Rule 45 of the *Rules of Court,* it would still be defective due to its being filed beyond the period provided by law. Section 2 of Rule 45 requires the filing of the petition within 15 days from the notice of judgment to be appealed.

2. ID.; ID.; ID.; LIBERALLY APPLIED IN CASE AT BAR AS PETITIONER'S RIGHT TO LIBERTY IS AT JEOPARDY. — The procedural transgressions of the petitioner notwithstanding, we opt to forego quickly dismissing the petition, and instead set ourselves upon the task of resolving the issues posed by the petition on their merits. We cannot fairly and justly ignore his plea about the sentence imposed on him not being commensurate to the wrong he committed. x x x The petitioner's right to liberty is in jeopardy. He may be entirely deprived of such birthright without due process of

law unless we shunt aside the rigidity of the rules of procedure and review his case. Hence, we treat this recourse as an appeal timely brought to the Court. Consonant with the basic rule in criminal procedure that an appeal opens the whole case for review, we should deem it our duty to correct errors in the appealed judgment, whether assigned or not.

3. CRIMINAL LAW; CHILD ABUSE; IN LAYING HANDS AT THE SPUR OF THE MOMENT AND IN ANGER, THERE IS NO INTENTION TO DEBASE, DEGRADE OR DEMEAN THE INTRINSIC WORTH AND DIGNITY OF A CHILD AS A HUMAN BEING. — The law under which the petitioner was charged, tried and found guilty of violating is Section 10 *(a)*, Article VI of Republic Act No. 7610. x x x *Child abuse*, the crime charged, is defined by Section 3 *(b)* of Republic Act No. 7610, as follows: x x x "Child Abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following: x x x **(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;** x x x Although we affirm the factual findings of fact by the RTC and the CA to the effect that the petitioner struck Jayson at the back with his hand and slapped Jayson on the face, we disagree with their holding that his acts constituted *child abuse* within the purview of the above-quoted provisions. The records did not establish beyond reasonable doubt that his laying of hands on Jayson had been intended to debase the "intrinsic worth and dignity" of Jayson as a human being, or that he had thereby intended to humiliate or embarrass Jayson. The records showed the laying of hands on Jayson to have been done at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of *child abuse*. It is not trite to remind that under the well-recognized doctrine of *pro reo* every doubt is resolved in favor of the petitioner as the accused. Thus, the Court should consider all possible circumstances in his favor.

4. ID.; SLIGHT PHYSICAL INJURIES AND MALTREATMENT; PROPER PENALTY PRESENT THE MITIGATING CIRCUMSTANCE OF PASSION AND OBFUSCATION; PROPER MORAL DAMAGES. — Considering that Jayson's physical injury required five to seven days of medical attention, the petitioner was liable for slight physical injuries under Art. 266(1) of the *Revised Penal Code*, x x x The penalty for slight physical injuries is *arresto menor*, which ranges from one day to 30 days of imprisonment. In imposing the correct penalty, however, we have to consider the mitigating circumstance of passion or obfuscation under Article 13 (6) of the *Revised Penal Code*, because the petitioner lost his reason and self-control, thereby diminishing the exercise of his will power. Passion or obfuscation may lawfully arise from causes existing only in the honest belief of the accused. It is relevant to mention, too, that in passion or obfuscation, the offender suffers a diminution of intelligence and intent. With his having acted under the belief that Jayson and Roldan had thrown stones at his two minor daughters, and that Jayson had burned Cherrlyn's hair, the petitioner was entitled to the mitigating circumstance of passion. *Arresto menor* is prescribed in its minimum period (*i.e.*, one day to 10 days) in the absence of any aggravating circumstance that offset the mitigating circumstance of passion. Accordingly, with the *Indeterminate Sentence Law* being inapplicable due to the penalty imposed not exceeding one year, the petitioner shall suffer a straight penalty of 10 days of *arresto menor*. The award of moral damages to Jayson is appropriate. Such damages are granted in criminal cases resulting in physical injuries. The amount of ₱5,000.00 fixed by the lower courts as moral damages is consistent with the current jurisprudence.

APPEARANCES OF COUNSEL

Oliver O. Olaybal for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Not every instance of the laying of hands on a child constitutes the crime of *child abuse* under Section 10 (a) of Republic Act No. 7610.[1] Only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as *child abuse*. Otherwise, it is punished under the *Revised Penal Code*.

The Case

On June 22, 2005,[2] the Court of Appeals (CA) affirmed the conviction of the petitioner for the crime of *child abuse* under Section 10 (a) of Republic Act No. 7610.

Antecedents

On June 26, 2000, the Prosecutor's Office of Legazpi City charged the petitioner in the Regional Trial Court (RTC) in Legazpi City with *child abuse*, an act in violation of Section 10 (a) of Republic Act No. 7610, alleging as follows:

That on or about the 11th day of May 2000, in the City of Legazpi Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously commit on the person of JAYSON DELA CRUZ, a twelve year-old, Grade VI pupil of MABA Institute, Legazpi City, acts of physical abuse and/or maltreatment by striking said JAYSON DELA CRUZ with his palm hitting the latter at his back and by slapping said minor hitting his left cheek and uttering derogatory remarks to the latter's family to wit: "*Mga hayop kamo, para dayo kamo digdi, Iharap mo dito ama mo*" (You all animals, you are all strangers here. Bring your father here), which acts of the accused

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[1] *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act* (Approved on June 17, 1992).

[2] *Rollo*, pp. 18-31; penned by Associate Justice Rodrigo V. Cosico (retired), with Associate Justice Danilo B. Pine (retired) and Associate Justice Arcangelita Romilla-Lontok (retired) concurring.

are prejudicial to the child's development and which demean the intrinsic worth and dignity of the said child as a human being.

CONTRARY TO LAW.[3]

The Prosecution showed that on May 11, 2002, Jayson Dela Cruz (Jayson) and Roldan, his older brother, both minors, joined the evening procession for the Santo Niño at Oro Site in Legazpi City; that when the procession passed in front of the petitioner's house, the latter's daughter Mary Ann Rose, also a minor, threw stones at Jayson and called him "sissy"; that the petitioner confronted Jayson and Roldan and called them names like "strangers" and "animals"; that the petitioner struck Jayson at the back with his hand, and slapped Jayson on the face;[4] that the petitioner then went to the brothers' house and challenged Rolando dela Cruz, their father, to a fight, but Rolando did not come out of the house to take on the petitioner; that Rolando later brought Jayson to the Legazpi City Police Station and reported the incident; that Jayson also underwent medical treatment at the Bicol Regional Training and Teaching Hospital;[5] that the doctors who examined Jayson issued two medical certificates attesting that Jayson suffered the following contusions, to wit: (1) contusion .5 x 2.5 scapular area, left; and (2) +1 x 1 cm. contusion left zygomatic area and contusion .5 x 2.33 cm. scapular area, left.[6]

On his part, the petitioner denied having physically abused or maltreated Jayson. He explained that he only talked with Jayson and Roldan after Mary Ann Rose and Cherrylyn, his minor daughters, had told him about Jayson and Roldan's throwing stones at them and about Jayson's burning Cherrylyn's hair. He denied shouting invectives at and challenging Rolando to a fight, insisting that he only told Rolando to restrain his sons from harming his daughters.[7]

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[3] Records, pp. 1-2.

[4] TSN, June 4, 2001, pp. 9-11.

[5] TSN, February 6, 2001, pp. 6-21.

[6] TSN, October 19, 2001, pp. 3-12.

[7] TSN, March 10, 2003, pp. 6-9.

To corroborate the petitioner's testimony, Mary Ann Rose testified that her father did not hit or slap but only confronted Jayson, asking why Jayson had called her daughters "Kimi" and why he had burned Cherrlyn's hair. Mary Ann Rose denied throwing stones at Jayson and calling him a "sissy." She insisted that it was instead Jayson who had pelted her with stones during the procession. She described the petitioner as a loving and protective father.[8]

Ruling of the RTC

After trial, the RTC found and declared the petitioner guilty of *child abuse* as charged, to wit:[9]

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered finding the accused GEORGE BONGALON @ "GI" GUILTY beyond reasonable doubt of Violation of Republic Act No. 7610, and is hereby ordered to undergo imprisonment of six (6) years and one (1) day to eight (8) years of *prision mayor* in its minimum period.
>
> SO ORDERED.

Ruling of the CA

On appeal, the petitioner assailed the credibility of the Prosecution witnesses by citing their inconsistencies. He contended that the RTC overlooked or disregarded material facts and circumstances in the records that would have led to a favorable judgment for him. He attacked the lack of credibility of the witnesses presented against him, citing the failure of the complaining brothers to react to the incident, which was unnatural and contrary to human experience.

The CA affirmed the conviction, but modified the penalty,[10] *viz*:

> **WHEREFORE,** premises considered, the decision dated October 20, 2003 of the Regional Trial Court, Branch 9 of Legazpi City is

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[8] TSN, June 28, 2002, pp. 7-16.

[9] Records, pp. 301-304.

[10] *Supra* note 2.

hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant George Bongalon is sentenced to suffer the indeterminate penalty of (4) years, two (2) months and one (1) day of *prision correccional*, as minimum term, to six (6) years, eight (8) months and 1 day of *prision mayor* as the maximum term.

Further, accused-appellant is ordered to pay the victim, Jayson de la Cruz the additional amount of ₱5,000 as moral damages.

SO ORDERED.

Issues

The petitioner has come to the Court *via* a petition for *certiorari* under Rule 65 of the *Rules of Court.*[11]

The petitioner asserts that he was not guilty of the crime charged; and that even assuming that he was guilty, his liability should be mitigated because he had merely acted to protect her two minor daughters.

Ruling of the Court

At the outset, we should observe that the petitioner has adopted the wrong remedy in assailing the CA's affirmance of his conviction. His proper recourse from the affirmance of his conviction was an appeal taken in due course. Hence, he should have filed a petition for review on *certiorari*. Instead, he wrongly brought a petition for *certiorari*. We explained why in *People v. Court of Appeals*:[12]

The special civil action for *certiorari* is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. As observed in *Land Bank of the Philippines v. Court of Appeals, et al.* "the special civil action for *certiorari* is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The *raison d'etre* for the rule is when a court exercises its jurisdiction, an error committed

[11] *Rollo*, pp. 3-17.

[12] G.R. No. 142051, February 24, 2004, 423 SCRA 605, 612-613.

while so engaged does not deprived it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision — not the jurisdiction of the court to render said decision — the same is beyond the province of a special civil action for *certiorari*. The proper recourse of the aggrieved party from a decision of the Court of Appeals is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court.

It is of no consequence that the petitioner alleges grave abuse of discretion on the part of the CA in his petition. The allegation of grave abuse of discretion no more warrants the granting of due course to the petition as one for *certiorari* if appeal was available as a proper and adequate remedy. At any rate, a reading of his presentation of the issues in his petition indicates that he thereby imputes to the CA errors of judgment, not errors of jurisdiction. He mentions instances attendant during the commission of the crime that he claims were really constitutive of justifying and mitigating circumstances; and specifies reasons why he believes Republic Act No. 7610 favors his innocence rather than his guilt for the crime charged.[13] The errors he thereby underscores in the petition concerned only the CA's appreciation and assessment of the evidence on record, which really are errors of judgment, not of jurisdiction.

Even if we were to treat the petition as one brought under Rule 45 of the *Rules of Court*, it would still be defective due to its being filed beyond the period provided by law. Section 2 of Rule 45 requires the filing of the petition within 15 days from the notice of judgment to be appealed. However, the petitioner received a copy of the CA's decision on July 15, 2005,[14] but filed the petition only on September 12, 2005,[15] or well beyond the period prescribed by the *Rules of Court*.

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[13] *Rollo*, pp. 10-14.

[14] *Id.* at 8.

[15] *Id.* at 15.

The procedural transgressions of the petitioner notwithstanding, we opt to forego quickly dismissing the petition, and instead set ourselves upon the task of resolving the issues posed by the petition on their merits. We cannot fairly and justly ignore his plea about the sentence imposed on him not being commensurate to the wrong he committed. His plea is worthy of another long and hard look. If, on the other hand, we were to outrightly dismiss his plea because of the procedural lapses he has committed, the Court may be seen as an unfeeling tribunal of last resort willing to sacrifice justice in order to give premium to the rigidity of its rules of procedure. But the *Rules of Court* has not been intended to be rigidly enforced at all times. Rather, it has been instituted first and foremost to ensure justice to every litigant. Indeed, its announced objective has been to secure a "just, speedy and inexpensive disposition of every action and proceeding."[16] This objective will be beyond realization here unless the *Rules of Court* be given liberal construction and application as the noble ends of justice demand. Thereby, we give primacy to substance over form, which, to a temple of justice and equity like the Court, now becomes the ideal ingredient in the dispensation of justice in the case now awaiting our consideration.

The petitioner's right to liberty is in jeopardy. He may be entirely deprived of such birthright without due process of law unless we shunt aside the rigidity of the rules of procedure and review his case. Hence, we treat this recourse as an appeal timely brought to the Court. Consonant with the basic rule in criminal procedure that an appeal opens the whole case for review, we should deem it our duty to correct errors in the appealed judgment, whether assigned or not.[17]

The law under which the petitioner was charged, tried and found guilty of violating is Section 10 *(a)*, Article VI of Republic Act No. 7610, which relevantly states:

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[16] Section 6, Rule 1, Rules of Court, which provides:

Section 6. Construction. — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. (2a)

[17] *Ferrer v. People*, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 54.

Section 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development*. —

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

x x x x x x x x x

Child abuse, the crime charged, is defined by Section 3 *(b)* of Republic Act No. 7610, as follows:

Section 3. *Definition of terms*. —

x x x x x x x x x

(b) "Child Abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

x x x x x x x x x

Although we affirm the factual findings of fact by the RTC and the CA to the effect that the petitioner struck Jayson at the back with his hand and slapped Jayson on the face, we disagree with their holding that his acts constituted *child abuse* within the purview of the above-quoted provisions. The records did not establish beyond reasonable doubt that his laying of hands on Jayson had been intended to debase the "intrinsic worth and dignity" of Jayson as a human being, or that he had thereby

intended to humiliate or embarrass Jayson. The records showed the laying of hands on Jayson to have been done at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of *child abuse.*

It is not trite to remind that under the well-recognized doctrine of *pro reo* every doubt is resolved in favor of the petitioner as the accused. Thus, the Court should consider all possible circumstances in his favor.[18]

What crime, then, did the petitioner commit?

Considering that Jayson's physical injury required five to seven days of medical attention,[19] the petitioner was liable for slight physical injuries under Article 266 (1) of the Revised Penal Code, to wit:

> Article 266. *Slight physical injuries and maltreatment.* — The crime of slight physical injuries shall be punished:
>
> 1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.
>
> x x x x x x x x x

The penalty for slight physical injuries is *arresto menor*, which ranges from one day to 30 days of imprisonment.[20] In imposing the correct penalty, however, we have to consider the mitigating circumstance of passion or obfuscation under Article

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[18] *Villanueva v. People*, G.R. No. 160351, April 10, 2006, 487 SCRA 42, 58.

[19] Records, p. 154.

[20] Article 27, *Revised Penal Code.*

13 (6) of the *Revised Penal Code*,[21] because the petitioner lost his reason and self-control, thereby diminishing the exercise of his will power.[22] Passion or obfuscation may lawfully arise from causes existing only in the honest belief of the accused.[23] It is relevant to mention, too, that in passion or obfuscation, the offender suffers a diminution of intelligence and intent. With his having acted under the belief that Jayson and Roldan had thrown stones at his two minor daughters, and that Jayson had burned Cherrlyn's hair, the petitioner was entitled to the mitigating circumstance of passion. *Arresto menor* is prescribed in its minimum period (*i.e.*, one day to 10 days) in the absence of any aggravating circumstance that offset the mitigating circumstance of passion. Accordingly, with the *Indeterminate Sentence Law* being inapplicable due to the penalty imposed not exceeding one year,[24] the petitioner shall suffer a straight penalty of 10 days of *arresto menor*.

The award of moral damages to Jayson is appropriate. Such damages are granted in criminal cases resulting in physical injuries. [25] The amount of ₱5,000.00 fixed by the lower courts as moral damages is consistent with the current jurisprudence.[26]

WHEREFORE, we **SET ASIDE** the decision of the Court of Appeals; and **ENTER** a new judgment: (*a*) finding petitioner

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[21] Article 13. Mitigating circumstances. — The following are mitigating circumstances:

x x x x x x x x x

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

x x x x x x x x x

[22] *United States v. Salandanan, et al.*, 1 Phil. 464, 465 (1902).

[23] Reyes, *Criminal Law, The Revised Penal Code*, Book One (15th Edition), p. 286, citing *U.S. v. Ferrer*, 1 Phil. 56, 62, *U.S. v. Macalintal*, 2 Phil. 448, 451; and *People v. Zapata*, 107 Phil. 103, 109.

[24] Section 2, *Indeterminate Sentence Law*.

[25] Article 2219 (1) of the *Civil Code*.

[26] *People v. Villacorta*, G.R. No. 186412, September 7, 2011, 657 SCRA 270, 288.

Deed of Transfer would necessarily entail or involve an examination of the true nature of the said agreement. In other words, the matter of validity of the disputed Deed of Transfer and the question of whether the agreement evidenced by such Deed was, in fact, an equitable mortgage are issues which are closely related, which can, thus, be resolved jointly by the CA.

WHEREFORE, the instant petition is **DENIED.** The assailed Amended Decision and Resolutions of the Court of Appeals, dated September 30, 2005, July 5, 2006 and August 28, 2006, respectively, in CA-G.R. CV No. 76388, are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin,[*] *Abad,* and *Leonen, JJ., concur.*

SECOND DIVISION

[G.R. No. 174844. March 20, 2013]

VEVENCIA ECHIN PABALAN, *ET AL.*, *petitioners, vs.* **THE HEIRS OF SIMEON A.B. MAAMO, SR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; CONFINED TO QUESTIONS OF LAW. — For the most part, petitioners raise questions of fact which, as a general rule, are not proper subjects of appeal by *certiorari* under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law. This Court is not a

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[*] Designated Acting Member, in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated March 18, 2013.

trier of facts and cannot, therefore, be tasked to go over the proofs presented by the parties in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence. Among the recognized exceptions to this rule, however is when the factual findings of the trial court are, as here, different from those of the CA. Even then, a re-evaluation of factual issues would only be warranted when the assailed findings are totally bereft of support in the records or are so patently erroneous as to amount to grave abuse of discretion. So long as such findings are supported by the record, the findings of the Court of Appeals are conclusive and binding on this Court, even if contrary to those of the trial court.

2. **CIVIL LAW; LAND REGISTRATION; A LAND IS DEFINED BY THE METES AND BOUNDS SPECIFIED IN ITS DESCRIPTION AS ENCLOSING THE LAND AND INDICATING ITS LIMITS. —** As determined by the court-appointed commissioner, the total area of the parcel claimed by respondents measures 14,433 square meters, of which 7,055 square meters are, in turn, claimed by petitioners. In deciding against respondents, the RTC ruled that the areas of said parcel and, for that matter, the portion in litigation, were disproportionately larger than the 1,612 square meters stated in the TDs adduced by respondents. It must be borne in mind, however, that what defines the land is not the numerical data indicated as its size or area but, rather, the boundaries or "metes and bounds" specified in its description as enclosing the land and indicating its limits. To repeat, the evidence adduced *a quo* shows that the boundaries of the parcel of land purchased by Antonia are consistent with the boundaries of the parcel of land in Miguel's TDs and the sketch submitted by the court-appointed commissioner.

3. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; RULE ON CONCLUSIVENESS OF JUDGMENT; BARS THE RELITIGATION OF PARTICULAR FACTS OR ISSUES IN ANOTHER LITIGATION BETWEEN THE SAME PARTIES AND THEIR PRIVIES ON A DIFFERENT CAUSE OF ACTION. —** While it is true that a judgment rendered in a forcible entry case will not bar an action between the same parties respecting title or ownership, the rule is settled that such a judgment is conclusive with respect to the issue of material possession. Although it does not have the same effect

as *res judicata* in the form of bar by former judgment which prohibits the prosecution of a second action upon the same claim, demand, or cause of action, the rule on conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties and their privies on a different claim or cause of action.

4. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; ACQUISITIVE PRESCRIPTION; ACTS OF POSSESSORY CHARACTER EXECUTED DUE TO LICENSE OR BY MERE TOLERANCE OF THE OWNER ARE INADEQUATE FOR PURPOSES THEREOF. — [T]he fact that the writ of execution issued in Civil Case No. 298 was returned duly served also lends credence to respondents' claim that Simplecio's possession of the property was upon Miguel's tolerance. Since acts of a possessory character executed due to license or by mere tolerance of the owner are inadequate for purposes of acquisitive prescription, petitioners cannot claim to have acquired ownership of the property by virtue of their possession thereof since 1935. Under Articles 444 and 1942 of the old *Civil Code*, possession of real property is not affected by acts of a possessory character which are merely tolerated by the possessor, or which are due to his license. Granted that long, continued occupation, accompanied by acts of a possessory character, affords some evidence that possession has been exerted in the character of owner and under claim of right, this inference is unavailing to petitioners since Simplecio's continued possession of the property after his defeat in the ejectment suit was clearly upon the tolerance of respondents' predecessors-in-interest.

5. ID.; ID.; ID.; POSSESSION MUST BE ADVERSE IN ORDER TO CONSTITUTE THE FOUNDATION OF A PRESCRIPTIVE RIGHT. — Inasmuch as possession must be adverse, public, peaceful and uninterrupted in order to consolidate prescription, it stands to reason that acts of a possessory character done by virtue of a license or mere tolerance on the part of the real owner are not sufficient. It has been ruled that this principle is applicable not only with respect to the prescription of the dominium as a whole, but, to the prescription of right *in rem*. Considering that Article 1119 of the present *Civil Code* also provides that "(acts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purposes of possession,"

the error petitioners impute against the CA for applying the new *Civil Code* provisions on prescription is more apparent than real. Then as now, possession must be *en concepto de dueño* or adverse in order to constitute the foundation of a prescriptive right. If not, such possessory acts, no matter how long, do not start the running of the period of prescription.

APPEARANCES OF COUNSEL

Renato M. Rances for petitioners.
Sinforoso N. Ordiz, Jr. for respondents.

D E C I S I O N

PEREZ, *J.*:

Filed pursuant to Rule 45 of the 1997 *Rules of Civil Procedure*, the petition for review at bench primarily assails the Decision[1] dated 22 May 2006 rendered by the Twentieth Division of the Court of Appeals (CA) in CA-G.R. CV No. 60769,[2] reversing the Decision dated 20 August 1997 in turn rendered by the Regional Trial Court, Branch 26, Southern Leyte **(*RTC*)** in Civil Case No. R-263.[3]

On 31 December 1910, ***Onofre*** Palapo sold in favor of ***Placido*** Sy-Cansoy a parcel of land situated in the then Barrio Calapian (now Barangay Estela), Liloan, Leyte (now Southern), for the stated consideration of ₱86.00. Drawn in Spanish, the notarized Leyte Deed of Sale the former executed in favor of the latter identified the property as enclosed by the following boundaries: on the North, by the Barrio Church; on the South and East, by the property of Matias Simagala; and, on the West, by the property of ***Miguel*** Maamo.[4] On 29 October 1934, Placido, in turn, executed

[1] Penned by CA Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr.

[2] CA *rollo*, 22 May 2006 Decision in CA-G.R. CV No. 60769, pp. 205-219.

[3] Records, pp. 825-834, (Civil Case No. R-263), 20 August 1997 RTC Decision.

[4] Exhibit "B" and submarkings, folder of exhibits, pp. 2-3.

a notarized deed in Spanish, affirming a 12 October 1912 sale of the same parcel for the sum of ₱100.00 in favor of Miguel's wife, ***Antonia*** Bayon.[5] Faulting ***Simplecio*** Palapo with forcible entry into the property on 17 October 1934, Antonia, represented by ***Simeon*** Maamo, later filed the 4 December 1934 ejectment complaint which was docketed as Civil Case No. 298 before the then Court of the Justice of the Peace of Liloan, Leyte.[6]

Served with summons, Simplecio filed an answer dated 6 December 1934, asserting that, as one of the heirs of ***Concepcion*** Palapo, he had been in legal possession of the property for many years without once being disturbed by anyone.[7] On the strength of the aforesaid documents of transfer as well as the evidence of prior possession adduced by Antonia, however, the Court of the Justice of the Peace of Liloan, Leyte went on to render a Decision dated 17 December 1934, brushing aside Simplecio's defense for lack of evidentiary basis and ordering him to vacate the parcel in litigation.[8] As may be gleaned from the 5 December 1983 certification later issued by Liloan, Leyte Municipal Trial Judge Patricio S. de los Reyes Sr., it appears that the 24 December 1934 writ of execution issued in the case was later returned duly served.[9]

On 9 December 1981, ***Simeon Sr., Fabian Sr., Juliana, Olivo, Silvestre Sr., Angela, Bonifacia*** and ***Estelita***, all surnamed Maamo (**plaintiffs Maamo**), commenced the instant suit with the filing of their complaint for recovery of real property and damages against Simplecio's children, ***Crispiniano, Juanito Sr., Arsenia*** and ***Roberto***, all surnamed Palapo (***defendants Palapo***).[10] In their amended complaint, plaintiffs Maamo alleged that, as children and heirs of the Spouses Miguel and Antonia, they were the co-owners of the parcel of land sold by Placido

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[5] Exhibit "A", *id*. at 1.

[6] Exhibit "E" and submarkings, *id*. at 46-47.

[7] Exhibit "F", *id*. at 48.

[8] Exhibit "G", *id*. at 49.

[9] Exhibit "H" and submarkings, *id*. at 50.

[10] Records, pp. 1-6, (Civil Case No. R-263), 3 December 1981 Complaint.

which, while reported in tax declarations to contain an area of 1,612 square meters, actually measured 13,813 square meters. Invoking the decision redeemed in favor of Antonia in Civil Case No. 298, plaintiffs Maamo maintained that their parents later relented to Simplecio's entreaty to be allowed to stay on the property as administrator. Plaintiffs Maamo further averred that, having illegally claimed ownership over the western portion of the property after Simplecio's death in 1971, defendants Palapo unjustifiably refused to heed their demands for the return of the litigated section measuring 7,055 square meters.[11]

On 10 February 1982, defendants Palapo filed their answer, specifically denying the material allegations of plaintiffs Maamo's complaint. Maintaining that they inherited the litigated portion from Simplecio, defendants Palapo asserted that their father, in turn, inherited the same from his brother, ***Crispiniano Palapo***, who also succeeded to the rights of Concepcion, the tax declarant as early as 1906. By themselves and thru their said predecessors-in-interest, defendants Palapo insisted that they had been in open, continuous and adverse possession of the litigated portion in the concept of owner since 1906, paying the realty taxes due thereon long before the Second World War. Even assuming that Antonia prevailed in the ejectment suit she filed against Simplecio in 1934, defendants Palapo argued that the causes of action of plaintiffs Maamo's were already barred by prescription, estoppel and laches.[12]

At pre-trial, a commissioner was appointed to conduct an ocular inspection of the litigated portion and to submit a sketch showing, among other matters, the metes and bounds thereof. On 15 August 1982, the court-appointed commissioner submitted a report and sketch, mapping out the 7,055 square meter portion in litigation and identifying its boundaries as follows: on the North, by Maamo St.; on South by Peter Burset St.; on the East, by the Provincial Road; and, on the West, by Ang Bayon St.[13] As

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[11] 22 July 1983 Amended Complaint, *id.* at 146-150.

[12] 29 January 1982 Answer, *id*. at 15-20.

[13] 15 August 1982 Commissioner's Report and Sketch, *id*. at 61-64.

noted in the 29 November 1983 pre-trial order issued in the case, the identity of the portion in litigation was admitted by the parties.[14] At the trial of the case on the merits, Simeon Sr. took the witness stand[15] and submitted the deeds executed by Onofre and Placido, the documents pertaining to Civil Case No. 298, the tax declarations ***(TD***s) and receipts pertaining to the property dating back to the year 1918 and the certification to file action by the Barangay Estela Lupon secretary.[16] By way of defense evidence, defendants Palapo presented the testimonies of Juanito Palapo and Balbina Galgaw Madlos,[17] together with the TDs and receipts which they traced to the TD filed by Concepcion in 1906.[18]

On 20 August 1997, the RTC rendered a decision, declaring defendants Palapo to be the legal owners and possessors of the litigated portion. Finding that Simplecio's supposed 17 October 1934 forcible entry into the property preceded the 29 October 1934 deed Placido executed in favor of Antonia, the RTC brushed aside plaintiffs Maamo's claim on the further ground that the 7,055 square meter area of the litigated portion far exceeded the 1,612 square meters declared in their TDs which, as a rule, cannot prevail over defendants Palapo's actual possession of the property. Having possessed the litigated portion in the concept of owner for more than thirty years, defendants Palapo were also declared to have acquired the property by means of prescription, without need of title or good faith. Ordered to respect defendants Palapo's ownership and possession of the portion in litigation, the RTC held plaintiffs Maamo liable to pay the former the total sum of ₱50,000.00 by way of actual and moral damages as well attorney's fees and litigation expenses.[19]

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[14] 29 November 1983 Pre-Trial Order, *id*. at 173-175.

[15] TSN, 3 July 1984.

[16] Exhibits "A" to "K" and submarkings, folder of exhibits, pp. 1-52; 91-93.

[17] TSNs, 28 May 1985, 18 November 1986, 22 August 1996.

[18] Exhibits "1" to "6" and submarkings, folder of exhibits, pp. 53-90.

[19] Records, pp. 825-834, (Civil Case No. R-263), RTC Decision dated 20 August 1990.

On appeal, the foregoing Decision was reversed and set aside in the herein assailed 22 May 2006 Decision rendered by the CA's Twentieth Division in CA-G.R. CV No. 60769. The CA ruled that plaintiffs Maamo were the true and lawful owners of the litigated portion, upon the following findings and conclusions: (a) the 29 October 1934 deed Placido executed in favor of Antonia was a mere affirmation of an earlier sale made on 12 October 1912, hence, the acquisition of the litigated portion by plaintiffs Maamo's predecessor-in-interest predated Simplecio's 17 October 1934 entry thereon; (b) defendants Palapo traced their claim to Concepcion's 1906 TD which pertained to a different parcel situated in Barrio Pandan, Liloan, Leyte; (c) the claim that the litigated portion was inherited from Concepcion had been rejected in the 17 December 1934 Decision rendered in Civil Case No. 298 which appears to have been returned duly served and executed; and, (e) since the possessory rights of plaintiffs Maamo's predecessor-in-interest had been affirmed and restored, Simplecio's continued possession of the portion in litigation was by mere tolerance and could not, therefore, ripen into ownership acquired by prescription, laches or estoppel.[20]

In the meantime, the death of some of the original parties to the case resulted in their substitution by their respective heirs. Simeon, Sr. was substituted by his wife and children, ***respondents*** Crispina, Simeon, Jr., Aselita, Remedios, Evansueda, Carmelita, Manuel, Elizabeth, Adelaida and Miguel II, all surnamed Maamo. As a consequence, they were joined in the case with the surviving plaintiffs Maamo, (now ***respondents***) Fabian Sr., Juliana, Olivo, Silvestre Sr., Angela, Bonifacia and Estelita, all surnamed Maamo. On defendants Palapo's side, Roberto was substituted by ***petitioners*** Lydia Veronica, Alily, Beverly and Maricar, all surnamed Palapo.[21] Juanito was, likewise, substituted by ***petitioners*** Generoso, Perla, Juanito Jr., Delia, Raul, Editha and Elvira, all surnamed Palapo. Arsenia was, in turn, substituted by her children, ***petitioners*** V[e]vencia, Rogelio, Elizabeth, Josefina, Eusebio, Gavina and Amelita, all surnamed Enchin. Crispiniano was, finally, substituted

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[20] CA *rollo*, (CA-G.R. No. 60769), pp. 205-219.

[21] Records, pp. 735-736; 740; 773-774, (Civil Case No. R-263).

by his children, ***petitioners*** Angelita, Normita, Apolonia, Bining and Inday, all surnamed Palapo.[22]

On 7 September 2006, the CA issued the second assailed resolution of the same date, denying for lack of merit petitioners' motion for reconsideration of its 22 May 2006 Decision. Aggrieved, petitioners filed the petition at bench, on the following grounds:

1. THE CA SERIOUSLY ERRED IN REVERSING THE RTC'S DECISION AND IN DECLARING THE RESPONDENTS IN CONTINUED POSSESSION OF THE PROPERTY IN DISPUTE FROM 1918 TO 1980, NOTWITHSTANDING PETITIONERS' EVIDENCE TO THE CONTRARY WHICH PREPONDERANTLY ESTABLISHED THAT, BY THEMSELVES AND THRU THEIR PREDECESSORS-IN-INTEREST, THEY HAVE BEEN IN OPEN, PUBLIC, ADVERSE AND CONTINUOUS POSSESSION THEREOF IN THE CONCEPT OF OWNERS SINCE 20 JULY 1906.

2. THE CA GRAVELY ERRED IN DISREGARDING SIMEON SR.'S ADMISSION IN OPEN COURT THAT RESPONDENTS HAVE NOT BEEN IN POSSESSION OF THE PROPERTY FROM 1935 UNTIL THE FILING OF THEIR COMPLAINT IN 1981, SAID ADMISSION BEING A CLEAR INDICATION THAT THEIR COMPLAINT IS BARRED BY ESTOPPEL AND LACHES.

3. THE CA GRAVELY ERRED IN DECLARING RESPONDENTS AS OWNERS OF THE PROPERTY BY VIRTUE OF PRESCRIPTION UNDER THE CIVIL CODE.

4. THE CA SERIOUSLY ERRED IN RELYING ON THE JUDGMENT RENDERED IN CIVIL CASE NO. 298 AS BASIS FOR RESPONDENTS' POSSESSION.

5. THE CA ALSO ERRED IN DECLARING THAT SIMPLECIO'S POSSESSION WAS UPON THE TOLERANCE OF RESPONDENTS' PREDECESSORS-IN-INTEREST.[23]

We find the petition bereft of merit.

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[22] CA *rollo*, (CA-G.R. CV No. 60769), pp. 142-143; 165-166; 169-170.

[23] *Rollo*, pp. 13-14.

For the most part, petitioners raise questions of fact which, as a general rule, are not proper subjects of appeal by *certiorari* under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law.[24] This Court is not a trier of facts and cannot, therefore, be tasked to go over the proofs presented by the parties in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.[25] Among the recognized exceptions to this rule, however is when the factual findings of the trial court are, as here, different from those of the CA.[26] Even then, a re-evaluation of factual issues would only be warranted when the assailed findings are totally bereft of support in the records or are so patently erroneous as to amount to grave abuse of discretion. So long as such findings are supported by the record, the findings of the Court of Appeals are conclusive and binding on this Court, even if contrary to those of the trial court.[27]

Our perusal of the record shows that the CA correctly ruled that the land to which the litigated portion pertains was purchased from Placido by respondents' predecessor-in-interest, Antonia, on 12 October 1912 and not on 29 October 1934, the date of the document in which the former acknowledged the transaction in writing.[28] Contrary to the RTC's finding, therefore, Antonia already owned the property when petitioners' own predecessor-in-interest, Simplecio, was alleged to have forcibly entered into the property on 17 October 1934. Considering that Placido was, in turn, established to have purchased the property from Onofre on 31 December 1910,[29] it was from the latter date that respondents rightfully traced their ownership and possession

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[24] *Goyena v. Ledesma-Gustilo*, 443 Phil. 150, 158 (2003).

[25] *JMM Promotions and Management, Inc. v. Court of Appeals*, G.R. No. 139401, 2 October 2002, 390 SCRA 223, 229-230.

[26] *Manila Electric Company v. Court of Appeals*, 413 Phil. 338, 354 (2001).

[27] *Gonzales v. Court of Appeals*, 411 Phil. 232, 242 (2001).

[28] Exhibit "A", folder of exhibits, p. 1.

[29] Exhibit "B", and submarkings, *id.* at 2-3.

thereof. Reference to the aforesaid transactions in the body of the 4 December 1934 ejectment complaint Antonia filed against Simplecio before the Court of the Justice of the Peace of Liloan, Leyte[30] also leave no doubt that the same property was the subject matter of Civil Case No. 298.

The area of the property that Antonia acquired in 1912 was, of course, not specified but was simply identified by the following boundaries: on the North, by the Barrio Church; on the South and East, by the property of Matias Simagala; and, on the West, by the property of Miguel Maamo. By the time that the property was declared for taxation purposes in the name of Antonia's husband, Miguel, for the years 1918, 1948, 1971, 1974, 1976 and 1980, the boundaries enclosing the same were, however, already stated as follows: on the North, by Maamo St.; on the South, by Peter Burset St.; on the East, by Union St.; and, on the West, by Ang Bayon St.[31] These apparent variances in the boundaries of the property were, however, elucidated during the direct examination of Simeon Sr. who explained the permutations said boundaries underwent over the years. These included the destruction of the Barrio church in 1912 and its subsequent relocation, the construction of Maamo St., Peter Burset St. and Ang Bayon St. and the donation made by his parents, Miguel and Antonia, of portions of the property for street construction.[32]

On the other hand, petitioners trace their claim of ownership and possession to Concepcion who declared a two-hectare parcel of land for taxation purposes in 1906 under TD 832 and from whom her brother, Crispiniano, was alleged in the answer to have inherited the same. Contradicting their initial claim that Simplecio, in turn, inherited the property from Crispiniano,[33] petitioners later asserted that Simplecio directly inherited the property from Concepcion who was unmarried and died with

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[30] Exhibit "C", and submarkings, *id*. at 46-47.

[31] Exhibits "C", "C-1", "C-2", "C-3", "C-4" and "C-5", *id*. at 4-9.

[32] TSN, 3 July 1984, pp. 22-38.

[33] Records, p. 17, (Civil Case No. R-263).

issue.[34] As a perusal thereof would readily reveal, however, TD 832 was filed by Concepcion on 20 July 1906 with respect to a parcel of land situated in Barrio of Pandan and identified by the following boundaries: on the North, by la Playa (the seashore); on the South, by Patrecio Lanog; on the East, by Simeon Bajan; and on the West, by Placido Cimagala.[35] According to the testimony of Juanito, said property was eventually subdivided into three parcels which were all eventually declared for taxation purposes in the name of Simplecio.[36]

Instead of Barrio Pandan which was stated as the location of Concepcion's property in TD 832, our perusal of the TDs that petitioners adduced *a quo* shows that the three parcels into which said property was supposedly divided are, however, situated in Barrio Estela. The first parcel was declared in the names of Concepcion and ***Justiniano*** Palapo under TDs 4173 and 5401 in the years 1922 and 1958, respectively, and was identified by the following boundaries: on the North, by Cuares St.; on the South, by Bahan St.; on the East, by Palapo St.; and on the West by Union St.[37] The foregoing boundaries were reproduced in TDs 16670 and 1997 in the name of Concepcion for the years 1971 and 1974, respectively.[38] It was only in 1975 and 1980, when the property was declared in the name of Simplecio under TDs 5125 and 4202, respectively, that the boundaries of the property were stated as follows: on the North, by the Church Site; on the South, by Cuares St.; on the East, by the Provincial Road; and on the West, by the School Site.[39]

Declared for taxation purposes in the name of Concepcion under TDs 4175, 5411, 16667 and 1994 in the years 1922, 1948, 1971 and 1974, respectively, the second parcel was, on

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[34] TSN, 28 May 1985, p. 10; TSN, 18 July 1996, p. 3.

[35] Exhibit "1-F", folder of exhibits, p. 59.

[36] TSN, 13 June 1986; TSN, 18 July 1996, p. 24.

[37] Exhibits "1-D" and "1-E", folder of exhibits, pp. 57-58.

[38] Exhibits "1-B" and "1-C", *id*. at 55-56.

[39] Exhibits "1" and "1-A", *id*. at 53-54.

the other hand, described as delimited by the following boundaries: on the North by Sarvida St.; on the South, by Cuares St.; on the East, by Union St.; and on the West, by the property of Antonia Bayon.[40] When the same parcel was, however, declared in Simplecio's name in 1975 and 1980 under TDs 5123 and 4204, the boundaries were inexplicably altered in the following wise: on the North, by Cuares and Sarvida St.; on the South, by the property of Demetrio Palapo; on the East, by the Seashore; and on the West, by the Provincial Road.[41] The third parcel was, finally, declared in the names of Concepcion and Justiniano in the years 1922, 1948, 1971 and 1974 under TDs 4179, 5410, 16664 and 1993, respectively. Its boundaries were identified as follows: on the North, by the property of Concepcion Palapo; on the South, by the property of Simeon Bajan; on the East, by Palapo St.; and on the West, by Union St.[42] By the time this parcel was declared for taxation purposes in Simplecio's name in 1975 and 1980 under TDs 5121 and 4205, the boundaries were once again altered in the following wise: on the North, by the Barrio Road and the property of Miguel Maamo; on the South, by the Church Site; on the East, by the Provincial Road; and on the West, by the School Site and Barrio Road.[43]

As noted, the provenance of the foregoing TDs were all traced to TD 832 which pertained to a property situated in Barrio Pandan and not Barrio Estela, the location of the property in litigation. Since both Simeon, Sr. and Juanito testified that Barrio Pandan is more than one kilometer to about two kilometers away from Barrio Estela,[44] we find that the CA correctly ruled that petitioners cannot trace their claim of possession and ownership to TD 832 that Concepcion obtained in 1906. In contrast, respondents were able to trace their claim to Onofre's 31 December 1910 sale of the property to Placido who, in turn, sold the same

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[40] Exhibits "3-B", "3-C", "3-D" and "3-E", *id*. at 70-73.

[41] Exhibits "3" and "3-A," *id*. at 68-69.

[42] Exhibits "4-B", "4-C", "4-D", "4-E", *id*. at 80-83.

[43] Exhibits "4" and "4-A", *id*. at 78-79.

[44] TSN, 24 September 1984, p. 5, TSN 18 July 1996, p. 7.

to Antonia on 12 October 1912. The TDs Miguel filed with respect to the property also date back to 1918[45] or four years ahead of the TD's filed in 1922 in the names of Concepcion and Justiniano, over the three parcels into which the property was purportedly subdivided. Even more importantly, the stated boundaries of the property declared in Miguel's name are identical to the boundaries of the property identified in the sketch submitted by the court-appointed commissioner. This cannot be said of the properties declared in the names of Concepcion and Justiniano, the boundaries of which were further altered when they were declared in Simplecio's name in 1975 and 1980.

As determined by the court-appointed commissioner, the total area of the parcel claimed by respondents measures 14,433 square meters, of which 7,055 square meters are, in turn, claimed by petitioners.[46] In deciding against respondents, the RTC ruled that the areas of said parcel and, for that matter, the portion in litigation, were disproportionately larger than the 1,612 square meters stated in the TDs adduced by respondents. It must be borne in mind, however, that what defines the land is not the numerical data indicated as its size or area but, rather, the boundaries or "metes and bounds" specified in its description as enclosing the land and indicating its limits.[47] To repeat, the evidence adduced *a quo* shows that the boundaries of the parcel of land purchased by Antonia are consistent with the boundaries of the parcel of land in Miguel's TDs and the sketch submitted by the court-appointed commissioner.

Petitioners next fault the CA for supposedly disregarding their evidence to the effect that Simplecio had been in possession of the property since 1912 as well as Simeon Sr.'s admission that respondents have not been in possession thereof since 1935. Aside from the fact that the TDs they presented pertain to a

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[45] Exhibits "C", "C-1", "C-2", "C-3", "C-4" and "C-5", folder of exhibits, pp. 4-9.

[46] Records, pp. 61-64, (Civil Case No. R-263), 15 August 1982 Commissioner's Report and Sketch.

[47] *Tabuso v. Court of Appeals,* 411 Phil. 775, 787 (2001).

different property, however, petitioners conveniently overlook Antonia's filing of an ejectment complaint against Simplecio in 1934 with respect to the property herein litigated. In the 17 December 1934 Decision rendered in the case, the Court of the Justice of the Peace of Liloan Leyte significantly determined Antonia's prior possession of the property and upheld her right to take possession thereof.[48] While it is true that a judgment rendered in a forcible entry case will not bar an action between the same parties respecting title or ownership,[49] the rule is settled that such a judgment is conclusive with respect to the issue of material possession.[50] Although it does not have the same effect as *res judicata* in the form of bar by former judgment which prohibits the prosecution of a second action upon the same claim, demand, or cause of action, the rule on conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties and their privies on a different claim or cause of action.[51]

To Our mind, the fact that the writ of execution issued in Civil Case No. 298 was returned duly served[52] also lends credence to respondents' claim that Simplecio's possession of the property was upon Miguel's tolerance.[53] Since acts of a possessory character executed due to license or by mere tolerance of the owner are inadequate for purposes of acquisitive prescription,[54] petitioners cannot claim to have acquired ownership of the property by virtue of their possession thereof since 1935. Under Articles 444[55]

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[48] Exhibit "G", folder of exhibits, p. 49.

[49] *S.J. Vda. de Villanueva v. Court of Appeals*, 403 Phil. 721, 730 (2001).

[50] *Buazon v. Court of Appeals*, G.R. No. 97749, 19 March 1993, 220 SCRA 182, 190.

[51] *Heirs of Abadilla v. Galarosa*, 527 Phil. 264, 278 (2006).

[52] Exhibit "H" and submarkings, folder of exhibits, p. 50.

[53] TSN, 3 July 1984, p. 34.

[54] *Lamsis v. Dong-e*, G.R. No. 173021, 20 October 2010, 634 SCRA 154, 172.

[55] Art. 444. Acts which are merely tolerated and those clandestinely executed, without knowledge of the possessors of a thing, or by force, do not affect the possession.

and 1942[56] of the old Civil Code, possession of real property is not affected by acts of a possessory character which are merely tolerated by the possessor, or which are due to his license.[57] Granted that long, continued occupation, accompanied by acts of a possessory character, affords some evidence that possession has been exerted in the character of owner and under claim of right,[58] this inference is unavailing to petitioners since Simplecio's continued possession of the property after his defeat in the ejectment suit was clearly upon the tolerance of respondents' predecessors-in-interest.

Viewed in the light of the foregoing considerations, petitioners' reliance on Sections 40[59] and 41[60] of Act No. 190 or the Code of Civil Procedure is, at the very least, misplaced. Inasmuch as possession must be adverse, public, peaceful and uninterrupted in order to consolidate prescription, it stands to reason that acts of a possessory character done by virtue of a license or

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[56] Art. 1942. Acts of a possessory character, performed by virtue of the license, or by mere tolerance on the part of the owner, are of no effect for establishing possession.

[57] *Cuayong v. Benedicto*, 37 Phil. 781, 793 (1918).

[58] *Corporacion de PP. Dominicos v. Lazaro*, 42 Phil. 119, 127 (1921).

[59] SECTION 40. *Period of Prescription as to Real Estate*. — An action for recovery of the title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues.

[60] SECTION 41. *Title to Land by Prescription*. — Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war.

mere tolerance on the part of the real owner are not sufficient.[61] It has been ruled that this principle is applicable not only with respect to the prescription of the dominium as a whole, but, to the prescription of right in rem.[62] Considering that Article 1119 of the present Civil Code also provides that "(a)cts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purposes of possession," the error petitioners impute against the CA for applying the new Civil Code provisions on prescription is more apparent than real. Then as now, possession must be *en concepto de dueño* or adverse in order to constitute the foundation of a prescriptive right. If not, such possessory acts, no matter how long, do not start the running of the period of prescription.[63]

As for the supposed fact that possession by tolerance was not among the issues simplified during the pre-trial of the case, suffice it to say that the same is subsumed in the second issue identified in the RTC's 29 November 1983 pre-trial order, *i.e.*, "(w)hether or not [p]etitioners and the[ir] predecessors-in-interest had been in the actual, physical possession of the land in question in the concept [of] owners since 1906 up to the present."[64] Since Simplecio's possession of the subject parcel was by mere tolerance, we find that the CA correctly brushed aside petitioners' reliance on estoppel which cannot be sustained by mere argument or doubtful inference.[65] The same may be said of the CA's rejection of laches, an equitable doctrine the application of which is controlled by equitable considerations.[66] It operates not really to penalize neglect or sleeping on one's rights, but rather to avoid

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[61] *Seminary of San Carlos v. Municipality of Cebu*, 19 Phil. 32, 42 (1911).

[62] *Cuaycong v. Benedicto, supra*, note 57 at 792-793.

[63] *Esguerra v. Manantan,* G.R. No. 158328, 23 February 2007, 516 SCRA 561, 573.

[64] Records, (Civil Case No. R-263), p. 175.

[65] *Liga v. Allegro Resources Corp.*, G.R. No. 175554, 23 December 2008, 575 SCRA 310, 320-321.

[66] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 379 (2003).

recognizing a right when to do so would result in a clearly inequitable situation.[67] Unfortunately for petitioners' cause, no such situation obtains in the case.

WHEREFORE, premises considered, the instant petition for review on *certiorari* is **DENIED** for lack of merit.

SO ORDERED.

Carpio, Brion, del Castillo, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 176422. March 20, 2013]

MARIA MENDOZA, in her own capacity and as Attorney-in-fact of DEOGRACIAS, MARCELA, DIONISIA, ADORACION, all surnamed MENDOZA, REMEDIOS MONTILLA, FELY BAUTISTA, JULIANA GUILALAS and ELVIRA MENDOZA, *petitioners, vs.* **JULIA POLICARPIO DELOS SANTOS, substituted by her heirs, CARMEN P. DELOS SANTOS, ROSA BUENAVENTURA, ZENAIDA P. DELOS SANTOS *VDA. DE* MATEO, LEONILA P. DELOS SANTOS, ELVIRA P. DELOS SANTOS *VDA. DE* JOSE, TERESITA P. DELOS SANTOS-CABUHAT, MERCEDITA P. DELOS SANTOS, LYDIA P. DELOS SANTOS *VDA. DE* HILARIO, PERFECTO P. DELOS SANTOS, JR., and CECILIA M. MENDOZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER

[67] *Maestrado v. Court of Appeals,* 384 Phil. 418, 430 (2000).

RULE 45 OF THE RULES OF COURT; SHOULD RAISE ONLY QUESTIONS OF LAW; EXCEPTION. — This petition is one for review on *certiorari* under Rule 45 of the Rules of Court. The general rule in this regard is that it should raise only questions of law. There are, however, admitted exceptions to this rule, one of which is when the CA's findings are contrary to those of the trial court. This being the case in the petition at hand, the Court must now look into the differing findings and conclusion of the RTC and the CA on the two issues that arise — *one*, whether the properties in dispute are reservable properties and two, whether petitioners are entitled to a reservation of these properties.

2. CIVIL LAW; SUCCESSION; *RESERVA TRONCAL*; LINES OF TRANSMISSION. — The principle of *reserva troncal* is provided in Article 891 of the Civil Code x x x. There are three (3) lines of transmission in *reserva troncal*. The **first transmission** is by gratuitous title, whether by inheritance or donation, from an ascendant/brother/sister to a descendant called the *prepositus*. The **second transmission** is by operation of law from the *prepositus* to the other ascendant or reservor, also called the *reservista*. The **third and last transmission** is from the *reservista* to the reservees or *reservatarios* who must be relatives within the third degree from which the property came.

3. ID.; ID.; ID.; PERSONS INVOLVED THEREIN. — The persons involved in *reserva troncal* are: (1) The ascendant or brother or sister from whom the property was received by the descendant by lucrative or gratuitous title; (2) The descendant or *prepositus* (*propositus*) who received the property; (3) The reservor (*reservista*), the other ascendant who obtained the property from the *prepositus* by operation of law; and (4) The reservee (*reservatario*) who is within the third degree from the *prepositus* and who belongs to the (*linea o tronco*) from which the property came and for whom the property should be reserved by the reservor.

4. ID.; ID.; ID.; THE PROPERTY SHOULD HAVE BEEN ACQUIRED BY THE DESCENDANT OR *PREPOSITUS* FROM AN ASCENDANT BY GRATUITOUS OR LUCRATIVE TITLE. — Ownership of the properties should be reckoned only from Exequiel's as he is the ascendant from where the first transmission occurred, or from whom Gregoria inherited the properties in dispute. The law does not go farther

than such ascendant/brother/sister in determining the lineal character of the property. Article 981 simply requires that the property should have been acquired by the descendant or *prepositus* from an ascendant by gratuitous or lucrative title. A transmission is gratuitous or by gratuitous title when the recipient does not give anything in return.

5. ID.; ID.; ID.; THE PERSON OBLIGED TO RESERVE THE PROPERTY SHOULD BE AN ASCENDANT OF THE DESCENDANT/*PREPOSITUS*. — Article 891 provides that the person obliged to reserve the property should be an ascendant (also known as the reservor/*reservista*) of the descendant/*prepositus*. Julia, however, is not Gregoria's ascendant; rather, she is Gregoria's collateral relative. x x x Gregoria's ascendants are her parents, Exequiel and Leonor, her grandparents, great-grandparents and so on. On the other hand, Gregoria's descendants, if she had one, would be her children, grandchildren and great-grandchildren. Not being Gregoria's ascendants, both petitioners and Julia, therefore, are her collateral relatives. In determining the collateral line of relationship, ascent is made to the common ancestor and then descent to the relative from whom the computation is made. In the case of Julia's collateral relationship with Gregoria, ascent is to be made from Gregoria to her mother Leonor (one line/degree), then to the common ancestor, that is, Julia and Leonor's parents (second line/degree), and then descent to Julia, her aunt (third line/degree). Thus, Julia is Gregoria's collateral relative within the third degree and not her ascendant.

6. ID.; ID.; ID.; THE RESERVEES/*RESERVATARIOS* SHOULD BE WITHIN THE THIRD DEGREE FROM THE DESCENDANT/*PREPOSITUS*. — [P]etitioners cannot be considered reservees/*reservatarios* as they are not relatives within the third degree of Gregoria from whom the properties came. The person from whom the degree should be reckoned is the descendant/*prepositus* — the one at the end of the line from which the property came and upon whom the property last revolved by descent. It is Gregoria in this case. Petitioners are Gregoria's fourth degree relatives, being her first cousins. **First cousins of the *prepositus* are fourth degree relatives and are not reservees or *reservatarios*.** They cannot even claim representation of their predecessors Antonio and Valentin as Article 891 grants a personal right of reservation only to

the relatives up to the third degree from whom the reservable properties came. The only recognized exemption is in the case of nephews and nieces of the *prepositus*, who have the right to represent their ascendants (fathers and mothers) who are the brothers/sisters of the *prepositus* and relatives within the third degree.

7. ID.; ID.; ID.; A *RESERVISTA* WHO INHERITS FROM A *PREPOSITUS* ACQUIRES THE INHERITANCE BY VIRTUE OF A TITLE PERFECTLY TRANSFERRING ABSOLUTE OWNERSHIP. — A *reservista* has the duty to reserve and to annotate the reservable character of the property on the title. In *reserva troncal*, the *reservista* who inherits of the property on the title. In *reserva troncal*, the *reservista* who inherits from a *prepositus*, whether by the latter's wish or by operation of law, acquires the inheritance by virtue of a title perfectly transferring absolute ownership. All the attributes of ownership belong to him exclusively. x x x It is when the reservation takes place or is extinguished, that a *reservatario* becomes, by operation of law, the owner of the reservable property.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates Law Office for petitioners.
Manuel S. Obedoza, Jr. for respondents.

D E C I S I O N

REYES, *J.*:

*Reserva troncal i*s a special rule designed primarily to assure the return of a reservable property to the third degree relatives belonging to the line from which the property originally came, and avoid its being dissipated into and by the relatives of the inheriting ascendant.[1]

The Facts

The properties subject in the instant case are three parcels of land located in Sta. Maria, Bulacan: (1) Lot 1681-B, with

[1] *De Papa v. Camacho*, 228 Phil. 269, 274-275 (1986).

an area of 7,749 square meters;[2] (2) Lot 1684, with an area of 5,667 sq.m.;[3] and (3) Lot No. 1646-B, with an area of 880 sq.m.[4] Lot Nos. 1681-B and 1684 are presently in the name of respondent Julia delos Santos[5] (respondent). Lot No. 1646-B, on the other hand, is also in the name of respondent but co-owned by Victoria Pantaleon, who bought one-half of the property from petitioner Maria Mendoza and her siblings.

Petitioners are grandchildren of Placido Mendoza (Placido) and Dominga Mendoza (Dominga). Placido and Dominga had four children: **Antonio**, **Exequiel**, married to Leonor, **Apolonio** and **Valentin**. Petitioners Maria, Deogracias, Dionisia, Adoracion, Marcela and Ricardo are the children of Antonio. Petitioners Juliana, Fely, Mercedes, Elvira and Fortunato, on the other hand, are Valentin's children. Petitioners alleged that the properties were part of Placido and Dominga's properties that were subject of an oral partition and subsequently adjudicated to Exequiel. After Exequiel's death, it passed on to his spouse Leonor and only daughter, Gregoria. After Leonor's death, her share went to Gregoria. In 1992, Gregoria died intestate and without issue. They claimed that after Gregoria's death, respondent, who is Leonor's sister, adjudicated unto herself all these properties as the sole surviving heir of Leonor and Gregoria. Hence, petitioners claim that the properties should have been reserved by respondent in their behalf and must now revert back to them, applying Article 891 of the Civil Code on *reserva troncal*.

Respondent, however, denies any obligation to reserve the properties as these did not originate from petitioners' familial line and were not originally owned by Placido and Dominga. According to respondent, the properties were bought by Exequiel and Antonio from a certain Alfonso Ramos in 1931. It appears, however, that it was only Exequiel who was in possession of the properties.[6]

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[2] Covered by TCT No. T-149035 (M) (formerly TCT No. T-101248 [M]).

[3] Covered by TCT No. T-183631 (M) (formerly TCT No. T-139184 [M]).

[4] Covered by TCT No. T-149033 (M) (formerly TCT No. T-124852 [M]).

[5] Respondent was subsequently substituted by her heirs.

[6] *Rollo*, p. 38.

The Regional Trial Court (RTC) of Malolos, Bulacan, Branch 6, found merit in petitioners' claim and granted their action for Recovery of Possession by *Reserva Troncal*, Cancellation of TCT and Reconveyance. In its Decision dated November 4, 2002, the RTC disposed as follows:

> WHEREFORE, premised from the foregoing judgment [is] hereby rendered:
>
> 1. Ordering [respondents] (heirs of Julia Policarpio) to reconvey the three (3) parcels of land subject of this action in the name of the plaintiffs enumerated in the complaint including intervenor Maria Cecilia M. Mendoza except one-half of the property described in the old title[,] TCT No. T-124852(M) which belongs to Victorina Pantaleon;
> 2. Ordering the Register of Deeds of Bulacan to cancel the titles in the name of Julia Policarpio[,] TCT No. T-149033(M), T-183631(M) and T-149035(M) and reconvey the same to the enumerated plaintiffs; [and]
> 3. No pronouncement as to claims for attorney's fees and damages and costs.
>
> SO ORDERED.[7]

On appeal, the Court of Appeals (CA) reversed and set aside the RTC decision and dismissed the complaint filed by petitioners. The dispositive portion of the CA Decision dated November 16, 2006 provides:

> **WHEREFORE,** premises considered, the November 4, 2002 ***Decision*** of the Regional Trial Court, Br. 6, Third Judicial Region, Malolos, Bulacan, is **REVERSED** and **SET ASIDE**. The Third Amended Complaint in Civil Case No. 609-M-92 is hereby **DISMISSED**. Costs against the Plaintiffs-Appellants.
>
> **SO ORDERED.**[8]

Petitioners filed a motion for reconsideration but the CA denied the same per Resolution[9] dated January 17, 2007.

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[7] *Id.* at 50.

[8] *Id.* at 40.

[9] *Id.* at 42-43.

In dismissing the complaint, the CA ruled that petitioners failed to establish that Placido and Dominga owned the properties in dispute.[10] The CA also ruled that even assuming that Placido and Dominga previously owned the properties, it still cannot be subject to *reserva troncal* as neither Exequiel predeceased Placido and Dominga nor did Gregoria predecease Exequiel.[11]

Now before the Court, petitioners argue that:

A.

THE HONORABLE [CA] GRIEVOUSLY ERRED IN HOLDING THAT THE SUBJECT PROPERTIES ARE NOT RESERVABLE PROPERTIES, COMING AS THEY DO FROM THE FAMILY LINE OF THE PETITIONERS MENDOZAS.

B.

THE HONORABLE [CA] GRIEVOUSLY ERRED IN HOLDING THAT THE PETITIONERS MENDOZAS DO NOT HAVE A RIGHT TO THE SUBJECT PROPERTIES BY VIRTUE OF THE LAW ON *RESERVA TRONCAL*.[12]

Petitioners take exception to the ruling of the CA, contending that it is sufficient that the properties came from the paternal line of Gregoria for it to be subject to *reserva troncal*. They also claim the properties in representation of their own predecessors, Antonio and Valentin, who were the brothers of Exequiel.[13]

Ruling of the Court

This petition is one for review on *certiorari* under Rule 45 of the Rules of Court. The general rule in this regard is that it should raise only questions of law. There are, however, admitted exceptions to this rule, one of which is when the CA's findings are contrary to those of the trial court.[14] This being the case in

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[10] *Id.* at 37.

[11] *Id.* at 39.

[12] *Id.* at 19.

[13] *Id.* at 19-25.

[14] *Maglana Rice and Corn Mill, Inc. v. Tan*, G.R. No. 159051, September 21, 2011, 658 SCRA 58, 64-65.

the petition at hand, the Court must now look into the differing findings and conclusion of the RTC and the CA on the two issues that arise — *one*, whether the properties in dispute are reservable properties and *two*, whether petitioners are entitled to a reservation of these properties.

Article 891 of the Civil Code on *reserva troncal*

The principle of *reserva troncal* is provided in Article 891 of the Civil Code:

> Art. 891. The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law **for the benefit of relatives who are within the third degree and belong to the line from which said property came**. (Emphasis ours)

There are three (3) lines of transmission in *reserva troncal*. The **first transmission** is by gratuitous title, whether by inheritance or donation, from an ascendant/brother/sister to a descendant called the *prepositus*. The **second transmission** is by operation of law from the *prepositus* to the other ascendant or reservor, also called the *reservista*. The **third and last transmission** is from the *reservista* to the reservees or *reservatarios* who must be relatives within the third degree from which the property came.[15]

The lineal character of the reservable property is reckoned from the ascendant from whom the *prepositus* received the property by gratuitous title

Based on the circumstances of the present case, Article 891 on *reserva troncal* is not applicable.

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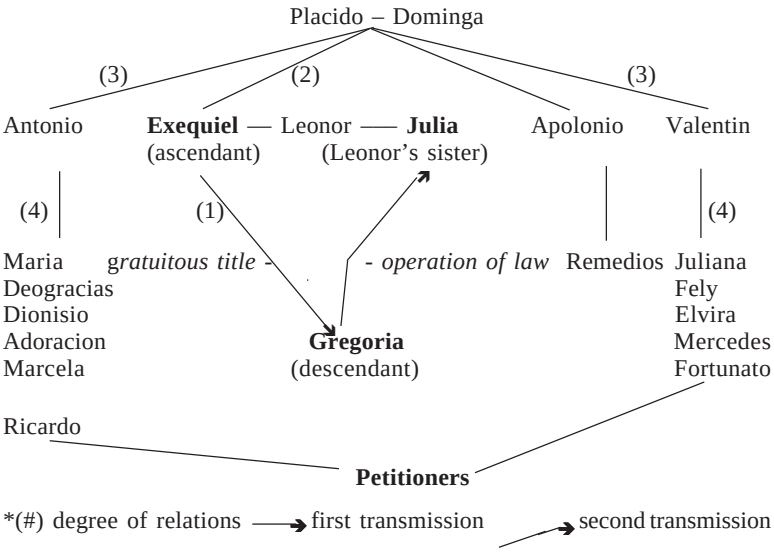
[15] *Gonzales v. CFI of Manila (Br. V), et al.*, 192 Phil. 1, 12 (1981).



The fallacy in the CA's resolution is that it proceeded from the erroneous premise that Placido is the ascendant contemplated in Article 891 of the Civil Code. From thence, it sought to trace the origin of the subject properties back to Placido and Dominga, determine whether Exequiel predeceased Placido and whether Gregoria predeceased Exequiel.

The persons involved in *reserva troncal* are:

(1) The ascendant or brother or sister from whom the property was received by the descendant by lucrative or gratuitous title;

(2) The descendant or *prepositus* (*propositus*) who received the property;

(3) The reservor (*reservista*), the other ascendant who obtained the property from the *prepositus* by operation of law; and

(4) The reservee (reservatario) who is within the third degree from the *prepositus* and who belongs to the (*linea o tronco*) from which the property came and for whom the property should be reserved by the reservor.[16]

[16] *Id.* at 12-13.

It should be pointed out that the ownership of the properties should be reckoned only from Exequiel's as he is the ascendant from where the first transmission occurred, or from whom Gregoria inherited the properties in dispute. The law does not go farther than such ascendant/brother/sister in determining the lineal character of the property.[17] It was also immaterial for the CA to determine whether Exequiel predeceased Placido and Dominga or whether Gregoria predeceased Exequiel. What is pertinent is that Exequiel owned the properties and he is the ascendant from whom the properties in dispute originally came. Gregoria, on the other hand, is the descendant who received the properties from Exequiel by gratuitous title.

Moreover, Article 891 simply requires that the property should have been acquired by the descendant or *prepositus* from an ascendant by gratuitous or lucrative title. A transmission is gratuitous or by gratuitous title when the recipient does not give anything in return.[18] At risk of being repetitious, what was clearly established in this case is that the properties in dispute were owned by Exequiel (ascendant). After his death, Gregoria (descendant/*prepositus*) acquired the properties as inheritance.

Ascendants, descendants and collateral relatives under Article 964 of the Civil Code

Article 891 provides that the person obliged to reserve the property should be an ascendant (also known as the reservor/ *reservista*) of the descendant/ *prepositus*. Julia, however, is not Gregoria's ascendant; rather, she is Gregoria's collateral relative.

Article 964 of the Civil Code provides for the series of degrees among ascendants and descendants, and those who are not ascendants and descendants but come from a common ancestor, *viz*:

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[17] Tolentino, A.M., *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. III, 2003 ed., p. 276, citing 6 Manresa 273, 6 Sanchez Roman 1020.

[18] *Chua v. CFI of Negros Occidental, Br. V*, 168 Phil. 571, 575 (1977).

Art. 964. A series of degrees forms a line, which may be either direct or collateral.

A *direct line* is that constituted by the series of degrees among ascendants and descendants.

A *collateral line* is that constituted by the series of degrees among persons **who are not ascendants and descendants**, but who come from a common ancestor. (Emphasis and italics ours)

Gregoria's ascendants are her parents, Exequiel and Leonor, her grandparents, great-grandparents and so on. On the other hand, Gregoria's descendants, if she had one, would be her children, grandchildren and great-grandchildren. Not being Gregoria's ascendants, both petitioners and Julia, therefore, are her collateral relatives. In determining the collateral line of relationship, ascent is made to the common ancestor and then descent to the relative from whom the computation is made. In the case of Julia's collateral relationship with Gregoria, ascent is to be made from Gregoria to her mother Leonor (one line/degree), then to the common ancestor, that is, Julia and Leonor's parents (second line/degree), and then descent to Julia, her aunt (third line/degree). Thus, Julia is Gregoria's *collateral* relative within the third degree and not her ascendant.

First cousins of the descendant/ *prepositus* are fourth degree relatives and cannot be considered reservees/*reservatarios*

Moreover, petitioners cannot be considered reservees/ *reservatarios* as they are not relatives within the third degree of Gregoria from whom the properties came. The person from whom the degree should be reckoned is the descendant/ *prepositus* — the one at the end of the line from which the property came and upon whom the property last revolved by descent.[19] It is Gregoria in this case. Petitioners are Gregoria's fourth degree relatives, being her first cousins. **First cousins of the *prepositus* are fourth degree relatives and are not reservees or *reservatarios*.**[20]

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[19] *Supra* note 15, at 14.

[20] *Id*.

They cannot even claim representation of their predecessors Antonio and Valentin as Article 891 grants a personal right of reservation only to the relatives up to the third degree from whom the reservable properties came. The only recognized exemption is in the case of nephews and nieces of the *prepositus*, who have the right to represent their ascendants (fathers and mothers) who are the brothers/sisters of the *prepositus* and relatives within the third degree.[21] In *Florentino v. Florentino*,[22] the Court stated:

> Following the order prescribed by law in legitimate succession, when there are relatives of the descendant within the third degree, the right of the nearest relative, called *reservatario*, over the property which the *reservista* (person holding it subject to reservation) should return to him, excludes that of the one more remote. The right of representation cannot be alleged when the one claiming same as a *reservatario* of the reservable property is not among the relatives within the third degree belong to the line from which such property came, inasmuch as **the right granted by the Civil Code in [A]rticle 811 [now Article 891] is in the highest degree personal and for the exclusive benefit of the designated persons who are the relatives, within the third degree, of the person from whom the reservable property came. Therefore, relatives of the fourth and the succeeding degrees can never be considered as *reservatarios*, since the law does not recognize them as such**.
>
> x x x [N]evertheless there is right of representation on the part of *reservatarios* who are within the third degree mentioned by law, as in the case of nephews of the deceased person from whom the reservable property came. x x x.[23] (Emphasis and underscoring ours)

The conclusion, therefore, is that while it may appear that the properties are reservable in character, petitioners cannot benefit from *reserva troncal*. *First*, because Julia, who now holds the properties in dispute, is not the other ascendant within the purview of Article 891 of the Civil Code and second, because

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[21] *Florentino v. Florentino*, 40 Phil. 480, 490 (1919).

[22] 40 Phil. 480 (1919).

[23] *Id.* at 489-490.

petitioners are not Gregoria's relatives within the third degree. Hence, the CA's disposition that the complaint filed with the RTC should be dismissed, only on this point, is correct. If at all, what should apply in the distribution of Gregoria's estate are Articles 1003 and 1009 of the Civil Code, which provide:

> Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.
>
> Art. 1009. Should there be neither brothers nor sisters, nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.
>
> The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood.

Nevertheless, the Court is not in the proper position to determine the proper distribution of Gregoria's estate at this point as the cause of action relied upon by petitioners in their complaint filed with the RTC is based solely on *reserva troncal*. Further, any determination would necessarily entail reception of evidence on Gregoria's entire estate and the heirs entitled thereto, which is best accomplished in an action filed specifically for that purpose.

A *reservista* acquires ownership of the reservable property until the reservation takes place or is extinguished

Before concluding, the Court takes note of a palpable error in the RTC's disposition of the case. In upholding the right of petitioners over the properties, the RTC ordered the reconveyance of the properties to petitioners and the transfer of the titles in their names. What the RTC should have done, assuming for argument's sake that *reserva troncal* is applicable, is have the reservable nature of the property registered on respondent's titles. In fact, respondent, as *reservista*, has the duty to reserve and to annotate the reservable character of the property on the title.[24]

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[24] *Sumaya v. Intermediate Appellate Court*, 278 Phil. 201, 210-211 (1991).

In *reserva troncal*, the *reservista* who inherits from a *prepositus*, whether by the latter's wish or by operation of law, acquires the inheritance by virtue of a title perfectly transferring absolute ownership. All the attributes of ownership belong to him exclusively.[25]

> The reservor has the legal title and dominion to the reservable property but subject to the resolutory condition that such title is extinguished if the reservor predeceased the reservee. The reservor is a usufructuary of the reservable property. He may alienate it subject to the reservation. The transferee gets the revocable and conditional ownership of the reservor. The transferee's rights are revoked upon the survival of the reservees at the time of the death of the reservor but become indefeasible when the reservees predecease the reservor.[26] (Citations omitted)

It is when the reservation takes place or is extinguished,[27] that a *reservatario* becomes, by operation of law, the owner of the reservable property.[28] In any event, the foregoing discussion does not detract from the fact that petitioners are not entitled to a reservation of the properties in dispute.

WHEREFORE, the petition is **DENIED.** The Decision dated November 16, 2006 and Resolution dated January 17, 2007 of the Court of Appeals in CA-G.R. CV No. 77694 insofar as it dismissed the Third Amended Complaint in Civil Case No. 609-M-92 are **AFFIRMED.** This Decision is without prejudice to any civil action that the heirs of Gregoria Mendoza may file for the settlement of her estate or for the determination of ownership of the properties in question.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[25] *Edroso v. Sablan,* 25 Phil. 295, 307-308 (1913).

[26] *Supra* note 15, at 15.

[27] *Dizon and Dizon v. Galan*g, 48 Phil. 601, 603-604 (1926).

[28] *Supra* note 15, at 17.

THIRD DIVISION

[G.R. No. 180321. March 20, 2013]

EDITHA PADLAN, *petitioner*, *vs.* **ELENITA DINGLASAN and FELICISIMO DINGLASAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER OF A CASE IS CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT. —** [I]n order to determine which court has jurisdiction over the action, an examination of the complaint is essential. Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.

2. **ID.; ID.; ACTIONS; ACTION INVOLVING TITLE TO REAL PROPERTY; DEFINED. —** An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. Title is the "legal link between (1) a person who owns property and (2) the property itself."

3. ID.; ID.; ID.; ID.; TITLE AND CERTIFICATE OF TITLE, DISTINGUISHED. — "Title" is different from a "certificate of title" which is the document of ownership under the Torrens system of registration issued by the government through the Register of Deeds. While title is the claim, right or interest in real property, a certificate of title is the evidence of such claim.

4. ID.; ID.; JURISDICTION; AN ACTION INVOLVING TITLE TO REAL PROPERTY SHOULD BE FILED IN THE PROPER COURT HAVING JURISDICTION OVER THE ASSESSED VALUE OF THE PROPERTY SUBJECT THEREOF. — From the Complaint, the case filed by respondent is not simply a case for the cancellation of a particular certificate of title and the revival of another. The determination of such issue merely follows after a court of competent jurisdiction shall have first resolved the matter of who between the conflicting parties is the lawful owner of the subject property and ultimately entitled to its possession and enjoyment. The action is, therefore, about ascertaining which of these parties is the lawful owner of the subject lot, jurisdiction over which is determined by the assessed value of such lot. In no uncertain terms, the Court has already held that a complaint must allege the assessed value of the real property subject of the complaint or the interest thereon to determine which court has jurisdiction over the action. In the case at bar, the only basis of valuation of the subject property is the value alleged in the complaint that the lot was sold by Lorna to petitioner in the amount of ₱4,000.00. No tax declaration was even presented that would show the valuation of the subject property. x x x [W]here the ultimate objective of the plaintiffs is to obtain title to real property, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof. Since the amount alleged in the Complaint by respondents for the disputed lot is only ₱4,000.00, the MTC and not the RTC has jurisdiction over the action. Therefore, all proceedings in the RTC are null and void.

APPEARANCES OF COUNSEL

Victor P. De Dios, Jr. for petitioner.
Asuncion Abasolo-Pacaldo for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated June 29, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 86983, and the Resolution[2] dated October 23, 2007 denying petitioner's Motion for Reconsideration.[3]

The factual and procedural antecedents are as follows:

Elenita Dinglasan (Elenita) was the registered owner of a parcel of land designated as Lot No. 625 of the Limay Cadastre which is covered by Transfer Certificate of Title (TCT) No. T-105602, with an aggregate area of 82,972 square meters. While on board a *jeepney*, Elenita's mother, Lilia Baluyot (*Lilia*), had a conversation with one Maura Passion (*Maura*) regarding the sale of the said property. Believing that Maura was a real estate agent, Lilia borrowed the owner's copy of the TCT from Elenita and gave it to Maura. Maura then subdivided the property into several lots from Lot No. 625-A to Lot No. 625-O, under the name of Elenita and her husband Felicisimo Dinglasan (*Felicisimo*).

Through a falsified deed of sale bearing the forged signature of Elenita and her husband Felicisimo, Maura was able to sell the lots to different buyers. On April 26, 1990, Maura sold Lot No. 625-K to one Lorna Ong (*Lorna*), who later caused the issuance of TCT No. 134932 for the subject property under her name. A few months later, or sometime in August 1990, Lorna sold the lot to petitioner Editha Padlan for P4,000.00. Thus, TCT No. 134932 was cancelled and TCT No. 137466 was issued in the name of petitioner.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring; *rollo*, pp. 26-35.

[2] *Id.* at 41-45.

[3] *Rollo*, pp. 36-40.

After learning what had happened, respondents demanded petitioner to surrender possession of Lot No. 625-K, but the latter refused. Respondents were then forced to file a case before the Regional Trial Court (RTC) of Balanga, Bataan for the Cancellation of Transfer Certificate of Title No. 137466, docketed as Civil Case No. 438-ML. Summons was, thereafter, served to petitioner through her mother, Anita Padlan.

On December 13, 1999, respondents moved to declare petitioner in default and prayed that they be allowed to present evidence *ex parte*.[4]

On January 17, 2000, petitioner, through counsel, filed an Opposition to Declare Defendant in Default with Motion to Dismiss Case for Lack of Jurisdiction Over the Person of Defendant.[5] Petitioner claimed that the court did not acquire jurisdiction over her, because the summons was not validly served upon her person, but only by means of substituted service through her mother. Petitioner maintained that she has long been residing in Japan after she married a Japanese national and only comes to the Philippines for a brief vacation once every two years.

On April 5, 2001, Charlie Padlan, the brother of petitioner, testified that his sister is still in Japan and submitted a copy of petitioner's passport and an envelope of a letter that was allegedly sent by his sister. Nevertheless, on April 5, 2001, the RTC issued an Order[6] denying petitioner's motion to dismiss and declared her in default. Thereafter, trial ensued.

On July 1, 2005, the RTC rendered a Decision[7] finding petitioner to be a buyer in good faith and, consequently, dismissed the complaint.

Not satisfied, respondents sought recourse before the CA, docketed as CA-G.R. No. CV No. 86983.

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[4] Records, pp. 17-19.

[5] *Id.* at 20-22.

[6] *Id.* at 85-87.

[7] CA *rollo*, pp. 21-23.

On June 29, 2007, the CA rendered a Decision[8] in favor of the respondent. Consequently, the CA reversed and set aside the Decision of the RTC and ordered the cancellation of the TCT issued in the name of Lorna and the petitioner, and the revival of respondents' own title, to wit:

> **WHEREFORE,** in view of the foregoing, the Decision dated July 1, 2005 of the Regional Trial Court, Third Judicial Region, Branch 4, Mariveles, Bataan (Stationed in Balanga, Bataan) in Civil Case No. 438-ML is hereby **REVERSED** and **SET ASIDE**.
>
> The Transfer Certificate of Title No. 134932 issued in the name of Lorna Ong and Transfer Certificate of Title No. 137466 issued in the name of defendant-appellee Editha Padlan are **CANCELLED** and Transfer Certificate of Title No. 134785 in the name of the plaintiffs-appellants is **REVIVED**.
>
> SO ORDERED.[9]

The CA found that petitioner purchased the property in bad faith from Lorna. The CA opined that although a purchaser is not expected to go beyond the title, based on the circumstances surrounding the sale, petitioner should have conducted further inquiry before buying the disputed property. The fact that Lorna bought a 5,000-square-meter property for only ₱4,000.00 and selling it after four months for the same amount should have put petitioner on guard. With the submission of the Judgment in Criminal Case No. 4326 rendered by the RTC, Branch 2, Balanga, Bataan, entitled *People of the Philippines v. Maura Passion*[10] and the testimonies of respondents, the CA concluded that respondents sufficiently established that TCT No. 134932 issued in the name of Lorna and TCT No. 137466 issued in the name of petitioner were fraudulently issued and, therefore, null and void.

Aggrieved, petitioner filed a Motion for Reconsideration. Petitioner argued that not only did the complaint lacks merit,

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[8] *Rollo,* pp. 26-35.

[9] *Id.* at 34-35. (Emphasis in the original)

[10] Records, pp. 151-160.

the lower court failed to acquire jurisdiction over the subject matter of the case and the person of the petitioner.

On October 23, 2007, the CA issued a Resolution[11] denying the motion. The CA concluded that the rationale for the exception made in the landmark case of *Tijam v. Sibonghanoy*[12] was present in the case. It reasoned that when the RTC denied petitioner's motion to dismiss the case for lack of jurisdiction, petitioner neither moved for a reconsideration of the order nor did she avail of any remedy provided by the Rules. Instead, she kept silent and only became interested in the case again when the CA rendered a decision adverse to her claim.

Hence, the petition assigning the following errors:

I

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION OVER THE PERSON OF THE PETITIONER.

II

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

III

WHETHER OR NOT PETITIONER IS A BUYER IN GOOD FAITH AND FOR VALUE.[13]

Petitioner maintains that the case of *Tijam v. Sibonghanoy* finds no application in the case at bar, since the said case is not on all fours with the present case. Unlike in *Tijam*, wherein the petitioner therein actively participated in the proceedings, petitioner herein asserts that she did not participate in any proceedings before the RTC because she was declared in default.

Petitioner insists that summons was not validly served upon her, considering that at the time summons was served, she was

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[11] *Rollo,* pp. 41-45.

[12] 131 Phil. 556 (1968).

[13] *Rollo,* pp. 16-17.

residing in Japan. Petitioner contends that pursuant to Section 15, Rule 14 of the Rules of Civil Procedure, when the defendant does not reside in the Philippines and the subject of the action is property within the Philippines of the defendant, service may be effected out of the Philippines by personal service or by publication in a newspaper of general circulation. In this case, summons was served only by substituted service to her mother. Hence, the court did not acquire jurisdiction over her person.

Also, petitioner posits that the court lacks jurisdiction of the subject matter, considering that from the complaint, it can be inferred that the value of the property was only ₱4,000.00, which was the amount alleged by respondents that the property was sold to petitioner by Lorna.

Finally, petitioner stresses that she was a buyer in good faith. It was Maura who defrauded the respondents by selling the property to Lorna without their authority.

Respondents, on the other hand, argue that the CA was correct in ruling in their favor.

The petition is meritorious.

Respondents filed the complaint in 1999, at the time *Batas Pambansa Blg.* (BP) 129, the Judiciary Reorganization Act of 1980, was already amended by Republic Act (RA) No. 7691, *An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts,* amending for the purpose BP Blg. 129.[14] Section 1 of RA 7691, amending BP Blg. 129, provides that the RTC shall exercise exclusive original jurisdiction on the following actions:

> Section 1. Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended to read as follows:
>
> Sec. 19. *Jurisdiction in civil cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

[14] Effective April 15, 1994.

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty Thousand Pesos (₱50,000.00), except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x

Section 3 of RA 7691 expanded the exclusive original jurisdiction of the first level courts, thus:

Section 3. Section 33 of the same law [BP Blg. 129] is hereby amended to read as follows:

Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty Thousand Pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty Thousand Pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

Respondents filed their Complaint with the RTC; hence, before proceeding any further with any other issues raised by the petitioner, it is essential to ascertain whether the RTC has jurisdiction over the subject matter of this case based on the above-quoted provisions.

However, in order to determine which court has jurisdiction over the action, an examination of the complaint is essential. Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[15]

What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[16]

Respondents' Complaint[17] narrates that they are the duly registered owners of Lot No. 625 of the Limay Cadastre which was covered by TCT No. T-105602. Without their knowledge and consent, the land was divided into several lots under their names through the fraudulent manipulations of Maura. One of the lots was Lot 625-K, which was covered by TCT No. 134785. On April 26, 1990, Maura sold the subject lot to Lorna. By virtue of the fictitious sale, TCT No. 134785 was cancelled and TCT No. 134932 was issued in the name of Lorna. Sometime in August 1990, Lorna sold the lot to petitioner for a consideration in the amount of ₱4,000.00. TCT No. 134932 was later cancelled

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[15] *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011, 656 SCRA 102, 119.

[16] *Fort Bonifacio Development Corporation v. Domingo*, G.R. No. 180765, February 27, 2009, 580 SCRA 397, 404.

[17] *Rollo*, pp. 46-50.

and TCT No. 137466 was issued in the name of petitioner. Despite demands from the respondents, petitioner refused to surrender possession of the subject property. Respondents were thus constrained to engage the services of a lawyer and incur expenses for litigation. Respondents prayed for the RTC (a) to declare TCT No. 137466 null and to revive TCT No. T-105602 which was originally issued and registered in the name of the respondents; and (b) to order petitioner to pay attorney's fees in the sum of ₱50,000.00 and litigation expenses of ₱20,000.00, plus cost of suit.[18]

An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. Title is the "legal link between (1) a person who owns property and (2) the property itself." "Title" is different from a "certificate of title" which is the document of ownership under the Torrens system of registration issued by the government through the Register of Deeds. While title is the claim, right or interest in real property, a certificate of title is the evidence of such claim.[19]

In the present controversy, before the relief prayed for by the respondents in their complaint can be granted, the issue of who between the two contending parties has the valid title to the subject lot must first be determined before a determination of who between them is legally entitled to the certificate of title covering the property in question.

From the Complaint, the case filed by respondent is not simply a case for the cancellation of a particular certificate of title and the revival of another. The determination of such issue merely follows after a court of competent jurisdiction shall have first resolved the matter of who between the conflicting parties is the lawful owner of the subject property and ultimately entitled to its possession and enjoyment. The action is, therefore, about

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[18] *Id.* at 49.

[19] *Heirs of Generoso Sebe v. Heirs of Veronico Sevilla*, G.R. No. 174497, October 12, 2009, 603 SCRA 395, 404-405.

ascertaining which of these parties is the lawful owner of the subject lot, jurisdiction over which is determined by the assessed value of such lot.[20]

In no uncertain terms, the Court has already held that a complaint must allege the assessed value of the real property subject of the complaint or the interest thereon to determine which court has jurisdiction over the action.[21] In the case at bar, the only basis of valuation of the subject property is the value alleged in the complaint that the lot was sold by Lorna to petitioner in the amount of ₱4,000.00. No tax declaration was even presented that would show the valuation of the subject property. In fact, in one of the hearings, respondents' counsel informed the court that they will present the tax declaration of the property in the next hearing since they have not yet obtained a copy from the Provincial Assessor's Office.[22] However, they did not present such copy.

To reiterate, where the ultimate objective of the plaintiffs is to obtain title to real property, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof.[23] Since the amount alleged in the Complaint by respondents for the disputed lot is only ₱4,000.00, the MTC and not the RTC has jurisdiction over the action. Therefore, all proceedings in the RTC are null and void.[24]

Consequently, the remaining issues raised by petitioner need not be discussed further.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. CV No. 86983, dated June 29, 2007, and its Resolution dated October 23, 2007, are **REVERSED**

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[20] *Id.* at 406.

[21] *Quinagoran v. Court of Appeals*, G.R. No. 155179, August 24, 2007, 531 SCRA 104, 113.

[22] Records, p. 128.

[23] *Huguete v. Embudo*, 453 Phil. 170, 177 (2003).

[24] *Quinagoran v. Court of Appeals, supra* note 21, at 115.

and **SET ASIDE**. The Decision of the Regional Trial Court, dated July 1, 2005, is declared **NULL** and **VOID**. The complaint in Civil Case No. 438-ML is dismissed without prejudice.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.*, concur.

FIRST DIVISION

[G.R. No. 181458. March 20, 2013]

REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), *petitioner, vs.* **TRINIDAD DIAZ-ENRIQUEZ, LEANDRO ENRIQUEZ, ERLINDA ENRIQUEZ-PANLILIO, ALLAN E. PANLILIO, JOSE MARCEL E. PANLILIO, KATRINA E. PANLILIO, NICOLE P. MORRIS, IMELDA R. MARCOS, MA. IMELDA MARCOS-MANOTOC, FERDINAND R. MARCOS, JR., MA. VICTORIA IRENE MARCOS-ARANETA, EMILIA T. CRUZ, RAFAEL ROMAN T. CRUZ, MA. RONA ROMANA T. CRUZ, ANA CRISTINA CRUZ GAYLO, GINO R. CRUZ, ISAIAH PAVIA CRUZ, and DON M. FERRY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL DUE TO FAULT OF PLAINTIFF; THE RULE THEREON CONFERS ON THE COURT THE DISCRETION TO DECIDE BETWEEN THE DISMISSAL OF THE CASE ON TECHNICALITY *VIS-À-VIS* THE PROGRESSIVE PROSECUTION THEREOF. — Rule 17,

Section 3 of the Rules of Court, provides that the court **may** dismiss a complaint in case there are no **justifiable reasons** that explain the plaintiff's absence during the presentation of the evidence in chief. Generally speaking, the use of "may" denotes its directory nature, especially if used in remedial statutes that are known to be construed liberally. Thus, the word "may" in Rule 17, Section 3 of the Rules of Court, operates to confer on the court the **discretion** to decide between the dismissal of the case on technicality *vis-à-vis* the progressive prosecution thereof. Given the connotation of this procedural rule, it would have been expected that the Sandiganbayan would look into the body of cases that interpret the provision. From jurisprudence, it is inevitable to see that the **real test** of the exercise of discretion is whether, under the circumstances, the plaintiff is charged with want of due diligence in failing to proceed with reasonable promptitude. In fact, we have ruled that there is an abuse of that discretion when a judge dismisses a case without any showing that the party's conduct "is so indifferent, irresponsible, contumacious or slothful." Here, the Sandiganbayan appears to have limited itself to a rigid application of technical rules without applying the real test explained above. The 1 October 2007 Order was bereft of any explanation alluding to the indifference and irresponsibility of petitioner. The Order was also silent on any previous act of petitioner that can be characterized as contumacious or slothful.

2. ID.; RULES OF COURT; SHOULD BE LIBERALLY CONSTRUED. — [W]e remind justices, judges and litigants alike that rules "should be interpreted and applied not in a vacuum or in isolated abstraction, but in light of surrounding circumstances and attendant facts in order to afford justice to all." We underscore that there are specific rules that are liberally construed, and among them is the Rules of Court. In fact, no less than Rule 1, Section 6 of the Rules of Court echoes that the rationale behind this construction is to promote the objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Surprisingly, the Sandiganbayan obviated the speedy disposition of the case when it chose to dismiss the case spanning two decades over a technicality and, in the same breath, rationalized its cavalier attitude by saying that a complaint for ill-gotten wealth should be reinstituted all over again. Here, we find it incongruous to tip the balance of the scale in favor of a technicality that would result in a complete

restart of the 26-year-old civil case back to square one. Surely, this Court cannot waste the progress of the civil case from the institution of the complaint to the point of reaching the trial stage. Not only would this stance dry up the resources of the government and the private parties, but it would also compromise the preservation of the evidence needed by them to move forward with their respective cases. Thus, to prevent a miscarriage of justice in its truest sense, and considering the exceptional and special history of Civil Case No. 0014, this Court applies a liberal construction of the Rules of Court. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of its cause. "Adventitious resort to technicality resulting in the dismissal of cases is disfavored because litigations must as much as possible be decided on the merits and not on technicalities." Inconsiderate dismissals, even if without prejudice to its refiling as in this case, merely postpone the ultimate reckoning between the parties. In the absence of a clear intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the case before the court.

3. ID.; CIVIL PROCEDURE; MOTIONS; HEARING OF MOTIONS; THE MOVING PARTY IS REQUIRED TO SERVE MOTIONS IN SUCH A MANNER AS TO ENSURE RECEIPT THEREOF BY THE OTHER PARTY AT LEAST THREE DAYS BEFORE THE DATE OF HEARING. — By the very words of Rule 15, Section 4 of the Rules of Court, the moving party is required to serve motions in such a manner as to ensure the receipt thereof **by the other party** at least three days before the date of hearing. The purpose of the rule is to prevent a surprise and to afford the **adverse party** a chance to be heard before the motion is resolved by the trial court. Plainly, the rule does not require that the court receive the notice three days prior to the hearing date.

4. ID.; ID.; ID.; NOTICE OF HEARING; THE TIME AND DATE OF THE HEARING MUST NOT BE LATER THAN TEN DAYS AFTER THE FILING OF THE MOTION. — Since Rule 13, Section 3 of the Rules of Court, states that the date of the mailing of motions through registered mail shall be considered the date of their filing in court, it follows that petitioner filed the motion to the court 10 days in advance of the hearing date. In so doing, it observed the 10day requirement

under Rule 15, Section 5 of the Rules of Court, which provides that the time and date of the hearing must not be later than ten days after the filing of the motion.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Platon Martinez Flores San Pedro & Leaño for Heirs of Roman A. Cruz, Jr.

Ferry Toledo Gonzaga Tria & Associates for Don M. Ferry.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is the 11 March 2008 Petition for Review on *Certiorari* filed by petitioner under Rule 45 of the Rules of Court, which assails the 1 October 2007 Order and 25 January 2008 Resolution of the Sandiganbayan (Second Division).[1]

The facts in this case are not disputed.

On 23 July 1987, the Republic of the Philippines (Republic), represented by the Presidential Commission on Good Government (PCGG) and the Office of the Solicitor General (OSG), filed a Complaint against respondents. Docketed as Civil Case No. 0014, this civil action sought the recovery of ill-gotten wealth from respondents for the benefit of the Republic. Allegedly, these properties were illegally obtained during the reign of former President Ferdinand E. Marcos and, hence, were the subject of sequestration orders.

Thereafter, Civil Case No. 0014 went through a series of inclusions of individual defendants and defendant corporations. As a result, respondents finished filing their separate Answers eight years later, or in 1995.

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[1] *Rollo,* pp. 92, 56-58; both the Order and the Resolution were penned by Associate Justice Edilberto G. Sandoval, with Associate Justices Francisco H. Villaruz, Jr. and Samuel R. Martires concurring.

In May 1996, some of the defendant corporations filed motions for dismissal. Six years thereafter, the Sandiganbayan resolved the motions. It ruled in favor of defendant corporations and lifted the sequestration orders against them.[2]

Aggrieved, the Republic filed a Petition for *Certiorari*[3] before this Court on 23 August 2002. Docketed as G.R. No. 154560,[4] the Rule 65 petition questioned the lifting of the sequestration orders against defendant corporations.

With these two cases at bay, the counsels for the Republic divided their responsibilities as follows: Special PCGG Counsel Maria Flora A. Falcon (Falcon) attended to Civil Case No. 0014, while OSG Senior State Solicitor Derek R. Puertollano (Puertollano) handled G.R. No. 154560.

After receiving the Answers, the Sandiganbayan scheduled pretrial dates for Civil Case No. 0014. However, the court failed to conduct pretrial hearings from 2002 to 2007. For five years, it reset the hearings in view of the pending incidents, which included G.R. No. 154560, and because the case "was not yet ripe for a pretrial conference."[5]

On 28 June 2007, Civil Case No. 0014 was called for the initial presentation of plaintiff's evidence, but the proceedings did not push through. Finally, two decades after the inception of the case, both parties moved to set the pretrial and trial hearings

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[2] *Id.* at 143-146; Resolution promulgated on 7 February 2002 penned by Associate Justice Edilberto G. Sandoval, with Associate Justices Godofredo L. Legaspi and Raoul V. Victorino concurring.

[3] *Id.* at 149-194.

[4] This Court promulgated the Decision on *Republic v. Sandiganbayan (Second Division)*, G.R. No. 154560 on 13 July 2010.

[5] See *rollo*, p. 209, Order dated 26 June 2002; *id.* at 210, Order dated 17 September 2002; *id.* at 211, Resolution dated 29 November 2002; *id.* at 212, Resolution dated 19 February 2003; *id.* at 213, Order dated 7 July 2003; *id.* at 214, Order dated 1 March 2004; *id.* at 203, Order dated 10 June 2004; *id.* at 215, Order dated 2 September 2004; *id.* at 216, Notice dated 7 November 2005; *id.* at 217, Constancia dated 14 March 2006; *id.* at 218, Order dated 23 November 2006.

on 1, 2, 29, and 30 October 2007. The Sandiganbayan granted their motions in this wise:[6]

> When this case was called for initial presentation of plaintiff's evidence, both parties moved for postponement, and considering some issues still pending with the Supreme Court, but considering also on the other hand, that this case has been pending for quite a long time, the Court orders parties to submit Joint Stipulation of Facts, as well as substitution of parties, and by the next hearing, the Court shall proceed to hear this case.
>
> Accordingly, the hearing set for tomorrow is cancelled, and reset to October 1, 2, 29 & 30, 2007, all at 1:30 o'clock in the afternoon.
>
> SO ORDERED.

Following this Resolution, the defendants moved for the extension of the submission of these requirements. Nevertheless, none of them fully complied, except petitioner who submitted an "unofficial proposal for stipulation, for defendants to comment on the same."[7]

In the interim, the contract of Falcon with the PCGG terminated on 1 July 2007.[8] Through a letter dated 21 September 2007, she informed Puertollano that she was no longer connected with the PCGG. She also turned over to him the records of Civil Case No. 0014.[9] However, Puertollano belatedly received the letter on 8 October 2007. For all he knew, Falcon had attended the hearings prior to that date, while he was pursuing G.R. No. 154560.

Thus, on 1 October 2007, no representative appeared on behalf of petitioner. Consequently, the Sandiganbayan issued its 1 October 2007 Order dismissing the case without prejudice. The court ruled thus:[10]

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[6] *Rollo,* p. 91.

[7] *Id.* at 227; Manifestation dated 17 July 2007.

[8] *Id.* at 83; Certification dated 20 November 2007.

[9] *Id.* at 82.

[10] *Id.* at 92.

On motion of Atty. Nini Priscilla D. Sison-Ledesma for the dismissal of this case, since plaintiff's counsel failed to appear despite due notice and there was no representative from the plaintiff, this case is ordered DISMISSED without prejudice. The issue of whether the pending incident before the Supreme Court would affect this case is off tangent.

Accordingly, the hearings set tomorrow, October 2, 2007, and also on October 29 and 30, 2007 are cancelled.

SO ORDERED.

On 5 October 2007, Atty. Mary Charlene Hernandez took over the case from PCGG's previous special counsel[11] and only after a while did she learn of the trial dates. She also knew nothing about the dismissal of the case. Hence, she proceeded to file an Urgent Motion for Postponement[12] of the 30 October 2007 hearing.

The OSG came to know of the dismissal of Civil Case No. 0014 only when it received the assailed Order on 15 November 2007. On 29 November 2007, it filed a Motion for Reconsideration[13] with a notice for hearing on 7 December 2007. This motion was served on the Sandiganbayan and respondents on 29 November 2007 via registered mail.[14] Unfortunately, the court received the motion only on 10 December 2007.[15]

Considering the late receipt of the motion, the Sandiganbayan issued its 25 January 2008 Resolution denying it on the ground of failure to observe the three-day notice requirement.[16] In effect, it considered the motion as a worthless piece of paper. With this instant dismissal, the Sandiganbayan no longer considered

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[11] *Id.* at 83.

[12] *Id.* at 235-238.

[13] *Id.* at 60-78.

[14] *Id.* at 239-244; Registry Return Card stamped with 29 November 2007 as date of delivery.

[15] *Id.* at 56.

[16] *Id.* at 56-58.

the reasons adduced by petitioner to explain the latter's absence in court.

Specifically, petitioner brought to the Sandiganbayan's attention the fact that Falcon, who was assigned to Civil Case No. 0014, had diligently attended to the civil action. But since she was no longer connected to the PCGG, and given that the OSG only learned of this circumstance seven days after the hearing on 1 October 2007, counsels for petitioner failed to appear during the hearing.[17]

Hence, petitioner comes before this Court to seek the reinstatement of the 26-year-old case, which has already reached the start of the trial stage.

Petitioner argues that its single incidence of absence after Falcon resigned on 1 October 2007 does not amount to failure to prosecute under Rule 17, Section 3 of the Rules of Court, which states:

> Sec. 3. Dismissal due to fault of plaintiff. —
>
> If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

Petitioner further avers that the Motion for Reconsideration questioning the dismissal of Civil Case No. 0014 should not have been denied for supposedly violating the three-day notice requirement. Rule 15, Section 4 of the Rules of Court, reads:

> 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.

[17] *Id.* at 61-64.

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.

Therefore, this Court is tasked to resolve the two issues raised by petitioner as follows:

I. Whether the Sandiganbayan gravely erred in dismissing Civil Case No. 0014 for the failure of petitioner to appear during the 1 October 2007 hearing.

II. Whether the Sandiganbayan committed reversible error in denying the Motion for Reconsideration on the ground that it failed to comply with the three-day notice rule.

RULING OF THE COURT

Dismissal of Civil Case No. 0014 for Petitioner's Failure to Appear

Petitioner asserts that, save for the absence of Falcon due to the termination of her contract with the PCGG, she was diligent in attending the hearings and in submitting the requirements of the Sandiganbayan. Likewise, Puertollano was responsible in pursuing G.R. No. 154560. Thus, their inability to send representatives for the Republic in the 1 October 2007 hearing can only be appreciated as mere inadvertence and excusable negligence, which cannot amount to failure to prosecute.

Petitioner also advances the argument that this Court disfavors judgments based on non-suits and prefers those based on the merits — especially in Civil Case No. 0014, which contains allegations of ill-gotten wealth. Moreover, petitioner claims that reasonable deferments may be tolerated if they would not cause substantial prejudice to any party.

Lastly, petitioner manifests good reasons to expect the cancellation of the 1 October 2007 hearing, as in the past resetting. At that time, the same circumstances for postponement were present: (1) G.R. No. 154560 was still pending before this Court;

(2) several incidents[18] were also still pending; and (3) no pretrial order has yet been issued by the Sandiganbayan.

On the other hand, in their Comments,[19] respondents stress the letter of the law. Indeed, Rule 17, Section 3 of the Rules of Court, provides that complaints may be dismissed if a petitioner fails to be present on the date of presentation of its evidence in chief.

Additionally, respondents contend that no justifiable cause exists to warrant petitioner's absence. To support their contention, they cite the following: (1) Falcon agreed to set the hearing on 1 October 2007; and (2) Puertollano should have attended the pretrial even if Falcon failed to appear considering that, as counsels for petitioner, both of them had been notified of the orders and resolutions of the Sandiganbayan.

Respondents also highlight the fact that the PCGG and the OSG failed to monitor the proceedings when they filed a Motion for Reconsideration only after 14 days from the OSG's receipt of the assailed Order of dismissal. Worse, the counsels of the Republic did not even inform the court beforehand of the reason for their absence. Because of these circumstances, respondents posit that the Sandiganbayan did not gravely err in dismissing Civil Case No. 0014.

This Court rules in favor of the Republic.

As worded, Rule 17, Section 3 of the Rules of Court, provides that the court **may** dismiss a complaint in case there are no **justifiable reasons** that explain the plaintiff's absence during the presentation of the evidence in chief. Generally speaking,

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[18] *Rollo*, pp. 43-44; These pending incidents included the following: (1) Motion for Reconsideration and/or Set Order of Default and Urgent Motion to Resolve filed by Ferdinand Marcos Jr.; (2) Motion for Extension to file a Special Power of Attorney for two of the heirs of Rebecco Panlilio.

[19] *Id*. at 247-265, Opposition/Comment to Petition for Review on *Certiorari* filed by Heirs of Roman A. Cruz, Jr.; *id*. at 259-266, Comment/ Opposition filed by Trinidad Diaz-Enriquez and Leandro Enriquez; *id*. at 304-310, Comment on Petition for Review on *Certiorari* filed by Heirs of Rebecco Panlilio; *id*. at 365-367, Comment filed by Don M. Ferry.

the use of "may" denotes its directory nature,[20] especially if used in remedial statutes that are known to be construed liberally. Thus, the word "may" in Rule 17, Section 3 of the Rules of Court, operates to confer on the court the **discretion**[21] to decide between the dismissal of the case on technicality *vis-à-vis* the progressive prosecution thereof.

Given the connotation of this procedural rule, it would have been expected that the Sandiganbayan would look into the body of cases that interpret the provision. From jurisprudence, it is inevitable to see that the **real test** of the exercise of discretion is whether, under the circumstances, the plaintiff is charged with want of due diligence in failing to proceed with reasonable promptitude.[22] In fact, we have ruled that there is an abuse of that discretion when a judge dismisses a case without any showing that the party's conduct "is so indifferent, irresponsible, contumacious or slothful."[23]

Here, the Sandiganbayan appears to have limited itself to a rigid application of technical rules without applying the real test explained above. The 1 October 2007 Order was bereft of any explanation alluding to the indifference and irresponsibility of petitioner. The Order was also silent on any previous act of petitioner that can be characterized as contumacious or slothful.

Verily, the circumstances in Civil Case No. 0014 should have readily convinced the Sandiganbayan that it would be farfetched to conclude that petitioner lacked interest in prosecuting the latter's claims.

Firstly, based on the records, petitioner's counsels have actively participated in the case for two decades. The Sandiganbayan has not made any remark regarding the attendance of petitioner, save for this single instance. Secondly, after the latter received

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[20] *Grego v. COMELEC*, 340 Phil. 591 (1997).

[21] *Tan v. SEC*, G.R. No. 95696, 3 March 1992, 206 SCRA 740.

[22] *Pontejos v. Desierto*, G.R. No. 148600, 7 July 2009, 592 SCRA 64.

[23] *Rizal Commercial Banking Corporation v. Magawin Marketing Corporation*, 450 Phil. 720, 741 (2003).

the assailed Order, it duly filed a Motion for Reconsideration. These circumstances should have easily persuaded the Sandiganbayan that the Republic intended to advance the ill-gotten wealth case.

More importantly, respondents' imputation of lack of interest to prosecute on the part of petitioner becomes a hyperbole in the face of its explanation, albeit belated.

Respondents harp on the fact that since Falcon agreed to set the hearing on 1 October 2007 and Puertollano, being a counsel of record, may have also known of the schedule, petitioner has no excuse to be absent. But even if we concede to respondents' arguments, the most that they can say is that petitioner had an instance of absence without an excuse. Juxtaposing this lapse against its long history of actively prosecuting the case, it would be the height of rigidity to require from petitioner complete attendance, at all times.

Similarly, in *Perez v. Perez*, we held thus:[24]

> The records show that every time the case was set for hearing, the plaintiffs and their counsel had always been present; however, the scheduled hearings were either cancelled by the court *motu proprio* and/or postponed by agreement of the parties, until the case was eventually set for trial on the merits on February 15, 1967. It was only at this hearing where the plaintiffs and their counsel failed to appear, prompting the court to issue its controversial order of dismissal. Considering that it was the first time that the plaintiffs failed to appear and the added fact that the trial on the merits had not as yet commenced, We believe that it would have been more in consonance with the essence of justice and fairness for the court to have postponed the hearing on February 15, 1967.
>
> We are not unmindful of the fact that the matter of adjournment and postponement of trials is within the sound discretion of the court; but such discretion should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness should be served thereby. Postponements and continuances are part and parcel

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[24] 165 Phil. 500, 504 (1976).

of our procedural system of dispensing justice, and when — as in the present case — no substantial rights are affected and the intention to delay is not manifest, it is sound judicial discretion to allow them.

This Court further considers that based on the records, the contract of the handling lawyer, Falcon, with the PCGG terminated without the knowledge of Puertollano. After Falcon's resignation, it was only on 5 October 2007 that the case was transferred to the new lawyer. These facts then explain the nonattendance of petitioner on 1 October 2007, and why it failed to keep abreast with the succeeding 2, 29, and 30 October 2007 hearings.

Moreover, this Court understands the absence of Puertollano in Civil Case No. 0014. The OSG has explained that he attends to G.R. 154560, as the main case has been delegated to the PCGG. We find this arrangement sensible, given that case management is needed to tackle this sensitive case involving a number of high-profile parties, sensitive issues and, of course, numerous offshoots and incidents.

Respondents are correct in saying that courts have a right to dismiss a case for failure of the plaintiff to prosecute. Still, we remind justices, judges and litigants alike that rules "should be interpreted and applied not in a vacuum or in isolated abstraction, but in light of surrounding circumstances and attendant facts in order to afford justice to all."[25]

We underscore that there are specific rules that are liberally construed, and among them is the Rules of Court. In fact, no less than Rule 1, Section 6 of the Rules of Court echoes that the rationale behind this construction is to promote the objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Surprisingly, the Sandiganbayan obviated the speedy disposition of the case when it chose to dismiss the case spanning two decades over a technicality and, in the same breath, rationalized its cavalier attitude by saying that a complaint for ill-gotten wealth should be reinstituted all over again.

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[25] *Magsaysay Lines, Inc. v. Court of Appeals*, 329 Phil. 310, 323 (1996).

Here, we find it incongruous to tip the balance of the scale in favor of a technicality that would result in a complete restart of the 26-year-old civil case back to square one. Surely, this Court cannot waste the progress of the civil case from the institution of the complaint to the point of reaching the trial stage. Not only would this stance dry up the resources of the government and the private parties, but it would also compromise the preservation of the evidence needed by them to move forward with their respective cases. Thus, to prevent a miscarriage of justice in its truest sense, and considering the exceptional and special history of Civil Case No. 0014, this Court applies a liberal construction of the Rules of Court.

Every party-litigant must be afforded the amplest opportunity for the proper and just determination of its cause.[26] "Adventitious resort to technicality resulting in the dismissal of cases is disfavored because litigations must as much as possible be decided on the merits and not on technicalities."[27] Inconsiderate dismissals, even if without prejudice to its refiling as in this case, merely postpone the ultimate reckoning between the parties. In the absence of a clear intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the case before the court.[28]

Denial of Petitioner's Motion for Reconsideration due to Petitioner's Failure to Observe the Three-day Notice Rule

In its assailed 25 January 2008 Resolution, the Sandiganbayan held that petitioners failed to comply with the three-day notice rule. It faulted petitioner for its belated receipt on 10 December 2007 of the Motion for Reconsideration set for hearing on 7 December 2007.

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[26] *RN Development Corporation v. A.I.I. System, Inc.*, G.R. No. 166104, 26 June 2008, 555 SCRA 513, 524.

[27] *Pagadora v. Ilao*, G.R. No. 165769, 12 December 2011, 662 SCRA 14, 17.

[28] *Anson Trade Center, Inc. v. Pacific Banking Corporation*, G.R. No. 179999, 17 March 2009, 581 SCRA 751, 759.

The Sandiganbayan is incorrect. By the very words of Rule 15, Section 4 of the Rules of Court, the moving party is required to serve motions in such a manner as to ensure the receipt thereof by **the other party** at least three days before the date of hearing. The purpose of the rule is to prevent a surprise and to afford the **adverse party** a chance to be heard before the motion is resolved by the trial court.[29] Plainly, the rule does not require that the court receive the notice three days prior to the hearing date.

Likewise, petitioner mailed the motion to the Sandiganbayan on 29 November 2007. Since Rule 13, Section 3 of the Rules of Court, states that the date of the mailing of motions through registered mail shall be considered the date of their filing in court, it follows that petitioner filed the motion to the court 10 days in advance of the hearing date. In so doing, it observed the 10-day requirement under Rule 15, Section 5 of the Rules of Court, which provides that the time and date of the hearing must not be later than ten days after the filing of the motion.

Considering that the Motion for Reconsideration containing a timely notice of hearing was duly served in compliance with Rule 15, Sections 4 and 5 of the Rules of Court, the fact that the Sandiganbayan received the notice on 10 December 2007 becomes trivial. The court cannot also blame petitioner for this belated receipt of the registered mail since it followed the rules.

Therefore, the Sandiganbayan should have given due course to the Motion for Reconsideration filed by petitioner. If it had done so, Civil Case No. 0014 would have progressed at the trial court level.

IN VIEW THEREOF, the 11 March 2008 Petition for Review on *Certiorari* filed by petitioner is **GRANTED**. The 1 October 2007 Order and 25 January 2008 Resolution of the Sandiganbayan (Second Division) are **REVERSED**. Consequently, Civil Case No. 0014 is hereby **REINSTATED**.

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[29] *Leobrera v. Court of Appeals*, 252 Phil. 737, 743 (1989).

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 188956. March 20, 2013]

ARMED FORCES OF THE PHILIPPINES RETIREMENT AND SEPARATION BENEFITS SYSTEM, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL DUE TO FAULT OF PLAINTIFF; LACK OF AUTHORITY TO TESTIFY IS NOT A GROUND TO DISMISS A CASE FOR FAILURE TO PROSECUTE; CASE AT BAR. — The reason of the court *a quo* in dismissing petitioner's application for land registration on the ground of failure to prosecute was the lack of authority on the part of Ms. Aban to testify on behalf of the petitioner. However, Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, provides only three instances wherein the Court may dismiss a case for failure to prosecute x x x. Jurisprudence has elucidated on this matter in *De Knecht v. CA*: "An action may be dismissed for failure to prosecute in any of the following instances**: (1) if the plaintiff fails to appear at the time of trial; or (2) if he fails to prosecute the action for an unreasonable length of time; or (3) if he fails to comply with the Rules of Court or any order of the court."** x x x Clearly, the court a *quo's* basis for pronouncing that the petitioner failed to prosecute its case is not among those grounds provided by the Rules. It had no reason to conclude that the petitioner failed to prosecute its case. First, the petitioner did not fail to appear at the time

of the trial. In fact, the Decision of the RTC dated April 21, 2008 ordering the registration of petitioner's title to the subject lots shows that the petitioner appeared before the Court and was represented by counsel. Records would also reveal that the petitioner was able to present its evidence, and as a result, the RTC rendered judgment in its favor. Second, the petitioner did not fail to prosecute the subject case considering that it appeared during trial, presented Ms. Aban, who gave competent testimony as regards the titling of the subject lots, and the court *a quo* never held petitioner liable for any delay in prosecuting the subject case. Third, a perusal of the records would demonstrate that the petitioner did not fail to comply with the Rules or any order of the court *a quo*, as there is no ruling on the part of the latter to this effect. Indeed, there was no basis for the court *a quo's* ruling that the petitioner failed to prosecute the subject case, because none of the grounds provided in the Rules for dismissing a case due to failure to prosecute is present. That the RTC dismissed the application for land registration of the petitioner for failure to prosecute after the petitioner presented all its evidence and after said court has rendered a decision in its favor, is highly irregular.

2. ID.; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; A WITNESS FOR A PARTY IS NOT REQUIRED TO PRESENT SOME FORM OF AUTHORIZATION TO TESTIFY AS A WITNESS FOR THE PARTY PRESENTING HIM. — [T]here is no substantive or procedural rule which requires a witness for a party to present some form of authorization to testify as a witness for the party presenting him or her. No law or jurisprudence would support the conclusion that such omission can be considered as a failure to prosecute on the part of the party presenting such witness. All that the Rules require of a witness is that the witness possesses all the qualifications and none of the disqualifications provided therein.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 assailing the Orders dated February 17, 2009[1] and July 9, 2009[2] of the Regional Trial Court (RTC) of Pasig City, Branch 68, in Land Registration Case No. N-11517.

The first Order reconsidered and recalled the Decision[3] of the RTC dated April 21, 2008, which granted the application for land registration of petitioner Armed Forces of the Philippines Retirement and Separation Benefits System. The second Order denied the Motion for Reconsideration filed by the petitioner.

Petitioner was "created under Presidential Decree (P.D.) No. 361,[4] as amended, and was designed to establish a separate fund to guarantee continuous financial support to the [Armed Forces of the Philippines] military retirement system as provided for in Republic Act No. 340."[5]

Petitioner filed an Application for Registration of Title[6] over three parcels of land located in West Bicutan, Taguig City, before the RTC of Pasig City. The said application was later docketed as LRC Case No. N-11517 and raffled to Branch 68 of the court *a quo*.

These three parcels of land constitute a land grant by virtue of Presidential Proclamation No. 1218, issued by former President Fidel V. Ramos on May 8, 1998.[7]

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[1] *Rollo,* pp. 47-48. Penned by Judge Santiago G. Estrella.

[2] *Id.* at 49-50.

[3] *Id.* at 40-46.

[4] PROVIDING FOR AN ARMED FORCES RETIREMENT AND SEPARATION BENEFIT SYSTEM.

[5] *Rollo,* p. 13, citing *Ramiscal, Jr. v. Hon. Sandiganbayan*, 487 Phil. 384, 390 (2004).

[6] Records, pp. 1-4. The application was dated September 29, 2003.

[7] *Rollo,* pp. 17 and 56-58.

The application was filed by Mr. Honorio S. Azcueta (Mr. Azcueta), the then Executive Vice President and Chief Operating Officer of the petitioner, who was duly authorized to do so by the Board of Trustees of the petitioner, as evidenced by a notarized Secretary's Certificate[8] dated August 18, 2003.

After due posting and publication of the requisite notices, and since no oppositor registered any oppositions after the petitioner met the jurisdictional requirements, the court *a quo* issued an order of general default against the whole world, and the petitioner was allowed to present evidence *ex-parte*.[9]

The petitioner then presented as its witness, Ms. Alma P. Aban (Ms. Aban), its Vice President and Head of its Asset Enhancement Office. She testified, *inter alia*, that: among her main duties is to ensure that the properties and assets of petitioner, especially real property, are legally titled and freed of liens and encumbrances; the subject properties were acquired by the petitioner through a land grant under Presidential Proclamation No. 1218; prior to Presidential Proclamation No. 1218, the Republic of the Philippines was in open, continuous, exclusive, notorious, and peaceful possession and occupation of the subject properties in the concept of an owner to the exclusion of the world since time immemorial; petitioner, after the Republic of the Philippines transferred ownership of the subject properties to it, assumed open, continuous, exclusive, notorious, and peaceful possession and occupation, and exercised control over them in the concept of owner, and likewise assumed the obligations of an owner; petitioner has been paying the real estate taxes on the subject properties; and the subject properties are not mortgaged, encumbered, or tenanted.[10]

Subsequently, petitioner submitted its Formal Offer of Evidence,[11] following which, the court *a quo* granted the

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[8] Records, p. 25.

[9] *Rollo*, p. 44.

[10] TSN, March 30, 2006 pp. 1-10; records, pp. 204-213.

[11] Records, pp. 188-191.

application in a Decision dated April 21, 2008. The dispositive portion of the said decision reads:

WHEREFORE, finding the Petition meritorious, the Court **DECLARES, CONFIRMS AND ORDERS** the registration of AFPRSBS' title thereto.

As soon as this Decision shall have become final and after payment of the required fees, let the corresponding Decree be issued in the name of **Armed Forces of the Philippines Retirement and Separation Benefits System**.

Let copies of this Decision be furnished the Office of the Solicitor General, Land Registration Authority, Land Management Bureau and the Registry of Deeds, Taguig City, Metro Manila.

SO ORDERED.[12]

In response, the Office of the Solicitor General (OSG) filed a Motion for Reconsideration[13] dated May 12, 2008, wherein it argued that the petitioner failed to prove that it has personality to own property in its name and the petitioner failed to show that the witness it presented was duly authorized to appear for and in its behalf.

On June 2, 2008, petitioner filed its Comment/Opposition.[14]

On February 17, 2009, the court *a quo* issued the assailed Order granting the Motion for Reconsideration of the OSG on the ground that the petitioner failed to prosecute its case. The dispositive portion of the assailed Order reads:

WHEREFORE, premises considered, the OSG's motion for reconsideration is **GRANTED**. The Court's Decision of April 21, 2008 is hereby **RECONSIDERED** and **RECALLED**, and a new one issued DISMISSING this Application for Registration of Title for failure to prosecute.

SO ORDERED.[15]

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[12] *Rollo,* pp. 45-46.

[13] *Id.* at 65-68.

[14] *Id.* at 70-75.

[15] *Id.* at 48.

The Motion for Reconsideration[16] of petitioner was denied by the court *a quo* in the other assailed Order[17] dated July 9, 2009. Hence, this petition.

The issue to be resolved in the present case is whether the court *a quo* acted contrary to law and jurisprudence when it dismissed petitioner's application for land registration on the ground that petitioner failed to prosecute the subject case.

We answer in the affirmative.

The reason of the court *a quo* in dismissing petitioner's application for land registration on the ground of failure to prosecute was the lack of authority on the part of Ms. Aban to testify on behalf of the petitioner.

However, Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, provides only three instances wherein the Court may dismiss a case for failure to prosecute:

> Sec. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

Jurisprudence has elucidated on this matter in *De Knecht v. CA*:[18]

> An action may be dismissed for failure to prosecute in any of the following instances: **(1) if the plaintiff fails to appear at the time of trial; or (2) if he fails to prosecute the action for an unreasonable length of time; or (3) if he fails to comply with the Rules of Court**

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[16] *Id.* at 76-85.

[17] *Supra* note 2.

[18] 352 Phil. 833, 849 (1998).

or any order of the court. Once a case is dismissed for failure to prosecute, this has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In other words, unless there be a qualification in the order of dismissal that it is without prejudice, the dismissal should be regarded as an adjudication on the merits and is with prejudice. (Emphasis supplied.)

Clearly, the court a *quo*'s basis for pronouncing that the petitioner failed to prosecute its case is not among those grounds provided by the Rules. It had no reason to conclude that the petitioner failed to prosecute its case. First, the petitioner did not fail to appear at the time of the trial. In fact, the Decision of the RTC dated April 21, 2008 ordering the registration of petitioner's title to the subject lots shows that the petitioner appeared before the Court and was represented by counsel. Records would also reveal that the petitioner was able to present its evidence, and as a result, the RTC rendered judgment in its favor.

Second, the petitioner did not fail to prosecute the subject case considering that it appeared during trial, presented Ms. Aban, who gave competent testimony as regards the titling of the subject lots, and the court *a quo* never held petitioner liable for any delay in prosecuting the subject case.

Third, a perusal of the records would demonstrate that the petitioner did not fail to comply with the Rules or any order of the court *a quo*, as there is no ruling on the part of the latter to this effect.

Indeed, there was no basis for the court *a quo*'s ruling that the petitioner failed to prosecute the subject case, because none of the grounds provided in the Rules for dismissing a case due to failure to prosecute is present. That the RTC dismissed the application for land registration of the petitioner for failure to prosecute after the petitioner presented all its evidence and after said court has rendered a decision in its favor, is highly irregular.

At this juncture, it would be appropriate to discuss the basis of the court *a quo* in dismissing the petitioner's application for land registration for failure to prosecute — the alleged lack of

authority of the witness, Ms. Aban, to testify on behalf of the petitioner.

The assailed Order held as follows:

With things now stand, the Court believes that OSG was correct in observing that indeed the AFPRSBS did not present its duly authorized representative to prosecute this case. And the records support the observation since AFPRSBS presented only one witness — Mrs. Aban. In view of the foregoing the Court is left without choice than to grant OSG's motion for reconsideration.[19]

However, there is no substantive or procedural rule which requires a witness for a party to present some form of authorization to testify as a witness for the party presenting him or her. No law or jurisprudence would support the conclusion that such omission can be considered as a failure to prosecute on the part of the party presenting such witness. All that the Rules require of a witness is that the witness possesses all the qualifications and none of the disqualifications provided therein. Rule 130 of the Rules on Evidence provides:

SEC. 20. *Witnesses; their qualifications*. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

x x x x x x x x x

Cavili v. Judge Florendo[20] speaks of the disqualifications:

Sections 19 and 20 of Rule 130 provide for specific disqualifications. Section 19 disqualifies those who are mentally incapacitated and children whose tender age or immaturity renders them incapable of being witnesses. Section 20 provides for disqualification based on conflicts of interest or on relationship. Section 21 provides for disqualifications based on privileged communications. Section 15 of Rule 132 may not be a rule on disqualification of witnesses but

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[19] *Rollo,* p. 48.

[20] 238 Phil. 597, 602-603 (1987).

it states the grounds when a witness may be impeached by the party against whom he was called.

x x x **The specific enumeration of disqualified witnesses excludes the operation of causes of disability other than those mentioned in the Rules. It is a maxim of recognized utility and merit in the construction of statutes that an express exception**, exemption, or saving clause excludes other exceptions. (*In Re* Estate of Enriquez, 29 Phil. 167) As a general rule, where there are express exceptions these comprise the only limitations on the operation of a statute and no other exception will be implied. (Sutherland on Statutory Construction, Fourth Edition, Vol. 2A, p. 90) The Rules should not be interpreted to include an exception not embodied therein. (Emphasis supplied.)

A reading of the pertinent law and jurisprudence would show that Ms. Aban is qualified to testify as a witness for the petitioner since she possesses the qualifications of being able to perceive and being able to make her perceptions known to others. Furthermore, she possesses none of the disqualifications described above.

The RTC clearly erred in ordering the dismissal of the subject application for land registration for failure to prosecute because petitioner's witness did not possess an authorization to testify on behalf of petitioner. The court *a quo* also erred when it concluded that the subject case was not prosecuted by a duly authorized representative of the petitioner. The OSG and the court *a quo* did not question the Verification/Certification[21] of the application, and neither did they question the authority of Mr. Azcueta to file the subject application on behalf of the petitioner. Case records would reveal that the application was signed and filed by Mr. Azcueta in his capacity as the Executive Vice President and Chief Operating Officer of the petitioner, as authorized by petitioner's Board of Trustees.[22] The authority of Mr. Azcueta to file the subject application was established by a Secretary's Certificate[23] attached to the said application.

[21] Records, p. 4.

[22] *Id.* at 3, 25.

[23] *Supra* note 8.

The asseveration that the subject case was not prosecuted by a duly authorized representative of the petitioner is thus unfounded.

Interestingly enough, the respondent itself agrees with the petitioner that the dismissal of the subject application by the court *a quo* on the ground of failure to prosecute due to lack of authority of the sole witness of the petitioner is unfounded and without legal basis.[24]

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Orders of the Regional Trial Court dated February 17, 2009 and July 9, 2009 are **REVERSED AND SET ASIDE**. The Decision of the Regional Trial Court dated April 21, 2008, granting the Application for Registration of Title of the petitioner is hereby **REINSTATED and UPHELD**.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188986. March 20, 2013]

GALILEO A. MAGLASANG, doing business under the name GL Enterprises, *petitioner, vs.* **NORTHWESTERN UNIVERSITY, INC.,** *respondent.*

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[24] *Rollo,* p. 111.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; RESCISSION; THE TWO CONTRACTS REQUIRE NO LESS THAN SUBSTANTIAL BREACH BEFORE THEY CAN BE RESCINDED; SUBSTANTIAL BREACH, DEFINED. — The power to rescind the obligations of the injured party is implied in reciprocal obligations, such as in this case. x x x The two contracts require no less than substantial breach before they can be rescinded. Since the contracts do not provide for a definition of substantial breach that would terminate the rights and obligations of the parties, we apply the definition found in our jurisprudence. This Court defined in *Cannu v. Galang* that substantial, unlike slight or casual breaches of contract, are fundamental breaches that defeat the object of the parties in entering into an agreement, since the law is not concerned with trifles. The question of whether a breach of contract is substantial depends upon the attending circumstances.

2. ID.; DAMAGES; ATTORNEY'S FEES; WHEN AWARDED. — Article 2208 of the Civil Code allows the grant thereof when the court deems it just and equitable that attorney's fees should be recovered. An award of attorney's fees is proper if one was forced to litigate and incur expenses to protect one's rights and interest by reason of an unjustified act or omission on the part of the party from whom the award is sought.

APPEARANCES OF COUNSEL

Jose Allan N. Maglasang for petitioner.
Tan Acut Lopez & Pison for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition, seeking a review of the 27 July 2009 Court of Appeals (CA) Decision in CA-G.R. CV

No. 88989,[1] which modified the Regional Trial Court (RTC) Decision of 8 January 2007 in Civil Case No. Q-04-53660.[2] The CA held that petitioner substantially breached its contracts with respondent for the installation of an integrated bridge system (IBS).

The antecedent facts are as follows:[3]

On 10 June 2004, respondent Northwestern University (Northwestern), an educational institution offering maritime-related courses, engaged the services of a Quezon City-based firm, petitioner GL Enterprises, to install a new IBS in Laoag City. The installation of an IBS, used as the students' training laboratory, was required by the Commission on Higher Education (CHED) before a school could offer maritime transportation programs.[4]

Since its IBS was already obsolete, respondent required petitioner to supply and install specific components in order to form the most modern IBS that would be acceptable to CHED and would be compliant with the standards of the International Maritime Organization (IMO). For this purpose, the parties executed two contracts.

The first contract partly reads:[5]

> That in consideration of the payment herein mentioned to be made by the First Party (defendant), the Second Party agrees to furnish, supply, install and integrate the most modern **INTEGRATED BRIDGE SYSTEM** located at Northwestern University MOCK BOAT in accordance with the general conditions, plans and specifications of this contract.

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[1] CA Decision, penned by Associate Justice Isaias P. Dicdican, with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Marlene B. Gonzales-Sison concurring.

[2] RTC Decision penned by Judge Hilario L. Laqui.

[3] *Rollo,* pp. 21-38.

[4] *Id.* at 13; Petition for Review dated 13 September 2009.

[5] *Id.* at 43-44.

SUPPLY & INSTALLATION OF THE FOLLOWING:
INTEGRATED BRIDGE SYSTEM
A. 2-RADAR SYSTEM
B. OVERHEAD CONSOLE MONITORING SYSTEM
C. ENGINE TELEGRAPH SYSTEM
D. ENGINE CONTROL SYSTEM
E. WEATHER CONTROL SYSTEM
F. ECDIS SYSTEM
G. STEERING WHEEL SYSTEM
H. BRIDGE CONSOLE

TOTAL COST:	PhP3,800,000.00
LESS: OLD MARITIME EQUIPMENT TRADE-IN VALUE	1,000,000.00
DISCOUNT	100,000.00
PROJECT COST (MATERIALS & INSTALLATION)	**PhP 2,700,000.00**

(Emphasis in the original)

The second contract essentially contains the same terms and conditions as follows:[6]

That in consideration of the payment herein mentioned to be made by the First Party (defendant), the Second Party agrees to furnish, supply, install & integrate the most modern **INTEGRATED BRIDGE SYSTEM located at Northwestern University MOCK BOAT** in accordance with the general conditions, plans and specifications of this contract.

SUPPLY & INSTALLATION OF THE FOLLOWING:

1. ARPA RADAR SIMULATION ROOM
x x x x x x x x x
2. GMDSS SIMULATION ROOM
x x x x x x x x x

TOTAL COST: PhP270,000.00

(Emphasis in the original)

Common to both contracts are the following provisions: (1) the IBS and its components must be compliant with the IMO and

[6] *Id.* at 45-46.

CHED standard and with manuals for simulators/major equipment; (2) the contracts may be terminated if one party commits a substantial breach of its undertaking; and (3) any dispute under the agreement shall first be settled mutually between the parties, and if settlement is not obtained, resort shall be sought in the courts of law.

Subsequently, Northwestern paid ₱1 million as down payment to GL Enterprises. The former then assumed possession of Northwestern's old IBS as trade-in payment for its service. Thus, the balance of the contract price remained at ₱1.97 million.[7]

Two months after the execution of the contracts, GL Enterprises technicians delivered various materials to the project site. However, when they started installing the components, respondent halted the operations. GL Enterprises then asked for an explanation.[8]

Northwestern justified the work stoppage upon its finding that the delivered equipment were substandard.[9] It explained further that GL Enterprises violated the terms and conditions of the contracts, since the delivered components (1) were old; (2) did not have instruction manuals and warranty certificates; (3) contained indications of being reconditioned machines; and (4) did not meet the IMO and CHED standards. Thus, Northwestern demanded compliance with the agreement and suggested that GL Enterprises meet with the former's representatives to iron out the situation.

Instead of heeding this suggestion, GL Enterprises filed on 8 September 2004 a Complaint[10] for breach of contract and prayed for the following sums: ₱1.97 million, representing the amount that it would have earned, had Northwestern not stopped it from performing its tasks under the two contracts; at least ₱100,000 as moral damages; at least ₱100,000 by way of

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[7] *Id.* at 85.

[8] *Id.* at 47; petitioner's letter dated 23 August 2004.

[9] *Id.* at 48; respondent's letter dated 30 August 2004.

[10] *Id.* at 39-42.

exemplary damages; at least ₱100,000 as attorney's fees and litigation expenses; and cost of suit. Petitioner alleged that Northwestern breached the contracts by ordering the work stoppage and thus preventing the installation of the materials for the IBS.

Northwestern denied the allegation. In its defense, it asserted that since the equipment delivered were not in accordance with the specifications provided by the contracts, all succeeding works would be futile and would entail unnecessary expenses. Hence, it prayed for the rescission of the contracts and made a compulsory counterclaim for actual, moral, and exemplary damages, and attorney's fees.

The RTC held both parties at fault. It found that Northwestern unduly halted the operations, even if the contracts called for a completed project to be evaluated by the CHED. In turn, the breach committed by GL Enterprises consisted of the delivery of substandard equipment that were not compliant with IMO and CHED standards as required by the agreement.

Invoking the equitable principle that "each party must bear its own loss," the trial court treated the contracts as impossible of performance without the fault of either party or as having been dissolved by mutual consent. Consequently, it ordered mutual restitution, which would thereby restore the parties to their original positions as follows:[11]

> Accordingly, plaintiff is hereby ordered to restore to the defendant all the equipment obtained by reason of the First Contract and refund the downpayment of ₱1,000,000.00 to the defendant; and for the defendant to return to the plaintiff the equipment and materials it withheld by reason of the non-continuance of the installation and integration project. In the event that restoration of the old equipment taken from defendant's premises is no longer possible, plaintiff is hereby ordered to pay the appraised value of defendant's old equipment at ₱1,000,000.00. Likewise, in the event that restoration of the equipment and materials delivered by the plaintiff to the defendant is no longer possible, defendant is hereby ordered to pay its appraised value at ₱1,027,480.00.

[11] *Id.* at 92.

Moreover, plaintiff is likewise ordered to restore and return all the equipment obtained by reason of the Second Contract, or if restoration or return is not possible, plaintiff is ordered to pay the value thereof to the defendant.

SO ORDERED.

Aggrieved, both parties appealed to the CA. With each of them pointing a finger at the other party as the violator of the contracts, the appellate court ultimately determined that GL Enterprises was the one guilty of substantial breach and liable for attorney's fees.

The CA appreciated that since the parties essentially sought to have an IBS compliant with the CHED and IMO standards, it was GL Enterprises' delivery of defective equipment that materially and substantially breached the contracts. Although the contracts contemplated a completed project to be evaluated by CHED, Northwestern could not just sit idly by when it was apparent that the components delivered were substandard.

The CA held that Northwestern only exercised ordinary prudence to prevent the inevitable rejection of the IBS delivered by GL Enterprises. Likewise, the appellate court disregarded petitioner's excuse that the equipment delivered might not have been the components intended to be installed, for it would be contrary to human experience to deliver equipment from Quezon City to Laoag City with no intention to use it.

This time, applying Article 1191 of the Civil Code, the CA declared the rescission of the contracts. It then proceeded to affirm the RTC's order of mutual restitution. Additionally, the appellate court granted ₱50,000 to Northwestern by way of attorney's fees.

Before this Court, petitioner rehashes all the arguments he had raised in the courts *a quo*.[12] He maintains his prayer for actual damages equivalent to the amount that he would have earned, had respondent not stopped him from performing his

[12] *Id.* at 12-16.

tasks under the two contracts; moral and exemplary damages; attorney's fees; litigation expenses; and cost of suit.

Hence, the pertinent issue to be resolved in the instant appeal is whether the CA gravely erred in (1) finding substantial breach on the part of GL Enterprises; (2) refusing petitioner's claims for damages, and (3) awarding attorney's fees to Northwestern.

RULING OF THE COURT

Substantial Breaches of the Contracts

Although the RTC and the CA concurred in ordering restitution, the courts *a quo*, however, differed on the basis thereof. The RTC applied the equitable principle of mutual fault, while the CA applied Article 1191 on rescission.

The power to rescind the obligations of the injured party is implied in reciprocal obligations, such as in this case. On this score, the CA correctly applied Article 1191, which provides thus:

> The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

The two contracts require no less than substantial breach before they can be rescinded. Since the contracts do not provide for a definition of substantial breach that would terminate the rights and obligations of the parties, we apply the definition found in our jurisprudence.

This Court defined in *Cannu v. Galang*[13] that substantial, unlike slight or casual breaches of contract, are fundamental

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[13] 498 Phil. 128 (2005).

breaches that defeat the object of the parties in entering into an agreement, since the law is not concerned with trifles.[14]

The question of whether a breach of contract is substantial depends upon the attending circumstances.[15]

In the case at bar, the parties explicitly agreed that the materials to be delivered must be compliant with the CHED and IMO standards and must be complete with manuals. Aside from these clear provisions in the contracts, the courts *a quo* similarly found that the intent of the parties was to replace the old IBS in order to obtain CHED accreditation for Northwestern's maritime-related courses.

According to CHED Memorandum Order (CMO) No. 10, Series of 1999, as amended by CMO No. 13, Series of 2005, any simulator used for simulator-based training shall be capable of simulating the operating capabilities of the shipboard equipment concerned. The simulation must be achieved at a level of physical realism appropriate for training objectives; include the capabilities, limitations and possible errors of such equipment; and provide an interface through which a trainee can interact with the equipment, and the simulated environment.

Given these conditions, it was thus incumbent upon GL Enterprises to supply the components that would create an IBS that would effectively facilitate the learning of the students.

However, GL Enterprises miserably failed in meeting its responsibility. As contained in the findings of the CA and the RTC, petitioner supplied substandard equipment when it delivered components that (1) were old; (2) did not have instruction manuals and warranty certificates; (3) bore indications of being reconditioned machines; and, all told, (4) might not have met the IMO and CHED standards. Highlighting the defects of the delivered materials, the CA quoted respondent's testimonial evidence as follows:[16]

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[14] 234 Phil. 523 (1987).

[15] *G.G. Sportswear Mfg. Corp. v. World Class Properties, Inc.*, G.R. No. 182720, 2 March 2010, 614 SCRA 75.

[16] TSN dated 7 April 2006, pp. 9-12.

Q: In particular which of these equipment of CHED requirements were not complied with?

A: The Radar Ma'am, because they delivered only 10-inch PPI, that is the monitor of the Radar. That is 16-inch and the gyrocompass with two (2) repeaters and the history card. The gyrocompass — there is no marker, there is no model, there is no serial number, no gimbal, no gyroscope and a bulb to work it properly to point the true North because it is very important to the Cadets to learn where is the true North being indicated by the Master Gyrocompass.

x x x x x x x x x

Q: Mr. Witness, one of the defects you noted down in this history card is that the master gyrocompass had no gimbals, gyroscope and balls and was replaced with an ordinary electric motor. So what is the Implication of this?

A: Because those gimbals, balls and the gyroscope it let the gyrocompass to work so it will point the true North but they being replaced with the ordinary motor used for toys so it will not indicate the true North.

Q: So what happens if it will not indicate the true North?

A: It is very big problem for my cadets because they must[,] to learn into school where is the true North and what is that equipment to be used on board.

Q: One of the defects is that the steering wheel was that of an ordinary automobile. And what is the implication of this?

A: Because on board Ma'am, we are using the real steering wheel and the cadets will be implicated if they will notice that the ship have the same steering wheel as the car so it is not advisable for them.

Q: And another one is that the gyrocompass repeater was only refurbished and it has no serial number. What is wrong with that?

A: It should be original Ma'am because this gyro repeater, it must to repeat also the true [N]orth being indicated by the Master Gyro Compass so it will not work properly, I don't know it will work properly. (Underscoring supplied)

Evidently, the materials delivered were less likely to pass the CHED standards, because the navigation system to be installed

might not accurately point to the true north; and the steering wheel delivered was one that came from an automobile, instead of one used in ships. Logically, by no stretch of the imagination could these form part of the most modern IBS compliant with the IMO and CHED standards.

Even in the instant appeal, GL Enterprises does not refute that the equipment it delivered was substandard. However, it reiterates its rejected excuse that Northwestern should have made an assessment only after the completion of the IBS.[17] Thus, petitioner stresses that it was Northwestern that breached the agreement when the latter halted the installation of the materials for the IBS, even if the parties had contemplated a completed project to be evaluated by CHED. However, as aptly considered by the CA, respondent could not just "sit still and wait for such day that its accreditation may not be granted by CHED due to the apparent substandard equipment installed in the bridge system."[18] The appellate court correctly emphasized that, by that time, both parties would have incurred more costs for nothing.

Additionally, GL Enterprises reasons that, based on the contracts, the materials that were hauled all the way from Quezon City to Laoag City under the custody of the four designated installers might not have been the components to be used.[19] Without belaboring the point, we affirm the conclusion of the CA and the RTC that the excuse is untenable for being contrary to human experience.[20]

Given that petitioner, without justification, supplied substandard components for the new IBS, it is thus clear that its violation was not merely incidental, but directly related to the essence of the agreement pertaining to the installation of an

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[17] *Rollo*, p. 13; Petition for Review dated 13 September 2009.

[18] *Id.* at 37; CA Decision dated 27 July 2009.

[19] *Id.* at 12-13; Petition for Review dated 13 September 2009.

[20] *Id.* at 91, RTC Decision dated 8 January 2007; *id.* at 36, CA Decision dated 27 July 2009.

IBS compliant with the CHED and IMO standards. Consequently, the CA correctly found substantial breach on the part of petitioner.

In contrast, Northwestern's breach, if any, was characterized by the appellate court as slight or casual.[21] By way of negative definition, a breach is considered casual if it does not fundamentally defeat the object of the parties in entering into an agreement. Furthermore, for there to be a breach to begin with, there must be a "failure, without legal excuse, to perform any promise which forms the whole or part of the contract."[22]

Here, as discussed, the stoppage of the installation was justified. The action of Northwestern constituted a legal excuse to prevent the highly possible rejection of the IBS. Hence, just as the CA concluded, we find that Northwestern exercised ordinary prudence to avert a possible wastage of time, effort, resources and also of the ₱2.9 million representing the value of the new IBS.

Actual Damages, Moral and Exemplary Damages, and Attorney's Fees

As between the parties, substantial breach can clearly be attributed to GL Enterprises. Consequently, it is not the injured party who can claim damages under Article 1170 of the Civil Code. For this reason, we concur in the result of the CA's Decision denying petitioner actual damages in the form of lost earnings, as well as moral and exemplary damages.

With respect to attorney's fees, Article 2208 of the Civil Code allows the grant thereof when the court deems it just and equitable that attorney's fees should be recovered. An award of attorney's fees is proper if one was forced to litigate and incur expenses to protect one's rights and interest by reason of an unjustified act or omission on the part of the party from whom the award is sought.[23]

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[21] *Id.*

[22] *Omengan v. Philippine National Bank*, G.R. No. 161319, 23 January 2007, 512 SCRA 305.

[23] *Asian Center for Career and Employment System and Services, Inc. v. NLRC*, 358 Phil. 380 (1998).

Since we affirm the CA's finding that it was not Northwestern but GL Enterprises that breached the contracts without justification, it follows that the appellate court correctly awarded attorney's fees to respondent. Notably, this litigation could have altogether been avoided if petitioner heeded respondent's suggestion to amicably settle; or, better yet, if in the first place petitioner delivered the right materials as required by the contracts.

IN VIEW THEREOF, the assailed 27 July 2009 Decision of the Court of Appeals in CA-G.R. CV No. 88989 is hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Leonen,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 189324. March 20, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILBERT PENILLA *y* FRANCIA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; THE COMPLAINANT'S CREDIBILITY BECOMES THE SINGLE MOST IMPORTANT ISSUE IN A PROSECUTION FOR RAPE. — Rape case principles have not changed: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where

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[*] Additional member in lieu of Associate Justice Bienvenido L. Reyes due to his prior action in the Court of Appeals.

only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and, (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense. Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.

2. ID.; ID.; IN RAPE CASES, THE ACCUSED MAY BE CONVICTED BASED SOLELY ON THE CREDIBLE TESTIMONY OF THE VICTIM. — [I]n rape cases the accused may be convicted based solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that, usually, only the participants can directly testify as to its occurrence. Since normally only two persons are privy to the commission of rape, the evaluation of the evidence thereof ultimately revolves around the credibility of the complaining witness. Thus, we revert to the testimony of the witnesses.

3. ID.; ID.; THE MORAL CHARACTER OF THE VICTIM IS IMMATERIAL IN RAPE CASES. — [I]n rape cases, the moral character of the victim is immaterial. Rape may be committed not only against single women and children but also against those who are married, middle-aged, separated, or pregnant. Even a prostitute may be a victim of rape.

4. ID.; ID.; PHYSICAL RESISTANCE; NEED NOT BE ESTABLISHED WHEN THREATS AND INTIMIDATION ARE EMPLOYED. — Physical resistance need not be established in rape when threats and intimidation are employed, and the victim submits herself to her attacker because of fear. Failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused; it is not an essential element of rape.

5. ID.; ID.; ID.; THE BURDEN OF PROVING RESISTANCE IS NOT IMPOSED UPON THE PRIVATE COMPLAINANT. — Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any

resistance at all. The use of a weapon, by itself, is strongly suggestive of force or at least intimidation, and threatening the victim with a knife, much more poking it at her, as in this case, is sufficient to bring her into submission. Thus, the law does not impose upon the private complainant the burden of proving resistance.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON GENERALLY DESERVES GREAT WEIGHT. — [T]he matter of evaluating the credibility of witnesses depends largely on the assessment of the trial court. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Thus, appellate courts rely heavily on the weight given by the trial court on the credibility of a witness as it had a first-hand opportunity to hear and see the witness testify.

7. CRIMINAL LAW; RAPE; DELAY IN REVEALING THE COMMISSION THEREOF DOES NOT NECESSARILY RENDER THE CHARGE UNWORTHY OF BELIEF. — [D]elay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the cruelty of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.

8. ID.; ID.; A MEDICAL EXAMINATION OF THE VICTIM IS NOT INDISPENSABLE IN A PROSECUTION FOR RAPE. — A medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A FEW INCONSISTENT REMARKS IN RAPE CASES DO NOT NECESSARILY IMPAIR THE TESTIMONY OF THE OFFENDED PARTY. — [W]e dismiss the minor inconsistencies in AAA's testimony which Penilla latches on. These inconsistencies are not material to the instant case. Rape victims

are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.

10. CIVIL LAW; DAMAGES; MORAL DAMAGES; SHOULD BE AWARDED WITHOUT NEED OF PROOF IN RAPE CASES. — Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

Challenged in this appeal *via* Notice of Appeal is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 03206, which affirmed the finding of guilt by the Regional Trial Court (RTC), Branch 119, Pasay City in Criminal Case No. 00-0138.[2] Appellant Gilbert Penilla *y* Francia (Penilla) was convicted by the RTC of the crime of rape and sentenced to suffer the penalty of *reclusion perpetua*.

Penilla was charged in an Amended Information which reads:

That on or about the 22nd day of October, 1999, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this

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[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) with Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro, concurring. *Rollo*, pp. 2-16.

[2] Penned by Judge Pedro de Leon Gutierrez. Records, pp. 278-295.

Honorable Court, the above-named accused, GILBERT PENILLA *Y* FRANCIA, by means of force, threats and intimidation, did then and there, willfully, unlawfully and feloniously and with the use of deadly weapon, had carnal knowledge of the complainant, [AAA],[3] against her will and consent.[4]

AAA recounts that, at the time of the incident, she was renting a room at a boarding house in Pasay City which was owned by Penilla's grandmother. Around midnight of 22 October 1999, she was sleeping alone in her room and was suddenly awakened by Penilla's angry voice berating her for the loud volume of her television which was disturbing his sleep and rest in the adjacent room. AAA rose and was surprised to see Penilla by her bedside, naked and holding a kitchen knife of about eight (8) inches long. When AAA asked how Penilla entered the room, the latter did not answer and switched off the light. AAA picked up her clothes lying near the door and tried to put distance between her and Penilla, who then pushed her towards the bed. Penilla then knelt on top of AAA, poking the knife at the right side of her body. Paralyzed with fear and physically overpowered by Penilla, AAA remained silent and did not shout for help while Penilla forced himself on AAA, his penis penetrating into AAA's vagina.

After fifteen minutes and still not sated, Penilla ordered AAA to suck his penis, but AAA refused. For the second time, Penilla again ravished AAA for another thirty minutes. Thereafter, he left AAA's room.

After four (4) days, AAA filed a complaint for Rape against Penilla before *Barangay* Chairperson Imelda San Jose of *Barangay* XXX, Zone XXX, Pasay City. During the scheduled conference, only AAA appeared.

In a subsequent turn of events, on 30 October 1999, the grandmother of Penilla, AAA's landlady at the time, filed a complaint for ejectment against AAA before *Barangay* XXX.

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[3] The real name of the victim and its address are withheld as per Republic Act No. 7610 and Republic Act No. 9262. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 15.

At the conciliation meeting for the ejectment case, Penilla was present and confronted AAA on her accusation of rape. Penilla denied that he raped AAA, insisting that their sexual encounter was consensual and was, in fact, even initiated by AAA. Not unexpectedly, emotions ran high, and the parties hurled invectives at each other.

In connection with the physical examination of AAA, Medico-Legal Officer Dr. Annabelle L. Soliman issued Living Case No. MG-99-1043:

> CONCLUSIONS:
>
> 1. No evident sign of extragenital physical injury was noted on the body of the subject at the time of examination.
> 2. Hymen, reduced to carunculae myrtiformis.
> 3. Vaginal orifice wide (3.0 cms. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ without producing any new genital injury.[5]

Penilla vehemently denied that he raped AAA. Penilla painted a picture of his and AAA's mutual attraction brought about by the close proximity of their living quarters, his room being adjacent to the room rented by AAA from his grandmother. Penilla recounted on the witness stand, that, in several instances, he helped AAA, who made a living selling eggs, carry trays of eggs to and from her room. On different occasions and for various seemingly innocuous reasons, such as AAA borrowing video tapes from Penilla and giving him food, AAA would ask Penilla personal questions on his civil status, if he was in a relationship, and where he worked.

Penilla related that on 22 October 1999, he could not sleep due to the loud volume of AAA's television which he could hear even in his room. Penilla knocked on AAA's room and told her to lower the volume of her television. As a supposed pretext, AAA invited Penilla to enter her room, sit beside her on the bed so they could watch the shows aired on television. AAA went to the comfort room to wash herself. Upon her return,

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[5] *Id.* at 8.

she removed her panty and began caressing Penilla's neck and penis, arousing Penilla. While stroking Penilla, who claimed to be a virgin at that time, AAA was talking about sex and how it was exciting for a woman of her age (38 years old) to have intercourse with a younger man (23 years old). They both soon undressed and engaged in their first round of consensual intercourse where AAA was on top of Penilla and which lasted for approximately thirty minutes. Immediately thereafter, AAA assumed the prone position allowing Penilla to penetrate her from behind which intercourse lasted for another thirty minutes. Subsequently, Penilla fell asleep. Upon waking up, Penilla and AAA had another go at sexual intercourse.

Penilla averred that AAA's charge of rape came as a shock to him. He surmised that AAA must have been afraid that her common law partner at that time would learn of their sexual encounter, thus compelling her to fabricate a story of rape.

After trial, the RTC convicted Penilla of rape and sentenced him to suffer the penalty of *reclusion perpetua*:

> WHEREFORE, the prosecution having proved beyond reasonable doubt the guilt of accused **Gilbert Penilla *y* Francia** of the crime of **rape**, defined and penalized under Article 335 of the Revised Penal Code, he is hereby sentenced to suffer a penalty of ***reclusion perpetua*.** The said accused is likewise ordered to indemnify the complainant [AAA] the amount of ₱50,000.00, by way of civil liability *ex-delicto*.[6]

On appeal likewise *via* Notice of Appeal before the appellate court, Penilla was adamant on his innocence. However, the Court of Appeals affirmed the RTC's finding of guilt.

Penilla now appeals to us assigning grave error in the Court of Appeals's decision, thus:

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THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL CREDENCE [TO] PRIVATE COMPLAINANT'S TESTIMONY.

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[6] *Id.* at 295.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[7]

The sole issue for our resolution is whether Penilla indeed raped AAA.

As the lower courts were, we are likewise convinced that Penilla raped AAA.

We proceed straight to determining the actual circumstances surrounding the sexual encounter between AAA and Penilla, as carnal knowledge of AAA is admitted by Penilla, only that it was alleged as consensual sex, and not rape.

Rape case principles have not changed: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and, (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[8] Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.[9]

In this case, accused-appellant casts aspersions on AAA's credibility by portraying AAA as a morally loose woman, separated from her husband, living with another man, and hankering for the affection of a younger man. For good measure,

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[7] CA *rollo*, p. 64.

[8] *People v. Brondial*, 397 Phil. 663, 672 (2000); *People v. Baniguid*, 394 Phil. 398, 408-409 (2000); *People v. Baygar*, 376 Phil. 466, 473 (1999); *People v. Sta. Ana*, 353 Phil. 388, 402 (1998); *People v. Auxtero*, 351 Phil. 1001, 1007-1008 (1998); *People v. Balmoria*, 351 Phil. 188, 198 (1998); *People v. Barrientos*, 349 Phil. 141, 159 (1998).

[9] *People v. Baway*, 402 Phil. 872, 882 (2001).

Penilla contends that there is bad blood between AAA and his grandmother concerning money: AAA initially shouldered the expenses for the repairs on the room she was renting from Penilla's grandmother with the understanding that the latter would deduct the expense from the monthly rentals. When Penilla's grandmother collected payment for back rentals and transferred AAA to another room, AAA suddenly became disenchanted with Penilla, thus this concocted allegation of rape.

The contentions of Penilla on the credibility of complainant refer only to peripheral and trivial matters; they do not touch on the issue of whether or not the crime of rape was in fact committed.[10]

We emphasize that in rape cases the accused may be convicted based solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[11]

By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that, usually, only the participants can directly testify as to its occurrence.[12] Since normally only two persons are privy to the commission of rape, the evaluation of the evidence thereof ultimately revolves around the credibility of the complaining witness.[13] Thus, we revert to the testimony of the witnesses.

AAA remained steadfast and unyielding, even on cross-examination and questioning by the trial court, that an already naked Penilla suddenly appeared in her room on the pretext that the volume of her television set was bothering his sleep, and in a quick and horrifying turn of events, Penilla pushed her

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[10] *People v. Fernandez*, G.R. No. 172118, 24 April 2007, 522 SCRA 189, 202-203.

[11] *People v. Malones*, 469 Phil. 301, 318 (2004).

[12] *People v. Villaflores*, 422 Phil. 776, 786 (2001); *People v. Abuan*, 348 Phil. 52, 60-61 (1998); *People v. Fortich*, 346 Phil. 596, 614 (1997).

[13] *People v. Soriano*, 339 Phil. 144, 149 (1997).

on to her bed, poked a knife by her right side, and had carnal knowledge of her.

Q: So at that date you were awaken[ed] because the accused was already in front of your (*sic*) or you were only awaken[ed] by the accused?
A: Yes sir and he was already naked.

Q: He was already nake[d] when he was telling you that your t.v. was very noisy[,] [and] that is why you were awaken[ed]?
A: Yes sir.

Q: So in fact, you did not actually see how the accused opened your door?
A: No sir.

Q: And you already saw the accused naked?
A: Yes sir.

Q: And he was carrying a bladed weapon?
A: Kitchen knife[,] sir.

Q: And you saw that knife at that very moment already?
A: No sir, when I was awaken[ed], the light was still on and I saw the knife.

Q: It was the first time that you saw the deadly weapon being held by the accused?
A: Yes sir.

Q: When you stood up?
A: Yes sir.

Q: But he pushed you to [the] bed?
A: No sir.

Q: Did you immediately shout?
A: No sir, because of fear.

Q: But of course, the wall of your room is made of ordinary wood, and you have adjacent neighbors living in that place, isn't it?
A: Yes[,] sir.

Q: You have neighbors living in the adjacent room?
A: I don't remember[,] sir.

Q: And there were many?
A: I cannot remember[,] sir.

Q: It appears[,] madam witness[,] that you are fond of not remembering anything, can you still remember the contents of your *Sinumpaang Salaysay*?
A: Yes[,] sir.

Q: And you stated in your *Sinumpaang Salaysay* that [the accused was holding a kitchen knife] at the very time [he woke you up]?
A: Yes[,] sir.

Q: It was not at the time the accused was already on top of you?
A: When [he] entered the room he was already carrying a knife and told me not to shout.

Q: And you clearly saw the knife?
A: Yes sir because the light was still on.

Q: In question no. 7, you have an answer, will you please read your answer[:] "*tinanong ko siya kung bakit siya nasa loob at hindi siya sumagot, basta na lang niya pinatay ang ilaw, tapos hinarangan niya ang pinto para hindi ako makalabas, tapos lumapit siya sa akin dahil nakatayo ako at hinawakan niya ako sa balikat at tinulak ako sa kama, may naramdaman akong matulis na bagay na alam kong patalim, tapos itinaas niya ang aking duster at pumatong siya sa akin at ipinasok niya ang ari niya sa ari ako.*"

Q: Did you see it or just [felt] it while the knife was poked at your side?

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A: I saw it but when I was moving, [I] felt it so that his organ cannot enter.

COURT:

Q: But the first time you saw him, he was already holding a bladed weapon?
A: Yes[,] sir.

Q: At the time he was holding the knife, he was already naked?
A: Yes[,] sir.

Q: Do you know if he was drunk?
A: I smelled it when he was on top of me.

Q: He did not touch you first before he put down your panty?
A: He touched me and he pushed me down the bed.

Q: Did he touch your private part before he [pulled] down your panty?
A: No[,] sir.

Q: Who put down your panty, you or him?
A: He was the one[,] sir.

Q: According to him, you were the one who brought down your panty, what can you say to that?
A: That is not true[,] sir.

Q: And you brought down your panty because you were afraid of him?
A: Yes[,] sir.

Q: Why are you still interested in prosecuting the case when this happened on October 22, 1999?
A: To retaliate on the dirty things he [did] to me.

x x x x x x x x x

Atty. Rosales:

Q: You said that your bed room is also made of wood?
A: Yes[,] sir.

Q: Your bed is made of wood?
A: Yes sir, with a foam.

Q: You have been using two pieces of pillows?
A: Yes[,] sir.

Q: At the time the incident happened, you were the one who asked the accused to place the pillows underneath your buttocks?
A: No[,] sir.

Q: Who placed the pillows?
A: Him[,] sir.

Q: Where [were] [the] pillows situated when the accused grabbed [the] pillows?
A: At my side[,] sir.

Q: At the right side of your feet or thigh?
A: Body[,] sir.

Q: While he was raping you, he placed that pillow underneath your buttocks?
A: Yes[,] sir.

x x x x x x x x x

COURT:

Q: You just remained silent?
A: Yes sir, because I was afraid because [he was poking his knife] at my side.

Q: And what was the accused telling you while he was raping you?
A: That I [should] not shout because he will kill me.

Q: You did not cry while you were being raped?
A: No sir, because of fear.

Q: And you cannot forgive the accused because of what he has done to you?
A: No sir.

Atty. Rosales:

Q: When the private organ of the accused was inserted with yours for 15 minutes before his penis was pulled out and you were asked to suck his penis?
A: Yes[,] sir.

Q: Now in that first 15 minutes, you were not able to talk with the accused?
A: No[,] sir because I was afraid.

Q: How about the accused, the accused was telling you how much he loved you?
A: Yes[,] sir.

COURT:

Q: When the accused asked you to suck his penis, you suck[ed] the same?
A: No[,] sir.

Q: You did not try to fight back since you are big enough?
A: No sir, because I was afraid.

Q: You want to seek justice from this court because of what he did?
A: Yes[,] sir.

Atty. Rosales:

Q: For the second time, the penis of the accused was inside of you for about 30 minutes?
A: Yes[,] sir.

Q: For that second incident, the accused did not tell you how much he loved you?
A: No[,] sir.

Q: The accused did not tell you how much he was satisfied?
A: No[,] sir.

Q: How about you, you did not utter any word to the accused in a span of 30 minutes?
A: No sir, because of fear.

Q: And after that incident, in fact, it took you quite sometime to transfer [to] your place isn't it?
A: No sir[,] because the money was not yet returned to me for my expenses.

COURT:

Q: The grandmother of the accused asked for settlement or just pay you for something so that you will drop the case against the accused?
A: No sir, his sister approached me.

Q: When did she approach you?
A: That was a long time ago.

Q: What did she tell you?
A: She requested me to drop the case against the accused.

Q: What was your reply to her?
A: I told her that I am going to pursue the case against him.

Q: Did you tell her why?
A: Yes[,] sir.

Q: What did you tell her?
A: So that I can seek justice for what he did to me.

Q: Because you did not have any love-relationship with the accused, you hate him for raping you?
A: Yes[,] sir.

Atty. Rosales:

Q: After you were allegedly raped on October 22, 1999, you continued your business of selling your eggs?
A: Yes[,] sir because that is my occupation.

Q: What time did you leave your room when you sell your eggs?
A: 7:00 a.m.[,] sir.

Q: And you returned at around 6:00 p.m. everyday?
A: Yes[,] sir.

Q: And upon your arrival in your place after the incident, you heard your neighbors [asking] you [about] what happened to you, they already knew what happened to you?
A: No[,] sir.

Q: [None] of your neighbors?
A: No[,] sir.

Q: How about the accused Gilbert Penilla, after the incident, you met him again one day after the incident?
A: No more[,] sir.

Q: You mean to say that after one week, after the incident, you cannot anymore see the accused?
A: No more[,] sir.

Q: Where was he living?
A: I don't know[,] sir.

Q: You said that the accused was living [at] her mother's house, how far was this house of the accused to your place?
A: About ten meters[,] sir.

Q: So after one week, the accused did not anymore help you in carrying your eggs?
A: No more[,] sir.

Q: Up to the present, you are still selling eggs?
A: No more sir[,] because I am afraid of him.

Q: You are now staying where?
A: When I left Pasay, I transferred to Makati.

Q: And your husband is with you now?
A: Yes[,] sir.

Q: But you said that one week after the incident you are still selling eggs and you said you did not anymore see the accused?
A: Yes[,] sir.

Q: In fact, you could freely roamed (*sic*) around the city for one or two weeks because nobody was following you?
A: Yes[,] sir.

Q: When for the first time after the incident did you see the accused?
A: October 30 at the *barangay* hall[,] sir.

Q: You mean to say that the accused went to [the] *barangay* hall?
A: Yes sir, in the house of the *barangay* chairwoman.[14]

Quite apparent from the foregoing is that AAA never wavered in her claim that Penilla raped her. Even after the lapse of the time when Penilla evaded arrest, AAA remained resolute in her desire to seek justice for the crime done to her.

Penilla's insistence that he was then a virile young man of twenty-three years, lusted after by a separated and older woman, loses significance in light of the *dictum* that **in rape cases, the moral character of the victim is immaterial**. Rape may be committed not only against single women and children but also against those who are married, middle-aged, separated, or pregnant. Even a prostitute may be a victim of rape.[15] Correlatively and more importantly, the libidinousness of AAA, which is not accepted as a common attribute, should have been proven outside of the incident on the midnight of 22 October 1999.

Accused-appellant makes much of the fact that AAA did not cry for help given that the area where they lived was densely populated, the houses thereat were literally only divided by thin

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[14] TSN, 15 March 2004, pp. 22-30.

[15] *People v. Espino, Jr.*, G.R. No. 176742, 17 June 2008, 554 SCRA 682, 698.

walls, and any commotion could easily be heard. Penilla likewise points out that AAA did not put up a fight. In this regard, Penilla asseverates that the prosecution's story was silent on any physical struggle suggestive of rape.

Physical resistance need not be established in rape when threats and intimidation are employed, and the victim submits herself to her attacker because of fear.[16] Failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust.[17] Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused; it is not an essential element of rape.[18]

Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all.[19] The use of a weapon, by itself, is strongly suggestive of force or at least intimidation, and threatening the victim with a knife, much more poking it at her, as in this case, is sufficient to bring her into submission.[20] Thus, the law does not impose upon the private complainant the burden of proving resistance.[21]

We quote with favor the disquisition of the trial court in regard to Penilla's assault on AAA's credibility:

x x x. The complainant's supposed show of concerns and inquiry [on Penilla's] personal life are not to be considered as indicative of accepted wisdom [of] the complainant's dissipated moral[s] and [her] interest in having sexual relation[s] with the accused. The complainant [has] been living in the house of the grandmother of the accused

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[16] *People v. Silvano*, 368 Phil. 676, 696 (1999).

[17] *People v. Arraz*, G.R. No. 183696, 24 October 2008, 570 SCRA 136, 146.

[18] *Id.*

[19] *People v. Madeo*, G.R. No. 176070, 2 October 2009, 602 SCRA 425, 440-441.

[20] *People v. Tubat*, G.R. No. 183093, 1 February 2012, 664 SCRA 712, 721 citing *People v. Fernandez*, *supra* note 10 at 203.

[21] *Id.*

for more than six months before the incident complained of and there was no other evidence except that of the insinuation of the accused that the complainant showed interest [in] him. The claim of the accused that it was the complainant who made overt acts to have illicit intercourse with him was negated by the subsequent action of the complainant in lodging a complaint against him. The defense put up by the accused and his witnesses, who were close relatives, can not overcome the aforementioned positive evidence of the accused's liability. Moreso, that the complainant is living with another man, she would not dare to expose her dishonor and reputation, and tell to the public that she [was] abused had it not really [occurred].

x x x. It must be pointed out that complainant's first grievance[,] which she lodged before the *barangay* authorities[,] was the crime of rape. It was on the second instance that she complained against the grandmother of the accused who was trying to evict her from her rented room.

There may be instances of false charges that may be initiated by a party with a sinister motive to get even with his adversary. However, it would be beyond this Court's comprehension that the complainant would impute a so grave a crime for a petty misunderstanding or dispute on the property with the grandmother of the accused. Conscience dictates that a person not a party to a case should not be used as a leverage to get even with his opponent. x x x.

x x x. The complainant reported the incident to the authorities at the immediate possible time. While it may appear that the complainant reported the incident four days after it happened before the *barangay* authorities, it is understandable that she could be taking [her] time thinking whether she would report the incident or not and initially just wanted to confront the accused why he sexually assaulted the complainant. The belated reporting of the incident does not cast doubt on her credibility. This was[,] however[,] triggered by the word war between her and the accused before the *barangay* authorities thereby influencing her decision to file the case before the police authorities. Although she continued to stay in the premises, this was due to the fact that she [had] not yet been reimbursed her expenses [for] the repair of her room. And for her safety, she requested a friend to accompany her in her room.[22]

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[22] Records, pp. 292-294.

We adhere to the well-entrenched doctrine that the matter of evaluating the credibility of witnesses depends largely on the assessment of the trial court. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[23] Thus, appellate courts rely heavily on the weight given by the trial court on the credibility of a witness as it had a first-hand opportunity to hear and see the witness testify.[24]

In stark contrast to AAA's steadfast, clear and unwavering testimony is the fickle testimony of Penilla who changed his answer even when confronted by physical evidence showing the contrary, and also by prior assertions contained in his affidavits:

Q: By the way Mr. Witness can you describe the door of the room of [AAA]?
A: Made of wood.

Q: What about the lock?
A: Outside the door[,] there is no lock.

Q: What about inside the room?
A: There is a lock inside.

Q: Aside from the lock[,] there is a hole in the door of the room of [AAA]?
A: There is none, sir.

Q: Mr. Witness[,] I have with me a picture of the door, kindly go over this picture marked as Exb. "A-1" if this is the door of the room of [AAA]?
A: Yes, sir.

Q: You said awhile ago there is no hole at the door of the room of [AAA], kindly go over this picture if there is a hole at the door of the room of [AAA]?
A: There is no hole.

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[23] *People v. Rubio*, G.R. No. 195239, 7 March 2012, 667 SCRA 753, 761.

[24] *Id*.

Q: There is a hole to unlock and lock?
A: There is no hole in it.

Q: Mr. Witness[,] how many minutes before [AAA] returned to the room when according to you she asked permission to go to the toilet?
A: Less than two minutes she returned.

Q: What happened when she returned?
A: She entered into the room.

Q: Why did you not leave the room of [AAA] when she went outside the room?
A: Half of my body was outside.

Q: But you already instructed her to lower the volume of the TV, why did you still stay in the room of [AAA]?
A: I waited for her, she said she is going to wash.

Q: Did she tell you that you have to wait for her when she went out to go to the CR?
A: That is what she said.

Q: But you said awhile ago she just told you that she was going to the CR to wash?
A: Yes, sir.

Q: And yet you did not leave after telling her to lower the volume of the TV?
A: After telling her she came right away.

Q: But according to you she stayed in the CR for about two minutes?
A: She was not able to go to the CR, she held my hand.

Q: But you made us understand that she was able to go to the CR, is it not?
A: She was not able to enter the CR.

Q: You mean to say that she was not able to enter the CR?
A: Yes sir, she entered the room.

Q: What did you do when she entered the room?
A: She let me in.

Q: I thought she already let you in when you knocked at the door of [her] room? You entered the room?
A: Yes, sir.

Q: When she went out she also returned inside?

A: Yes, sir.

Q: Is it not true that you were [by] the door[,] according to you[,] when she went out to the CR?

A: I was at the door. Once you [enter], the door is there.

Q: But you were not only [by] the door of the room of [AAA] but inside the room of [AAA]?

A: "*Bahagya*," only part of my body was inside.

Q: In fact you were seated already at the edge of the bed of [AAA]?

A: Not yet.

Q: What were you doing then at that time when [AAA] went out of the room?

A: She was not able to go to the CR when she went out. She immediately [went] in.

Q: Did you not [lower] the volume of the TV when according to you[,] you were awaken[ed] [by] the volume of the TV?

A: "*Hindi ko po pinapakialaman ang gamit niya*."[25]

x x x x x x x xx

Q: Now, Mr. Witness, you said that the room [near] the room of the house of your mother is adjacent to the house where the complainant in this case stayed at the time the incident happened. Now, but what is adjacent to the wall of the room of [AAA] is the wall of the ground floor of the house of your mother and not the room where you stayed, is it not Mr. Witness?

A: Yes, sir.

Q: Now, you likewise testified during the direct examination, Mr. Witness, that the house of your *lola* consist[s] of two-storey[s]. However, during your cross-examination you testified that it has only one-storey found only at the ground floor, which is which now?

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[25] TSN, 30 June 2005, pp. 13-16.

A: Only one-storey.

Q: So, it is not true then that one of the rooms are located inside the house of your *lola* located in the second floor but both are located at the ground floor?

A: Yes, sir.

Q: Now, you testified, likewise, Mr. Witness, that [AAA] was not able to go to the comfort room, is it not? During your cross-examination, is it not?

A: Yes, sir.

Q: She was not able to go to the comfort room because you blocked the door of the room when she tried to go to the comfort room, is it not?

A: No, sir, I was not blocking the door.

Q: But you were right at the door of the room when she tried to get out of the room?

A: Yes, sir.

Q: Now, Mr. Witness, you said that you had sexual intercourse with [AAA] and you testified that she was the one who undressed herself and you were the one who undressed yourself?

A: No, sir, it was her.

Q: When you said, it was her, you mean she was the one who undressed you?

A: Yes, sir.

Q: Now, I am referring to you to the transcript of stenographic notes taken on February 14, 2005 first question, Question: "*Going back to the time when you said you were sitting on the bed of the complainant, what happened next after your private part was touched by the complainant*?" Answer: "*She undressed herself" Next question, Question: "On your part, what did you do when she undressed herself?*" Answer: "*I was the one who undressed myself, sir."* Which is which now, Mr. Witness, you said it was you who undressed yourself?

A: She was the one who undressed me, sir.

Q: In that case, the testimony you gave during your direct-examination is not true and what is correct is that she was the one who undressed you, is that what you mean?

A: Yes, sir.[26]

x x x x x x x x x

Q: You said it was [AAA] who undressed herself and she was [also] the one who undressed you. Now[,] was this case filed with the fiscal's office during the preliminary investigation in the fiscal's office?
A: Yes, sir.

Q: And as a matter of fact you filed your counter affidavit to the complaint [of AAA]?
A: Yes, sir.

Q: Now, if that counter affidavit that you filed with the fiscal's office would be shown to you would you be able to identify it?
A: Yes, sir.

Q: I am showing to you a Counter-Affidavit marked as Exhibit "1" of Gilbert Penilla dated December 20, 1999, could you go over the same and tell us if this is the counter affidavit that you submitted before the investigating prosecutor in the fiscal's office?
A: Yes, sir.

Q: Now, Mr. Witness, I am showing to you again your "*Kontra Salaysay*" and tell us whether you confirm and affirm the veracity contained therein?
A: Yes, sir.

Q: Now, at the second page[,] more particularly paragraph "k[,]" read it [out] loud.

The Witness:

> "*Hinubad ko ang kanyang panty habang siya naman ay nagbababa ng aking salawal at kami ay nagparaos ng aming kagustuhan sa ibabaw ng kanyang kama*."

Q: Do you still insist that it was the complainant who undressed herself and was likewise [the one] who undressed you?
A: Yes, sir, she was the one.

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[26] TSN, 13 July 2005, pp. 2-4.

Q: So, this is not true, Mr. Witness?
A: Yes, sir.

Q: Now, but you read this counter affidavit before you signed it, is it not, Mr. Witness?
A: No, sir.

Q: But a while ago you said that the allegation contained herein is true, is it not?
A: Yes, sir.

Q: Now, Mr. Witness[,] this case was filed in 1999, is it not?
A: Yes, sir.

Q: [A]nd you were only apprehended in 2003, is it not?
A: Yes, sir.

Q: And because of this, since you were only apprehended [in] 2003 you went into hiding after learning there is a case filed against you, is it not?
A: No sir. I did not hide.

Q: Where were you apprehended?
A: In that house.

Q: [While] you were still working at that time?
A: Yes, sir.

Q: Do you have any proof to that effect Mr. Witness?
A: I was then employed in the construction.

Q: What is the name of the [construction company]?
A: *Sabarte*.

Q: Where?
A: Novaliche[s].

Q: How long did you stay at Novaliche[s]?
A: Every week-end, sir, I would come home.

Q: And yet you were only apprehended [in] 2003?
A: Yes, your Honor.[27]

Relying on a tired defense, Penilla insists that AAA belatedly reported to the *barangay* authorities that she had been raped. For Penilla, this delay belies her cry of rape.

[27] *Id.* at 11-14.

We disagree. Indeed, jurisprudence is replete with holdings that delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the cruelty of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[28]

Neither does an inconclusive medical report negate the finding that Penilla raped AAA. A medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape.[29]

In the same vein, we dismiss the minor inconsistencies in AAA's testimony which Penilla latches on. These inconsistencies are not material to the instant case. Rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.[30]

On the whole, we find no error in the trial court's conclusions, as affirmed by the appellate court, and which we have examined against the records of this case. We find nothing on record, certain facts or circumstances of weight and value, which the lower courts may have overlooked and, if properly considered, are enough to alter the result of the case.

Finally, the lower courts properly imposed the penalty of *reclusion perpetua* on Penilla. Article 266-A, paragraph 1 (a), in relation to Article 266-B, paragraph 2, of the Revised Penal Code, provides:

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[28] *People v. Navarette, Jr.*, G.R. No. 191365, 22 February 2012, 666 SCRA 689, 704.

[29] *People v. Castro*, G.R. No. 172874, 17 December 2008, 574 SCRA 244, 254-255.

[30] *People v. Balbarona*, G.R. No. 146854, 28 April 2004, 428 SCRA 127, 139.

Article 266-A. *Rape; When and How Committed.* — Rape is committed:

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

x x x x x x x x x

ART. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

We find it proper to award moral damages to AAA in the amount of ₱50,000.00 although the lower courts were silent thereon in their respective disquisitions. Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility.[31]

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03206 dated 15 July 2009 and the Decision of the Regional Trial Court, Branch 119, Pasay City, in Criminal Case No. 00-0138 dated 15 December 2007, are **AFFIRMED with MODIFICATION**. Appellant Gilbert Penilla *y* Francia is sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim, AAA, the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[31] *People v. Tamano,* G.R. No. 188855, 8 December 2010, 637 SCRA 672, 689.

SECOND DIVISION

[G.R. No. 189843. March 20, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZENAIDA SORIANO *y* USI, and MYRNA SAMONTE *y* HIOLEN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS. — To secure a conviction for illegal sale of *shabu*, the prosecution must prove the presence of the following essential elements: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing." It is necessary to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.

2. ID.; ID.; ILLEGAL POSSESSION OF *SHABU*; REQUISITES. — The requisites for illegal possession of *shabu* x x x are the following: "(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug."

3. ID.; ID.; NON-COMPLIANCE WITH SECTION 21(1) THEREOF IS NOT FATAL TO THE PROSECUTION'S CASE AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED. — The defense now posits that the prosecution failed to establish the *corpus delicti* because the arresting team failed to comply with Section 21(1), Art. II of R.A. 9165, to wit: (1) there is no showing that a physical inventory was conducted in the presence of the accused or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official; and (2) no photograph of the seized items was taken in the presence of the above-enumerated representatives. We have time and again ruled, however, that such omissions are not

fatal to the prosecution's case as long as the integrity and evidentiary value of the seized items are preserved. x x x And, absent a showing of bad faith, ill will, or proof of tampering with the evidence, the presumption that the integrity of the evidence had been preserved lies.

4. ID.; ID.; ILLEGAL POSSESSION OF *SHABU* AND ILLEGAL SALE OF *SHABU*; PENALTIES; CASE AT BAR. — Under Section 11, Article II of R.A. No. 9165, the crime of illegal possession of *shabu* weighing less than five (5) grams is punishable by imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). On the other hand, Section 5, Article II of the same Act provides that a person found guilty of unauthorized sale of *shabu*, regardless of the quantity and purity involved, shall suffer the penalty of life imprisonment and a fine ranging from Five Hundred Thousand (₱500,000.00) Pesos to Ten Million Pesos (₱10,000,000.00). Applying Section 1 of the Indeterminate Sentence Law, which provides that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same," the trial court correctly imposed the following penalties: (1) for the crime of illegal possession of 0.399 gram of *shabu* in Criminal Case No. 2300-M-2003 against accused-appellant Zenaida Soriano, imprisonment for an indeterminate term of twelve years and one day, as minimum, to fourteen years and eight months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00); (2) for the crime of illegal possession of 0.511 gram of *shabu* in Criminal Case No. 2301-M-2003 against accused-appellant Myrna Samonte, imprisonment for an indeterminate term of twelve years and one day, as minimum, to fourteen years and eight months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00); and (3) for the crime of illegal sale of *shabu* in Criminal Case No. 2302-M-2003 against both accused-appellants, life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) each.

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.*:

Before us is an appeal from the Decision[1] dated 6 February 2009 of the Court of Appeals in CA-G.R. CR-HC No. 02842, which affirmed the trial court's conviction of herein accused-appellants Zenaida Soriano (Zenaida) and Myrna Samonte (Myrna)[2] for Violation of Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In three separate Informations[3] all dated 26 June 2003 filed and raffled to the Regional Trial Court, Branch 78, City of

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[1] CA *rollo*, pp. 94-108. Penned by Associate Justice Magdangal M. de Leon with Associate Justices Jose L. Sabio, Jr. and Ramon R. Garcia concurring.

[2] Records, pp. 323-334. Decision dated 13 April 2007 in Criminal Case Nos. 2300-M-2003 to 2302-M-2003. Penned by Judge Gregorio S. Sampaga.

[3] The Information in Criminal Case No. 2300-M-2003 for violation of Sec. 11 of R.A. 9165 reads:

> The undersigned Asst. Provincial Prosecutor accuses Zenaida Soriano *y* Usi of violation of Sec. 11 of R.A. 9165 x x x committed as follows:
>
> That on or about the 10th day of June, 2003, in the municipality of San Rafael, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully, and feloniously have in her possession and control dangerous drug consisting of six (6) pieces of heat-sealed transparent plastic sachets of [methamphetamine] hydrochloride weighing 0.399 gram.
>
> Contrary to law.

The Information in Criminal Case No. 2301-M-2003 also for violation of Sec. 11 of R.A. 9165 reads:

> The undersigned Asst. Provincial Prosecutor accuses Myrna Samonte *y* Hiolen of violation of Sec. 11 of R.A. 9165 x x x committed as follows:

Malolos, Bulacan, accused-appellants were charged with illegal sale and illegal possession of dangerous drugs. They pleaded not guilty to the crimes charged.[4] After conducting the mandatory pre-trial,[5] joint trial ensued.

For the prosecution, PO1 Carlito Bernardo (PO1 Bernardo), who was designated poseur-buyer during the buy-bust operation organized by the Bulacan Provincial Drug Enforcement Group (PDEG) against accused-appellants, testified:

x x x [O]n June 10, 2003 while he was assigned at the Provincial Drug Enforcement Group, one of their confidential informant (CI) arrived in the office and was looking for his chief P/Chief Insp. Celodonio Morales. When the C.I. was able to talk to their chief, the C.I. reported that a certain @ Zeny was engaged in selling illegal

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That on or about the 10th day of June 2003, in the municipality of San Rafael, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in her possession and control dangerous drug consisting of one (1) [piece of] heat-sealed transparent plastic sachet of [methamphetamine] hydrochloride weighing 0.511 gram.

Contrary to law.

The Information in Criminal Case No. 2302-M-2003 for violation of Sec. 5 of R.A. 9165 reads:

> The undersigned Asst. Provincial Prosecutor accuses Myrna Samonte *y* Hiolen and Zenaida Soriano *y* Usi of violation of Sec. 11 of R.A. 9165 x x x committed as follows:
>
> That on or about the 10th day of June 2003, in the municipality of San Rafael, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat sealed transparent plastic sachet of [methamphetamine] hydrochloride weighing 0.078 gram in conspiracy with each other.
>
> Contrary to law.

Id. at 2, 5 and 8.

[4] *Id*. at 27 and 29. Separate Orders dated 24 July 2003.

[5] *Id*. at 35. Pre-Trial Order dated 31 July 2003.

drugs at Sitio Gulod, Brgy. Tubigan, San Rafael, Bulacan. Thereafter, their chief talked to police officer Tomas Nachor, the Records PNCC of their office to confirm if the name Zeny of Barangay Tubigan, San Rafael, Bulacan was included in the watch list. When it was confirmed that Zeny was among those listed in the watch list, their chief instructed the C.I. to arrange a drug deal with Zeny. At about 5 o'clock in the afternoon, the C.I. returned to their office and informed their chief that he managed to arrange a drug deal with Zeny and the same would take place at [Myrna's house.][6] Immediately thereafter, their chief conducted a briefing wherein a team was formed composed of SPO1 Violago, as team leader, PO2 Rullan, PO1 Jacinto, PO1 Quizon, PO1 Magora, PO1 Chan and himself to conduct a buy bust operation against Zeny. They were dispatched at about 9:30 o'clock in the evening and were ordered to proceed to the target place. They arrived at [B]arangay Tubigan at about 10:30 in the evening and they set their plan into motion. The C.I. went ahead and was followed by them. As they were approaching the venue, they saw two (2) women talking and according to the C.I. one was Zeny while the other was Myrna. Zeny and Myrna saw them and recognized the C.I. The women then called the C.I. by [waving] their hands at him. When they reached Zeny and Myrna, the C.I. introduced him to the ladies as the[ir] prospective buyer. Zeny immediately demanded for the amount they have agreed upon, in response he handed the two (2) pieces of one hundred peso bills to Zeny which the latter in turn handed to Myrna. Zeny then took a match box from the pocket of the "duster" she was wearing and took one (1) plastic sachet of *shabu* there from and handed the same to him. Thereafter, he executed the pre-arranged signal by lighting a lighter prompting his companions to alight from their hiding places and approach them. They introduced themselves as police officers and informed both accused that the same is a buy bust-operation. He frisked Zeny and from her he recovered the match box from where she took the plastic sachet that she sold to him. Violago, on the other hand, searched the person of Myrna and from her they recovered the marked money and one (1) plastic sachet of *shabu*. The plastic sachet of *shabu* sold by Zeny was marked by him the letters "BB-CB" while the six (6) other plastic sachets which he recovered from the match box he seized from Zeny was marked by him with B P-1 CB to B P-6 CB. Violago, on the other hand, marked

[6] See TSN, 2 December 2004 and Joint Affidavit of Arrest dated 12 June 2003. Records, pp. 122 and 11.

the plastic sachet recovered from Myrna with "C P RV". At their office a request for laboratory examination was prepared by their duty investigator and together with the specimen recovered from the accused was sent to the Crime Laboratory for examination. The result thereof yielded positive result for [methamphetamine] hydrochloride, a dangerous drug. Witness positively identified both accused in open court as well as all the pieces of evidence presented by the State.

x x x x x x x x x

Witness further testified that after the operation they boarded both accused in their Tamaraw FX service vehicle and were brought to the PDEG Office at Camp General Alejo Santos in Malolos, Bulacan. Witness then revealed that the markings on the seized evidence were placed by them after they have recovered them from the accused. He, however, admitted that there were no *barangay* officials present when they recovered the plastic sachets from the accused neither was there any formal report made to the barangay authorities of the buy bust operation.

On re-direct examination, witness testified that accused Samonte and Soriano were known to each other and they were together at the time of the buy bust operation and were only less than a meter apart. It was Zeny who handed the marked money to Myrna after he handed the same to Zeny.[7]

The corroborating testimony of buy-bust operation team leader SPO2 Rogelio Violago (SPO2 Violago) was ordered stricken off the record due to his repeated failure to reappear in court for cross-examination.[8]

Meanwhile, the court dispensed with the testimony of forensic chemist P/C Insp. Nelson Cruz Sta. Maria after the defense admitted that, if so presented, the witness will testify on, among others, the identity of the specimen and the request for laboratory examination he received, the actual examination he conducted thereon, and the issuance of Chemistry Report No. D-405-2003

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[7] CA *rollo*, pp. 97-99. Decision dated 6 February 2009 of the Court of Appeals quoting the Decision dated 13 April 2007 of the Regional Trial Court.

[8] Records, p. 217. Order dated 9 March 2006.

showing that the specimen tested for methamphetamine hydrochloride (*shabu*).[9]

The Court of Appeals summarized the version of the defense in the following manner:

> According to Soriano, while she was at her house preparing milk for her grandson, she heard a noise at the door. As she was approaching the door, five to six armed persons barged into her house. The armed men searched her house. She asked them the reason for the search. The men conducting the search appeared to be drunk. They smelled of liquor. The men, likewise, searched her person. Instead of allowing the men to frisk her, she removed her clothes. One of the men approached her and asked her to accompany him to the store to buy soft drinks. But instead of bringing her to the store she was forcibly taken inside a van. There she saw accused Myrna Samonte. Both of them were first brought to a hospital in Malolos, Bulacan before proceeding to Camp General Alejo Santos. Once there, they were instructed to alight from the vehicle and was brought inside an office. Inside, the men who arrested her asked if she had any money. The following day, she was informed that a case was filed against her for illegal possession of *shabu*. She protested and told the police officers that they were lying. She first saw the plastic sachets of *shabu* used as evidence against her when they were already at Camp General Alejo Santos in Malolos, Bulacan.
>
> Samonte, on the other hand, stated in her testimony that on June 10, 2003, while she, together with her parents, was sleeping at her house in Sitio Gulod, she was awakened by the barking of the dogs. She stood up and peeped through the window to see what the commotion was about. She then heard a knock on the door. She asked for the identity of the person knocking but she heard no reply. Thereafter, she saw two men climb the window. They informed her that they were looking for a person who resides in Samonte's house. They then started searching the house. At this point, Samonte's father woke up and asked them what they were looking for. The men frisked her father but found nothing. Having failed to find what they came for, the men asked Samonte to go with them. She resisted. The men assured her that they just wanted to talk to her. They took her into a van and left her there with the driver. After

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[9] *Id.* at 224. Order dated 11 May 2006.

some time, they came back with Soriano, who she did not know until that night. The men took them to a camp in Malolos where the two women were separated. Samonte was then asked to sign a piece of paper. At first, she refused but the men forced her, thus, she had no choice but to acquiesce. After signing the document, they brought her to a room where she stayed the whole night. The next day, they transferred her to a detention cell. She only came to know that cases were already filed against her during the initial hearing.[10]

After trial, the court found accused-appellants guilty beyond reasonable doubt of both crimes.[11]

On appeal, the defense denied that there was a legitimate buy-bust operation, and argued that assuming that there was one conducted, it was in effect a form of instigation.[12] It likewise assailed the credibility of the testimony of the prosecution witness. The Court of Appeals, however, was not convinced. It affirmed the decision of the trial court.[13]

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[10] CA *rollo*, pp. 100-101. Decision dated 6 February 2009 of the Court of Appeals.

[11] Records, p. 334. Decision dated 13 April 2007 of the Regional Trial Court.

The dispositive portion of the Decision reads:

WHEREFORE the foregoing considered, this Court finds accused Zenaida Soriano *y* Usi and Myrna Samonte *y* Hiolen ***GUILTY*** **beyond reasonable doubt** of the offense of Violation of Sections 5 & 11, Art. II of R.A. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and hereby sentences both of them:

1. In Criminal Case No. 2300-M-2002 and 2301-M-2003, to suffer the penalty of ***TWELVE (12) YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS OF IMPRISONMENT AND A FINE OF ₱300,000,000 PESOS*** and

2. In Criminal Case No. 2302-M-2003, suffer the penalty of ***LIFE IMPRISONMENT AND A FINE OF FIVE HUNDRED THOUSAND PESOS (₱500,000.00)***; and

x x x x x x x x x

[12] CA *rollo*, pp. 42-54. Accused-Appellants' Brief dated 10 January 2008.

[13] *Id.* at 107. Decision dated 6 February 2009 of the Court of Appeals.

In its Supplemental Brief[14] filed with this Court, the defense maintained that the prosecution failed to establish the *corpus delicti* warranting the acquittal of accused-appellants.

We sustain the judgment of conviction.

At the outset, we cannot agree with the position of the defense that the transaction arranged by the confidential informant with accused-appellant Zenaida constitutes instigation. It bears stressing that she was in the Provincial Watch List Target Personality, and "the solicitation merely furnishe[d] evidence of a course of conduct."[15]

As to the merits of the case, the prosecution has established with moral certainty that accused-appellants sold prohibited drugs and that they were in possession of *shabu*.

To secure a conviction for illegal sale of *shabu*, the prosecution must prove the presence of the following essential elements:

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[14] *Rollo,* pp. 31-36.

[15] See *People v. Sta. Maria,* G.R. No. 171019, 23 February 2007, 516 SCRA 621-628, where the Court explained:

> In entrapment, the entrapper resorts to ways and means to trap and capture a lawbreaker while executing his criminal plan. In instigation, the instigator practically induces the would-be-defendant into committing the offense, and himself becomes a co-principal. **In entrapment, the means originates from the mind of the criminal. The idea and the resolve to commit the crime come from him**. In instigation, the law enforcer conceives the commission of the crime and suggests to the accused who adopts the idea and carries it into execution. The legal effects of entrapment do not exempt the criminal from liability. Instigation does.
>
> x x x x x x x x x
>
> It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. **Especially is this true in that class of cases where the offense is <u>one habitually committed</u>, and the solicitation merely furnishes evidence of a course of conduct**.[15] (Emphasis and underlining supplied)

"(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing."[16] It is necessary to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.[17]

The requisites for illegal possession of *shabu*, on the other hand, are the following: "(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug."[18]

These requirements were all present in the instant case.

PO1 Bernardo gave a detailed account of the transaction commencing from the introduction made by the confidential informant between him, as the poseur-buyer, and accused-appellants to the time the sale was consummated until the latter were arrested and several additional plastic sachets containing white crystalline substances, which later tested for *shabu*,[19] were found in their possession — six from Zenaida and one from Myrna.

That the sale actually took place and that several sachets were recovered from the accused-appellants were clear from the following testimony of PO1 Bernardo:

Q: What happened next?
A: We reached the venue and while we were walking, two (2) female persons were talking and according to the CI, one of them is @ Zeny and the other one is @ Myrna.
Q: Who was that person who was telling you that?

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[16] *People v. Bautista*, G.R. No. 177320, 22 February 2012, 666 SCRA 518, 529.

[17] *Id.* at 529-530 citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

[18] *Id.* citing *People v. Naquita, id.* at 451.

[19] Records, p. 14. Chemistry Report No. D-405-2003.

A: The CI.
Q: After that, what happened?
A: When the two female persons @ Zeny and Myrna saw us, they recognized the CI so they called us.
Q: How far were you from the 2 women?
A: Approximately, 3 meters, sir.
Q: Who was called by the 2 women?
A: The CI.
Q: How did the 2 women call the CI?
A: By [waving] their hands.
Q: What happened next when the CI was called?
A: I was introduced as the prospective buyer based on their agreement.
Q: What happened when you were introduced to be the prospective buyer?
A: @ Zeny demanded for the payment of the agreed amount.
Q: How did @ Zeny demanded for the amount?
A: She asked for the money.
Q: What did you do?
A: I handed it to @ Zeny.
Q: After you handed the money, what did @ Zeny do?
A: In turn, she handed it to @ Myrna.
Q: You handed it to @ Zeny and in turn, she handed it to @ Myrna, what is that being handed?
A: The money, sir.
Q: What happened after that?
A: She took the match box from her duster's pocket which contains several pieces of plastic sachet.
Q: After taking the match box from the pocket of her duster, what happened next?
A: She took 1 piece and handed it to me.
Q: By the way, how much was the money you gave?
A: 2 pieces of ₱100 bill.
COURT:
Q: Who handed to you the plastic sachets?
A: @ Zeny.[20]

x x x x x x x x x

Q: After you introduced yourself as policemen and you were conducting a buy bust operation, what happened next?

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[20] TSN, 15 January 2004. Records, pp. 77-78.

A: After that I frisked @ Zeny and recovered from her the matchbox containing plastic sachet.[21]

x x x x x x x x x

Q: The money that you handed to Zeny which in turn was handed to Myrna, what happened to that money?

A: After I frisked @ Zeny SPO2 Violago frisked @ Myrna and recovered from her the marked money and one piece of transparent plastic sachet containing crystalline substance.[22]

The credibility of PO1 Bernardo was put to test on cross-examination but his statements were consistent all throughout that we are convinced that his testimony, supported by evidence, was reliable. This is further strengthened by the fundamental principle that:

> x x x [F]indings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[23]

It is also worthy to note that PO2 Bernardo was able to render a clear and direct narration of the details of the buy-bust operation that led to the arrest of accused-appellants. The accused-appellants, on the other hand, could not impute any ill motive on the part of the arresting officers to falsely accuse them of committing the crimes. In fact, both accused-appellants testified

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[21] TSN, 19 February 2004. *Id.* at 87.

[22] *Id.* at 88.

[23] *People v. Magundayao*, G.R. No. 188132, 29 February 2012, 667 SCRA 310, 327-328 citing *People v. Santos*, G.R. No. 176735, 26 June 2008, 555 SCRA 578, 592.

that they did not know the apprehending officers. For these reasons, the contention of the defense that the doctrine of regularity of performance of official duty is inapplicable in the present case must fail.[24]

The defense now posits that the prosecution failed to establish the *corpus delicti* because the arresting team failed to comply with Section 21 (1), Art. II of R.A. 9165,[25] to wit: (1) there is no showing that a physical inventory was conducted in the presence of the accused or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official; and (2) no photograph of the seized items was taken in the presence of the above-enumerated representatives.[26]

We have time and again ruled, however, that such omissions are not fatal to the prosecution's case as long as the integrity and evidentiary value of the seized items are preserved.[27]

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[24] *People v. Pambid,* G.R. No. 192237, 26 January 2011, 640 SCRA 722, 734.

[25] 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;

x x x x x x x x x

[26] *Rollo,* pp. 33-34. Supplemental Brief of the Accused-Appellants.

[27] *People v. Felipe,* G.R. No. 191754, 11 April 2011, 647 SCRA 578, 591 citing *People v. Pagkalinawan*, G.R. No. 184805, 3 March 2010, 614 SCRA 202, 218, further citing *People v. Naquita*, 560 SCRA 430, 448 (2008).

Here, on the basis of the testimony of PO1 Bernardo and the documentary evidence presented, the Court of Appeals correctly determined:

> x x x **The prosecution also accounted for the chain of custody of the subject substances**. From appellants' possession, police officers Bernardo and Violago seized the sachets of *shabu*, marked them for evidence before handing them over to their chief Pol/Chief Insp. Celodonio Morales ("Morales"). Morales then requested for a laboratory examination of the seized drugs. Police Inspector Sta. Maria found the white crystalline granules contained in seven heat-sealed transparent plastic sachets to be positive for [methamphetamine] hydrochloride, a dangerous drugs.[28] (Emphasis supplied; citations omitted)

And, absent a showing of bad faith, ill will, or proof of tampering with the evidence, the presumption that the integrity of the evidence had been preserved lies.[29] The case of *People v. Quiamanlon*[30] is instructive on this point:

> x x x In this case, Quiamanlon bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties. Failing to discharge such burden, there can be no doubt that the drugs seized from Quiamanlon were the same ones examined in the crime laboratory. Evidently, the prosecution established the crucial link in the chain of custody of the seized drugs.[31] (Citations omitted)

All considered, the prosecution has established with moral certainty that the prohibited drugs recovered from the accused-appellants were the same presented in court as evidence.

Finally, we find the penalties imposed by the trial court and the Court of Appeals in order.

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[28] CA *rollo*, p. 103. Decision dated 6 February 2009 of the Court of Appeals.

[29] *People v. Quiamanlon*, G.R. No. 191198, 26 January 2011, 640 SCRA 697, 719.

[30] *Id.*

[31] *Id.* at 719-720.

Under Section 11, Article II of R.A. No. 9165, the crime of illegal possession of *shabu* weighing less than five (5) grams is punishable by imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).[32]

On the other hand, Section 5, Article II of the same Act provides that a person found guilty of unauthorized sale of *shabu*, regardless of the quantity and purity involved, shall suffer the penalty of life imprisonment and a fine ranging from Five Hundred Thousand (₱500,000.00) Pesos to Ten Million Pesos (₱10,000,000.00).[33]

Applying Section 1 of the Indeterminate Sentence Law,[34] which provides that "if the offense is punished by any other law, the

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[32] Section 11. *Possession of Dangerous Drugs*. — 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

3. Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x, methamphetamine hydrochloride or "*shabu*", or x x x.

[33] 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.

x x x x x x x x x

[34] Sec. 1, Act No. 4103.

court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same," the trial court correctly imposed the following penalties:

(1) for the crime of illegal possession of 0.399 gram of *shabu* in Criminal Case No. 2300-M-2003 against accused-appellant Zenaida Soriano, imprisonment for an indeterminate term of twelve years and one day, as minimum, to fourteen years and eight months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00);[35]

(2) for the crime of illegal possession of 0.511 gram of *shabu* in Criminal Case No. 2301-M-2003 against accused-appellant Myrna Samonte, imprisonment for an indeterminate term of twelve years and one day, as minimum, to fourteen years and eight months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00);[36] and

(3) for the crime of illegal sale of *shabu* in Criminal Case No. 2302-M-2003 against both accused-appellants, life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) each.[37]

WHEREFORE, the Decision dated 6 February 2009 of the Court of Appeals in CA-G.R. CR-HC No. 02842 is **AFFIRMED**, and, thereby the 13 April 2007 Decision of the Regional Trial Court in Criminal Case Nos. 2300-M-2003 to 2302-M-2003 is hereby **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[35] *Asiatico v. People*, G.R. No. 195005, 12 September 2011, 657 SCRA 443, 452 citing *Balarbar v. People*, G.R. No. 187483, 14 April 2010, 618 SCRA 283, 288.

[36] *Id.*

[37] *People v. Capco*, G.R. No. 183088, 17 September 2009, 600 SCRA 204, 216.

FIRST DIVISION

[G.R. No. 191567. March 20, 2013]

MARIE CALLO-CLARIDAD, *petitioner, vs.* **PHILIP RONALD P. ESTEBAN and TEODORA ALYN ESTEBAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43; A MODE OF APPEAL TO BE TAKEN ONLY TO REVIEW THE DECISIONS, RESOLUTIONS OR AWARDS BY THE QUASI-JUDICIAL OFFICERS, AGENCIES OR BODIES. — A petition for review under Rule 43 is a mode of appeal to be taken only to review the decisions, resolutions or awards by the quasi-judicial officers, agencies or bodies, particularly those specified in Section 1 of Rule 43. In the matter before us, however, the Secretary of Justice was not an officer performing a quasi-judicial function. In reviewing the findings of the OCP of Quezon City on the matter of probable cause, the Secretary of Justice performed an essentially executive function to determine whether the crime alleged against the respondents was committed, and whether there was probable cause to believe that the respondents were guilty thereof.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; COURTS COULD INTERVENE IN THE SECRETARY OF JUSTICE'S DETERMINATION OF PROBABLE CAUSE THROUGH A PETITION FOR *CERTIORARI* WHEN GRAVE ABUSE OF DISCRETION IS COMMITTED. — [T]he courts could intervene in the Secretary of Justice's determination of probable cause only through a special civil action for *certiorari*. That happens when the Secretary of Justice acts in a limited sense like a quasi-judicial officer of the executive department exercising powers akin to those of a court of law. But the requirement for such intervention was still for the petitioner to demonstrate clearly that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction. Unless such a clear demonstration is made,

the intervention is disallowed in deference to the doctrine of separation of powers.

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; REQUIRES THE PRESENTATION ONLY OF SUCH EVIDENCE THAT MAY ENGENDER A WELL-FOUNDED BELIEF THAT AN OFFENSE HAS BEEN COMMITTED AND THAT THE ACCUSED IS PROBABLY GUILTY THEREOF. — A preliminary investigation, according to Section 1, Rule 112 of the *Rules of Court*, is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation only of such evidence as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense. The role and object of preliminary investigation were "to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."

4. ID.; ID.; ID.; PURPOSES. — In *Arula vs. Espino*, the Court rendered the three purposes of a preliminary investigation, to wit: (1) to inquire concerning the commission of a crime and the connection of the accused with it, in order that he may be informed of the nature and character of the crime charged against him, and, if there is probable cause for believing him guilty, that the State may take the necessary steps to bring him to trial; (2) to preserve the evidence and keep the witnesses within the control of the State; and (3) to determine the amount of bail, if the offense is bailable. The officer conducting the examination investigates or inquires into facts concerning the commission of a crime with the end in view of determining whether an information may be prepared against the accused.

5. ID.; ID.; ID.; PROBABLE CAUSE; REQUIRES LESS THAN EVIDENCE JUSTIFYING A CONVICTION BUT DEMANDS MORE THAN BARE SUSPICION. — The determination of the existence of probable cause lies within

the discretion of the public prosecutor after conducting a preliminary investigation upon the complaint of an offended party. Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion.

6. ID.; ID.; ID.; COURTS SHALL NOT INTERFERE IN THE CONDUCT OF PRELIMINARY INVESTIGATIONS; EXCEPTION. — A public prosecutor alone determines the sufficiency of evidence that establishes the probable cause justifying the filing of a criminal information against the respondent because the determination of existence of a probable cause is the function of the public prosecutor. Generally, the public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. Consequently, it is a sound judicial policy to refrain from interfering in the conduct of preliminary investigations, and to just leave to the Department of Justice the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion. By way of exception, however, judicial review is permitted where the respondent in the preliminary investigation clearly establishes that the public prosecutor committed grave abuse of discretion, that is, when the public prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law. Moreover, the trial court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice. Although policy considerations call for the widest latitude of deference to the public prosecutor's findings, the courts should never shirk from exercising their

power, when the circumstances warrant, to determine whether the public prosecutor's findings are supported by the facts, and by the law.

7. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO CONVICT. — For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the respondents are probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the respondents were probably guilty of the crime and at the same time inconsistent with the hypothesis that they were innocent, and with every rational hypothesis except that of guilt. Circumstantial evidence is sufficient, therefore, if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

8. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE REQUIREMENT FOR THE CERTIFICATIONS OF AFFIDAVITS IS MANDATORY. — The lack of the requisite certifications from the affidavits of most of the other witnesses was in violation of Section 3, Rule 112 of the Rules of Court x x x. The CA explained that the requirement for the certifications under the aforecited rule was designed to avoid self-serving and unreliable evidence from being considered for purposes of the preliminary investigation, the present rules for which do not require a confrontation between the parties and their witnesses; hence, the certifications were mandatory x x x.

9. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED. — Grave abuse of discretion means that the abuse of discretion must be so 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, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. That showing was not made herein.

APPEARANCES OF COUNSEL

Soriano Velez & Partners Law Offices for petitioner.
Fortun Narvasa and Salazar for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The determination of probable cause to file a criminal complaint or information in court is exclusively within the competence of the Executive Department, through the Secretary of Justice. The courts cannot interfere in such determination, except upon a clear showing that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The Case

Under review is the decision promulgated on November 20, 2009,[1] whereby the Court of Appeals (CA) upheld the resolution dated April 16, 2009 issued by the Secretary of Justice dismissing for lack of probable cause the complaint for murder filed against the respondents.[2]

Antecedents

The petitioner is the mother of the late Cheasare Armani "Chase" Callo Claridad, whose lifeless but bloodied body was discovered in the evening of February 27, 2007 between vehicles parked at the carport of a residential house located at No. 10 Cedar Place, Ferndale Homes, Quezon City. Allegedly, Chase had been last seen alive with respondent Philip Ronald P. Esteban (Philip) less than an hour before the discovery of his lifeless body.

Based on the petition, the following are the background facts.

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[1] *Rollo*, pp. 80-104; penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Fernanda Lampas-Peralta.

[2] *Id.* at 281-285.

Around 5:30 p.m. of February 27, 2007, Chase returned home from visiting his girlfriend, Ramonna Liza "Monnel" Hernandez. Around 7:00 p.m., Chase's sister Ariane was sitting at the porch of their house when she noticed a white Honda Civic car parked along the street. Recognizing the driver to be Philip, Ariane waved her hand at him. Philip appeared nonchalant and did not acknowledge her gesture. Ariane decided to stay behind and leave with their house helpers, Marivic Guray and Michelle Corpus, only after Chase had left on board the white Honda Civic car.

In the meanwhile, Chase exchanged text messages with his girlfriend Monnel starting at 7:09 p.m. and culminating at 7:31 p.m. Among the messages was: *Ppnta n kunin gulong. . . yam iniisip k prn n d tyo magksma. sbrang lungkot k ngun* (On the way to get the tires. . . I still think about us not being together I'm very sad right now).

Security Guard (SG) Rodolph delos Reyes and SG Henry Solis, who were stationed at the main gate of Ferndale Homes, logged the arrival at 7:26 p.m. on February 27, 2007 of Philip on board a white Honda Civic bearing plate CRD 999 with a male companion in the passenger seat. It was determined later on that the white Honda Civic bearing plate CRD 999 was owned by one Richard Joshua Ulit, who had entrusted the car to Philip who had claimed to have found a buyer of the car. Ulit, Pamela Ann Que, and car shop owner Edbert Ylo later attested that Philip and Chase were friends, and that they were unaware of any rift between the two prior to the incident.

Marivic Rodriguez, a house helper of Shellane Yukoko, the resident of No. 9 Cedar Place, Ferndale Homes, was with her co-employee nanny Jennylyn Buri and the latter's ward, Joei Yukoko, when they heard somebody crying coming from the crime scene: *Help! Help!* This was at about 7:30 p.m. Even so, neither of them bothered to check who had been crying for help. It was noted, however, that No. 10 Cedar Place, which was owned by one Mrs. Howard, was uninhabited at the time. Based on the initial investigation report of the Megaforce Security and Allied Services, Inc.,[3]

[3] *Id.* at 134-138.

the Estebans were illegally parking their cars at Mrs. Howard's carport. The initial investigation report stated that the SGs would regularly remind the Estebans to use their own parking garage, which reminders had resulted in heated discussions and altercations. The SGs kept records of all the illegal parking incidents, and maintained that only the Estebans used the carport of No. 10 Cedar Place.

Around 7:45 p.m., respondent Teodora Alyn Esteban (Teodora) arrived at Ferndale Homes on board a vehicle bearing plate XPN 733, as recorded in the subdivision SG's logbook. At that time, three cars were parked at the carport of No. 10 Cedar place, to wit: a Honda CRV with plate ZAE 135 parked parallel to the Honda Civic with plate CRD 999, and another Honda Civic with plate JTG 333, the car frequently used by Philip, then parked diagonally behind the two cars. Some witnesses alleged that prior to the discovery of the Chase's body, they had noticed a male and female inside the car bearing plate JTG 333 engaged in a discussion.

At around 7:50 p.m., SG Abelardo Sarmiento Jr., while patrolling around the village, noticed that the side of the Honda Civic with plate JTG 333 had red streaks, which prompted him to move towards the parked cars. He inspected the then empty vehicle and noticed that its radio was still turned on. He checked the cars and discovered that the rear and side of the Honda Civic with plate CRD 999 were smeared with blood. He saw on the passenger seat a cellular phone covered with blood. It was then that he found the bloodied and lifeless body of Chase lying between the parallel cars. The body was naked from the waist up, with a crumpled bloodied shirt on the chest, and with only the socks on. SG Sarmiento called for back-up. SG Rene Fabe immediately barricaded the crime scene.

Around 7:55 p.m., SG Solis received a phone call from an unidentified person who reported that a "kid" had met an accident at Cedar Place. SG Solis later identified and confirmed the caller to be "Mr. Esteban Larry" when the latter entered the village gate and inquired whether the "kid" who had met an accident had been attended to. Moreover, when SG Fabe and SG Sarmiento

were securing the scene of the crime, they overheard from the radio that somebody had reported about a "kid" who had been involved in an accident at Cedar Place. SG Fabe thereafter searched the village premises but did not find any such accident. When SG Fabe got back, there were already several onlookers at the crime scene.

The Scene-of-the-Crime Operations (SOCO) team arrived. Its members prepared a sketch and took photographs of the crime scene. They recovered and processed the cadaver of Chase, a bloodstained t-shirt, blood smears, green nylon cord, fingerprints, wristwatch, and a bloodied Nokia N90 mobile phone.

According to the National Bureau of Investigation (NBI) Medico-Legal Report No. N-07-163 signed by Dr. Valentin Bernales, Acting Medico-Legal Division Chief, and Dr. Cesar B. Bisquera, Medico-Legal Officer, the victim sustained two stab wounds, to wit: one on the left side of the lower chest wall with a depth of 9 cm., which fractured the 4th rib and pierced the heart, and the other on the middle third of the forearm. The findings corroborated the findings contained in Medico-Legal Report No. 131-07 of Police Chief Insp. Filemon C. Porciuncula Jr.

Resolution of the
Office of the City Prosecutor

The Office of the City Prosecutor (OCP) of Quezon City dismissed the complaint in its resolution dated December 18, 2007.[4]

The OCP observed that there was lack of evidence, motive, and circumstantial evidence sufficient to charge Philip with homicide, much less murder; that the circumstantial evidence could not link Philip to the crime; that several possibilities would discount Philip's presence at the time of the crime, including the possibility that there were more than one suspect in the fatal stabbing of Chase; that Philip was not shown to have any motive to kill Chase; that their common friends attested that the two

[4] *Id.* at 219-225.

had no ill-feelings towards each other; that no sufficient evidence existed to charge Teodora with the crime, whether as principal, accomplice, or accessory; and that the allegation that Teodora could have been the female person engaged in a discussion with a male person inside the car with plate JTG 333 was unreliable being mere hearsay.

The petitioner moved for the reconsideration of the dismissal, but the OCP denied the motion on December 15, 2008.[5]

Resolution by the Secretary of Justice

On petition for review,[6] the Secretary of Justice affirmed the dismissal of the complaint on April 16, 2009.[7]

The Secretary of Justice stated that the confluence of lack of an eyewitness, lack of motive, insufficient circumstantial evidence, and the doubt as to the proper identification of Philip by the witnesses resulted in the lack of probable cause to charge Philip and Teodora with the crime alleged.

The Secretary of Justice held that the only circumstantial evidence connecting Philip to the crime was the allegation that at between 7:00 to 7:30 o'clock of the evening in question, Chase had boarded the white Honda Civic car driven by Philip; that the witnesses' positive identification of Philip as the driver of the car was doubtful, however, considering that Philip did not alight from the car, the windows of which were tinted; and that the rest of the circumstances were pure suspicions, and did not indicate that Philip had been with Chase at the time of the commission of the crime.

After her motion for reconsideration was denied by the Secretary of Justice on May 21, 2009,[8] the petitioner elevated the matter to the CA by petition for review under Rule 43, *Rules of Court*.

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[5] *Id.* at 243-244.

[6] *Id.* at 245-280.

[7] *Id.* at 281-285.

[8] *Id.* at 304-305.

Ruling of the CA

In her petition for review in the CA, the petitioner assigned to the Secretary of Justice the following errors, to wit:

I. THE HONORABLE SECRETARY OF JUSTICE MANIFESTLY ERRED IN DENYING THE PETITION FOR REVIEW AND MOTION FOR RECONSIDERATION THEREOF FILED BY PETITIONER CONSIDERING THAT PROBABLE CAUSE EXISTS AGAINST RESPONDENTS FOR THE CRIME OF MURDER UNDER ARTICLE 248 OF THE REVISED PENAL CODE.

II. THE HONORABLE SECRETARY OF JUSTICE ERRED IN NOT FINDING THE NUMEROUS PIECES OF CIRCUMSTANTIAL EVIDENCE PRESENTED AGAINST RESPONDENTS TO HOLD THEM LIABLE FOR THE CRIME OF MURDER AS EXTANT IN THE RECORDS OF THE CASE.

III. THE HONORABLE SECRETARY OF JUSTICE ERRED IN NOT FINDING THAT ALL THE ELEMENTS OF THE CRIME OF MURDER ARE PRESENT IN THE INSTANT CASE.[9]

On November 20, 2009, the CA promulgated its assailed decision,[10] dismissing the petition for review.

The petitioner filed a motion for reconsideration, but the CA denied the motion for its lack of merit.

Hence, this appeal by petition for review on *certiorari*.

The petitioner prays that Philip and Teodora be charged with murder on the strength of the several pieces of circumstantial evidence; that the qualifying aggravating circumstances of evident premeditation and treachery be appreciated in the slaying of her son, given the time, manner, and weapon used in the commission of the crime and the location and degree of the wounds inflicted on the victim.

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[9] *Id.* at 94.

[10] *Supra* note 1.

Issue

Whether the CA committed a reversible error in upholding the decision of the Secretary of Justice finding that there was no probable cause to charge Philip and Teodora with murder for the killing of Chase.

Ruling

We deny the petition for review, and sustain the decision of the CA.

We note, to start with, that the petitioner assailed the resolution of the Secretary of Justice by filing in the CA a petition for review under Rule 43, *Rules of Court*. That was a grave mistake that immediately called for the outright dismissal of the petition. The filing of a petition for review under Rule 43 to review the Secretary of Justice's resolution on the determination of probable cause was an improper remedy.[11] Indeed, the CA had no appellate jurisdiction *vis-à-vis* the Secretary of Justice.

A petition for review under Rule 43 is a mode of appeal to be taken only to review the decisions, resolutions or awards by the quasi-judicial officers, agencies or bodies, particularly those specified in Section 1 of Rule 43.[12] In the matter before us, however, the Secretary of Justice was not an officer performing a quasi-judicial function. In reviewing the findings of the OCP

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[11] *Levi Strauss (Phils.), Inc. v. Lim*, G.R. No. 162311, December 4, 2008, 573 SCRA 25, 38-39; *Barangay Dasmariñas v. Creative Play Corner School*, G.R. No. 169942, January 24, 2011; 640 SCRA 294, 307.

[12] These include the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

of Quezon City on the matter of probable cause, the Secretary of Justice performed an essentially executive function to determine whether the crime alleged against the respondents was committed, and whether there was probable cause to believe that the respondents were guilty thereof.[13]

On the other hand, the courts could intervene in the Secretary of Justice's determination of probable cause only through a special civil action for *certiorari*. That happens when the Secretary of Justice acts in a limited sense like a quasi-judicial officer of the executive department exercising powers akin to those of a court of law.[14] But the requirement for such intervention was still for the petitioner to demonstrate clearly that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction. Unless such a clear demonstration is made, the intervention is disallowed in deference to the doctrine of separation of powers. As the Court has postulated in *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*:[15]

> Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. That abuse of discretion must be so 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, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. x x x

Secondly, even an examination of the CA's decision indicates that the CA correctly concluded that the Secretary of Justice

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[13] *Bautista v. Court of Appeals*, G.R. No. 143375, July 6, 2001, 360 SCRA 618, 623.

[14] *Spouses Dacudao v. Secretary of Justice*, G.R. No. 188056, January 8, 2013.

[15] G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177.

did not abuse his discretion in passing upon and affirming the finding of probable cause by the OCP.

A preliminary investigation, according to Section 1, Rule 112 of the *Rules of Court*, is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation only of such evidence as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense.[16] The role and object of preliminary investigation were "to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."[17]

In *Arula vs. Espino*,[18] the Court rendered the three purposes of a preliminary investigation, to wit: (1) to inquire concerning the commission of a crime and the connection of the accused with it, in order that he may be informed of the nature and character of the crime charged against him, and, if there is probable cause for believing him guilty, that the State may take the necessary steps to bring him to trial; (2) to preserve the evidence and keep the witnesses within the control of the State; and (3) to determine the amount of bail, if the offense is bailable. The officer conducting the examination investigates or inquires into facts concerning the commission of a crime with the end in view of determining whether an information may be prepared against the accused.

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[16] *Osorio v. Desierto*, G.R. No. 156652, October 13, 2005, 472 SCRA 559, 574; *Kara-an v. Office of the Ombudsman*, G.R. No. 119990, June 21, 2004, 432 SCRA 457, 467.

[17] *Hashim v. Boncan*, 71 Phil. 216 (1941).

[18] No. L-28949, June 23, 1969, 28 SCRA 540, 592.

The determination of the existence of probable cause lies within the discretion of the public prosecutor after conducting a preliminary investigation upon the complaint of an offended party.[19] Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion.[20]

A public prosecutor alone determines the sufficiency of evidence that establishes the probable cause justifying the filing of a criminal information against the respondent because the determination of existence of a probable cause is the function of the public prosecutor.[21] Generally, the public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. Consequently, it is a sound judicial policy to refrain from interfering in the conduct of preliminary investigations, and to just leave to the Department of Justice the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.[22] By way of exception,

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[19] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010, 619 SCRA 141, 148.

[20] *Id.* at 148-149.

[21] *Glaxosmithkline Philippines, Inc. v. Khalid Mehmood Malik*, G.R. No. 166924, August 17, 2006, 499 SCRA 268, 272-273.

[22] *Kapunan, Jr. v. Court of Appeals*, G.R. Nos. 148213-17, and G.R. No. 148243, March 13, 2009, 581 SCRA 42, 55 citing *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777; *Manebo v. Acosta*, G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627, citing *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

however, judicial review is permitted where the respondent in the preliminary investigation clearly establishes that the public prosecutor committed grave abuse of discretion, that is, when the public prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[23] Moreover, the trial court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[24] Although policy considerations call for the widest latitude of deference to the public prosecutor's findings, the courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the public prosecutor's findings are supported by the facts, and by the law.[25]

Under the circumstances presented, we conclude to be correct the CA's determination that no *prima facie* evidence existed that sufficiently indicated the respondents' involvement in the commission of the crime. It is clear that there was no eyewitness of the actual killing of Chase; or that there was no evidence showing how Chase had been killed, how many persons had killed him, and who had been the perpetrator or perpetrators of his killing. There was also nothing that directly incriminated the respondents in the commission of either homicide or murder.

Admittedly, the petitioner relies solely on circumstantial evidence, which she insists to be enough to warrant the indictment of respondents for murder.

We disagree.

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[23] *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538, August 9, 2010, 627 SCRA 88, 101; *Kalalo v. Office of the Ombudsman, supra* note 19, at 149.

[24] *Manebo v. Acosta*, G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627-628, citing *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

[25] *Miller v. Perez*, G.R. No. 165412, May 30, 2011, 649 SCRA 158, 173.

For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the respondents are probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the respondents were probably guilty of the crime and at the same time inconsistent with the hypothesis that they were innocent, and with every rational hypothesis except that of guilt.[26] Circumstantial evidence is sufficient, therefore, if: *(a)* there is more than one circumstance, *(b)* the facts from which the inferences are derived have been proven, and *(c)* the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[27]

The records show that the circumstantial evidence linking Philip to the killing of Chase derived from the bare recollections of Ariane (sister of Chase), and of Guray and Corpus (respectively, the househelp and nanny in the household of a resident of the subdivision) about seeing Chase board the white Honda Civic at around 7:00 p.m. of February 27, 2007, and about Philip being the driver of the Honda Civic. But there was nothing else after that, because the circumstances revealed by the other witnesses could not even be regarded as circumstantial evidence against Philip. To be sure, some of the affidavits were unsworn.[28] The statements subscribed and sworn to before the officers of the Philippine National Police (PNP) having the authority to administer oaths upon matters connected with the performance of their official duties undeniably lacked the requisite certifications to the effect that such administering officers had personally examined the affiants, and that such administering officers were satisfied that the affiants had voluntarily executed and understood their affidavits.[29]

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[26] *People v. Pascual,* G.R. No. 172326, January 19, 2009, 576 SCRA 242, 252.

[27] Section 4, Rule 133, *Rules of Court.*

[28] *Rollo,* pp. 114-115, and pp. 131-132.

[29] *Id.* at 116-118, 123-125, and 126-128.

The lack of the requisite certifications from the affidavits of most of the other witnesses was in violation of Section 3, Rule 112 of the *Rules of Court*, which pertinently provides thusly:

Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. **The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.**

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The CA explained that the requirement for the certifications under the aforecited rule was designed to avoid self-serving and unreliable evidence from being considered for purposes of the preliminary investigation, the present rules for which do not require a confrontation between the parties and their witnesses; hence, the certifications were mandatory, to wit:

In ***Oporto, Jr. vs. Monserate***, it was held that the requirement set forth under Section 3, Rule 112 of the Revised Rules of Criminal Procedure is mandatory. This is so because the rules on preliminary investigation does not require a confrontation between the parties. **Preliminary investigation is ordinarily conducted through submission of affidavits and supporting documents, through submission of affidavits and supporting documents, through the exchange of pleadings. Thus, it can be inferred that the rationale for requiring the affidavits of witnesses to be sworn to before a competent officer so as to ensure that the affidavits supporting the factual allegations in the Complaint have been sworn before a competent officer and that the affiant has signed the same in the former's presence declaring on oath the truth of the statement made considering that this becomes part of the bases in finding probable guilt against the respondent. Well-settled is the rule that persons, such as an employee, whose unsworn declarations**

in behalf of a party, or the employee's employer in this case, are not admissible in favor of the latter. Further, it has been held that unsworn statements or declarations are self-serving and self-serving declarations are not admissible in evidence as proof of the facts asserted, whether they arose by implication from acts and conduct or were made orally or reduced in writing. The vital objection to the admission to this kind of evidence is its hearsay character.

In the case at bar, a perusal of the statements/affidavits accompanying the complaint shows that out of the total of 16 statements/affidavits corresponding to the respective witnesses, only nine (9) thereof were sworn to before a competent officer. These were the affidavits of the following: (1) SG Sarmiento; (2) SG Solis; (3) SG Fabe; (4) SG Marivic Rodriguez; (5) Jennylyn Buri; (6) Richard Joshua Sulit; (7) Marites Navarro; (8) Pamela-Ann Que; and (9) Edbert Ylo, which were sworn to or subscribed before a competent officer.

Thus, it is imperative that the circumstantial evidence that the victim was last seen in the company of respondent Philip must be established by competent evidence required by the rules in preliminary investigation. Here, it was allegedly Chase's sister, Ariane, and their two household helpers, Marivic Guray and Michelle Corpus, who saw respondent Philip pick up Chase at around 7:00 o'clock in the evening of February 27, 2007. Yet, such fact from which the inference is derived was not duly proven. The statements of Marivic and Michelle both executed on February 28, 2007 were not sworn to before the proper officer. Neither was the affidavit dated July 3, 2009 of Ariane Claridad duly notarized nor is there any explanation why the same was belatedly executed.

It cannot thus be used to prove the circumstance that it was respondent Philip who drove the white car parked in front of their house at around 7:00 o'clock in the evening of February 27, 2007 and that the factual allegation that the car used bore the Plate no. CRD-999. Further, since their affidavits were not in the nature of a public document, it is incumbent upon the complainant to prove its due execution and authenticity before the same is admitted in evidence. It is a well-settled rule that private documents must be proved as to their due execution and authenticity before they may be received in evidence.

Likewise, the circumstance that the victim sent a text message to his girlfriend Monet that he was on his way to get the tires at around 7:09 o'clock in the evening of February 27, 2007 is likewise inadmissible in evidence because Monet's affidavit was not sworn to before a competent officer. There was also no evidence of the alleged text message pursuant to the law on admissibility of electronic evidence. Besides, it cannot be inferred therefrom who the victim was with at that time and where he was going to get the tires.

Neither can the handwritten unsworn statement dated February 28, 2007 of SG Rodolph delos Reyes and handwritten sworn statement dated March 8, 2008 of SG Henry Solis be of any help in claiming that the victim was in the company of respondent Philip when the latter entered the village at around 7:26 o'clock in the evening of February 27, 2007. Suffice it to state that their statements only identified respondent Philip driving the white Honda Civic bearing Plate No. CRD-999. However, both were unsure if they saw respondent Philip with a passenger because it was already dark and the car was tinted.[30]

Also, the CA cited in its decision the further consequences of not complying with the aforequoted rule, to wit:

It also follows that the succeeding pieces of circumstantial evidence relied upon by complainant are not admissible for either being incompetent or hearsay evidence, to wit:

(a) that at around 7:45 p.m., respondent Teodora Alyn Esteban, on board a vehicle bearing plate no. XPN-733 entered Ferndale Homes is inadmissible because it is not supported by any sworn affidavit of a witness;

(b) that at around the same time, two unidentified persons, a male and female were heard talking inside Honda Civic bearing plate no. JTG-333 allegedly belonging to respondent Philip, which was one of the vehicles parked at the carport of #10 Cedar Place, inside Ferndale Homes is inadmissible because it is not supported by any sworn affidavit of a witness;

(c) that the Esteban family was temporarily using the carport of #10 Cedar Place as a carpark for their vehicles at that time is inadmissible because it is not supported by any sworn affidavit of a witness;

[30] *Id.* at 98-100.

(d) that when the guards went to the house of the Esteban family, the same was unusually dark and dim is inadmissible because it is not supported by any sworn affidavit of a witness;

(e) that while the crime scene was being processed, Mr. Esteban sought assistance from the police and requested that they escort his son, respondent Philip Esteban, to St. Luke's Medical Center, as the latter also allegedly suffered injuries is inadmissible because it is not supported by any sworn affidavit of a witness;

(f) that during the investigation, Philip, Mrs. Teodora Alyn Esteban and their family refused to talk and cooperate with the authorities and that they neither disclosed the extent of Philip's alleged injuries nor disclosed as to how or why he sustained them is inadmissible because it is not supported by any sworn affidavit of a witness; and

(g) Mrs. Edith Flores, speaking for respondents' family, reportedly communicated with the family of the deceased on numerous occasions and offered to pay for the funeral expenses is inadmissible because it is not supported by any sworn affidavit of a witness.

This now leaves this Court with the remaining pieces of circumstantial evidence supported by the sworn statement dated March 6, 2007 of Marivic Rodriguez, handwritten sworn statement dated March 8, 2007 of SG Abelardo Sarmiento, Jr. and handwritten sworn statement dated March 8, 2007 of SG Rene Fabe as follows:

(a) at around 7:30 p.m., Marivic Guray and Jennylyn Buri heard a commotion (loud cries saying "Help! Help!") at No. 10, Cedar Place inside Ferndale Homes;

(b) at around 7:50 p.m., the body of the deceased was discovered lying in a pool of blood in the carport of #10 Cedar Place;

(c) there was blood inside and outside the white Honda Civic bearing plate no. CRD-999;

(d) that at around 7:55 p.m., respondent Philip Esteban's father, Lauro Esteban, who was then outside the village, called the security guard at the entrance gate of the village to report the incident through his mobile phone;

(e) that at around 9:09 p.m., Mr. Esteban entered the village and admitted that he was the one who called for assistance regarding an incident that transpired at Cedar Place; and

(f) as per Autopsy Report, the cause of Chase's death was a stab wound in the chest and that the said wound was 9 centimeters deep, or around 3.6 inches and cut the descending aorta of his heart.

The above pieces of circumstantial evidence, though duly supported by sworn statements of witnesses, when taken as a whole, do not, however, lead to a finding of probable cause that respondents committed the crime charged.

The factual allegations of the complaint merely show that at around 7:30 o'clock in the evening of February 27, 2007, Marivic Rodriguez heard a male voice, coming from the front of their employer's house, shouting "*Help! Help!*"; that at around 7:50 p.m., the body of the deceased was discovered lying in a pool of blood in the carport of #10 Cedar Place; that there was blood inside and outside the white Honda Civic bearing plate no. CRD-999; and, that as per Autopsy Report, the cause of Chase's death was a stab wound in the chest and that the said wound was 9 centimeters deep, or around 3.6 inches and cut the descending aorta of his heart. However, all of these do not prove the presence of respondents at the scene of the crime nor their participation therein.

We likewise agree with the DOJ Secretary that there was no motive on the part of the respondents to kill the victim. This was supported by the sworn statement dated March 1, 2007 of Richard Joshua Ulit; the sworn statement dated March 10, 2007 of Pamela-Ann Que; and, the sworn statement dated March 10, 2007 of Egbert Ylo, who all knew the victim and respondent Philip and claimed that the two were good friends and that they were not aware of any misunderstanding that occurred between the concerned parties. Jurisprudence is replete that motive becomes of vital importance when there is doubt as to the identity of the perpetrator.

In *Preferred Home Specialties, Inc., et al. vs. Court of Appeals, et al.*, the Supreme Court held that while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty, the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses

in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[31]

It is clear from the foregoing disquisitions of the CA that the Secretary of Justice reasonably reached the conclusion that the dismissal by the OCP of Quezon City of the complaint for murder had been based on the lack of competent evidence to support a finding of probable cause against the respondents. Accordingly, such finding of probable cause by the Executive Department, through the Secretary of Justice, could not be undone by the CA, in the absence of a clear showing that the Secretary of Justice had gravely abused his discretion. *Grave abuse of discretion* means that the abuse of discretion must be so 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, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[32] That showing was not made herein.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*, and **AFFIRMS** the decision of the Court of Appeals promulgated on November 20, 2009.

The petitioner shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ., concur.*

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[31] *Id.* at 100-103.

[32] *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III, supra* note 15.

THIRD DIVISION

[G.R. Nos. 194490-91. March 20, 2013]

TRANSOCEAN SHIP MANAGEMENT (PHILS.), INC., CARLOS S. SALINAS, and GENERAL MARINE SERVICES CORPORATION, *petitioners, vs.* **INOCENCIO B. VEDAD,** *respondent.*

[G.R. Nos. 194518 & 194524. March 20, 2013]

INOCENCIO B. VEDAD, *petitioner, vs.* **TRANSOCEAN SHIP MANAGEMENT (PHILS.), INC., CARLOS S. SALINAS, and GENERAL MARINE SERVICES CORPORATION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; SICKNESS ALLOWANCE; PROPERLY AWARDED IN CASE AT BAR. — Inocencio got ill with what appeared to be tonsillitis while on board MV *Invicta*, for which he was treated at a foreign port where the ship docked. His malady still continued despite the treatment as he was, in fact, repatriated before the end of his l0-month contract on medical grounds. With the foregoing facts and the application of the x x x pertinent POEA-SEC provisos, it is abundantly clear that Inocencio is entitled to receive sickness allowance from his repatriation for medical treatment, which is equivalent to his basic wage for a period not exceeding 120 days or four months. The fact that Inocencio's sickness was later medically declared as not work-related does not prejudice his right to receive sickness allowance, considering that he got ill while on board the ship and was repatriated for medical treatment before the end of his 10-month employment contract. Moreover, at the time of his repatriation, his illness was not yet medically declared as not work-related by Dr. Cruz; thus, the presumption under x x x

Sec. 20(B)(4) of the POEA-SEC applies. He is, therefore, entitled to sickness allowance pending assessment and declaration by the company-designated physician on the work-relatedness of his ailment. When the assessment of the company physician is that the ailment is not workrelated but such assessment is duly contested by the second opinion from a physician of the seafarer's choice, then pending the final determination by a third opinion pursuant to the mechanism provided under the third paragraph of Sec. 20(B)(3), the seafarer is still entitled to sickness allowance but not to exceed 120 days. Considering that Inocencio's sickness in question manifested itself and that he was repatriated during the period of his employment, he is entitled to sickness allowance, his sickness being then disputably presumed to be work-related pursuant to Sec. 20(B) above. Later he had tonsillectomy on May l0, 2006. Though Inocencio was later diagnosed with cancer of the tonsils or *tonsillar carcinoma* and the company-designated doctor certified that it is not work-related, yet that fact should not prejudice the grant of sickness allowance which the law mandates the employers to give seafarers upon their repatriation for medical reasons to cushion their needs. Here, Inocencio was unable to work for a period of more than 120 days. The NLRC is, therefore, correct in awarding Inocencio his 120-day sickness allowance as required by the POEA-SEC from the time he was repatriated on February 19, 2006.

2. ID.; ID.; ID.; ID.; AN AWARD OF SICKNESS ALLOWANCE IS GERMANE TO THE PURPOSE THEREOF. — The POEA formulated the standard employment contract for seafarers pursuant to its mandate under Executive Order No. 247, Series of 1995, to ''secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas.'' As in *Crystal Shipping, Inc. v. Natividad*, an award of sickness allowance to Inocencio would be germane to the purpose of the benefit, which is to help the seafarer in making ends meet at the time when he is unable to work. The law looks tenderly on laborers. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to them, the balance must be tilted in their favor consistent with the principle of social justice.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE CONCLUSIVE UPON THE PARTIES AND BINDING ON THE SUPREME COURT. — Anent Inocencio's claim for permanent total disability benefits, its propriety hinges on whether or not his illness was work-related. We find no compelling reason to deviate from the factual findings of the NLRC that Inocencio failed to establish that his illness was work-related. Thus, he is not entitled to claim total permanent disability benefits. This Court has, time and again, held that the "factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court." "It must be stressed that in petitions for review under Rule 45 of the Rules of Court, only questions of law must be raised" before this Court.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; WHERE THE ILLNESS IS NOT INCLUDED IN THE LIST OF OCCUPATIONAL DISEASES, THE SEAFARER HAS THE BURDEN OF SHOWING BY SUBSTANTIAL EVIDENCE THAT IT DEVELOPED OR WAS AGGRAVATED FROM WORK-RELATED CAUSES. — Tonsil cancer or *tonsillar carcinoma* is, indeed, not work-related. The NLRC and the CA correctly ruled on this issue. It is not included in the list of occupational diseases. Thus, Inocencio carried the burden of showing by substantial evidence that his cancer developed or was aggravated from work related causes. As both the NLRC and the CA found, he had nothing to support his claim other than his bare allegations. We note that when Inocencio was repatriated, Dr. Cruz, the companydesignated physician, conducted the examination, diagnosis and treatment of Inocencio until the hispathology report showed he had cancer of the tonsils. Significantly, Dr. Cruz issued on June 9, 2006 his assessment and medical certification that Inocencio's cancer was not work-related or workaggravated. In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's

choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20(B)(3) of the POEA-SEC quoted above. Inocencio, however, failed to seek a second opinion from a physician of his choice. As already mentioned, Inocencio did not present any proof of work-relatedness other than his bare allegations. We, thus, have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x In the absence x x x of any duly medically proven workrelatedness, Inocencio cannot be accorded permanent total disability benefits.

5. ID.; ID.; ID.; ID.; SICKNESS ALLOWANCE; THE AWARD FOR PAYMENT OR REIMBURSEMENT OF MEDICAL EXPENSES IS PROPER IN CASE AT BAR. — The award granted by the NLRC and the CA for payment or reimbursement of the medical expenses of Inocencio relative to the required treatment for his cancer is proper. In fact, Transocean, *et al.* acknowledged offering to shoulder these expenses, alleging, however, that Inocencio did not continue with the treatment. x x x Having obliged themselves to shoulder the medical treatment of Inocencio, Transocean, *et al.* must be held answerable to said obligation, a finding of fact not only determined by the NLRC and the CA, but is also a judicial admission of Transocean, *et al.* x x x

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for Transocean, *et al.*
Bantog and Andaya Law Offices for Inocencio Vedad.

D E C I S I O N

VELASCO, JR., *J.*:

It would be an unsound policy to allow manning agencies and their principals to hedge in giving sickness allowance to our

seafarers while waiting for the assessment and declaration by the company-designated physician on whether or not the injury or illness is work-related. Otherwise, our poor seafarers who sacrifice their health and time away from their families and are stricken with some ailments will not be given the wherewithal to keep body and soul together and provide for their families while they are incapacitated or unable to perform their usual work as such seafarers.

The Case

In these consolidated Petitions for Review on *Certiorari* under Rule 45, the parties uniformly assail the July 28, 2010 Decision[1] and November 11, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 105601 and 105615, which modified the National Labor Relations Commission's (NLRC's) reversal of the grant by the Labor Arbiter of full permanent total disability benefits to seaman Inocencio B. Vedad (Inocencio).

The Facts

Inocencio was a seafarer employed as second engineer by Transocean Ship Management (Phils.), Inc. (Transocean),[3] a local manning agency, for its principal, General Marine Services Corporation (General Marine). Carlos S. Salinas (Salinas) was the President of Transocean.[4] Inocencio's employment under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) was for a 10-month period from June 1, 2005 to March 1, 2006.[5] Inocencio was deployed and went onboard M/V *Invicta* after the required pre-employment medical examination (PEME) which gave him a clean bill of health.

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[1] *Rollo* (G.R. Nos. 194518 & 194524), pp. 25-37. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca de Guia-Salvador and Sesinando E. Villon.

[2] *Id.* at 39-40.

[3] "Trans Ocean" in some parts of the records.

[4] He was also the owner and general manager of the company.

[5] *Rollo* (G.R. Nos. 194518 & 194524), p. 41.

Before the expiry of his 10-month contract or specifically on February 19, 2006, Inocencio was, however, repatriated for medical reasons. On board M/V *Invicta* he fell ill and experienced fever, sore throat and pain in his right ear. The ship docked on February 3, 2006 at Port Louis, Mauritius. The day after, on February 4, 2006, he underwent medical examination with the finding of "chronic suppurative otitis media right [CSOM(R)] with acute pharyngitis[, with] mild maxillary sinusitis," for which he was prescribed antibiotics and ear drops with the recommendation of a follow-up examination of the CSOM(R).[6] Subsequently on February 16, 2006, he underwent a follow-up examination on his illness in Tanjung Priok, Indonesia, and consequently, his eventual repatriation on February 19, 2006 for further evaluation and treatment.

Inocencio immediately reported to the company-designated doctor, Dr. Nicomedes G. Cruz (Dr. Cruz) of the NGC Medical Clinic in Manila, for diagnosis and treatment. On May 10, 2006, he underwent tonsillectomy but was later found by a histopathology report to be suffering from cancer of the right tonsil. The final histopathologic diagnosis reports: "undifferentiated carcinoma, right tonsil; and chronic follicular tonsillitis with actinomycosis, left tonsil."[7] Dr. Cruz then advised Inocencio to undergo chemotherapy and linear treatment at an estimated cost of PhP500,000, which Transocean and General Marine promised to shoulder. Inocencio started with the procedure but could not continue due to the failure of Transocean and General Marine to provide the necessary amount. This constrained Inocencio to file, on July 17, 2006, a Complaint[8] before the Labor Arbiter for, among others, total permanent disability benefits and sickness allowance, docketed as NLRC NCR OFW Case No. (M) 06-97-02117-00.

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[6] *Id.* at 42, Foreign Medical Report.

[7] *Id.* at 43.

[8] *Rollo* (G.R. Nos. 194490-91), pp. 106-107.

Decision of the Labor Arbiter

On August 10, 2007, the Labor Arbiter rendered a Decision, awarding Inocencio USD60,000 as permanent total disability benefits plus 10% attorney's fees while dismissing all other claims, the decretal portion reading:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Transocean Ship Management Phils. and General Marine Services Corporation to jointly and severally pay the complainant his disability compensation in the amount of US$60,000.00 in its peso equivalent at the time of actual payment, plus 10% thereof by way of attorney's fees.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[9]

The Labor Arbiter, applying Section 20 of the POEA-SEC, decreed Inocencio's tonsil cancer to be presumptively work-related, since it has not been proved otherwise and which lasted for more than 120 days. The Labor Arbiter likewise found Transocean and General Marine to have reneged on their promise to shoulder the medical procedures prescribed for Inocencio's treatment.

Decision of the NLRC

Upon appeal by Transocean, Salinas, and General Marine, the NLRC, by its May 29, 2008 Decision in NLRC LAC No. 12-000379-07(8), vacated that of the Labor Arbiter and awarded sickness allowance only equivalent to 120 days or four months salary amounting to USD4,616 and the payment or reimbursement of Inocencio's medical expenses. The decretal portion of the NLRC's Decision reads:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby VACATED and the Respondents-Appellants are ordered to pay Complainant-Appellee sickness allowance equivalent to his basic wage for 120 days, amounting US$4,616.00 (US$1,154

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[9] *Id.* at 238.

x 4 months) or its peso equivalent at the time of payment, plus payment/reimbursement of his medical expenses.

SO ORDERED.[10]

The NLRC held that the June 9, 2006 medical report/certification[11] by the company-designated physician, Dr. Cruz, that the tonsil cancer of Inocencio was not work-related shifted the burden of proof to Inocencio who failed to substantiate that his illness was work-related. As the NLRC further ruled, the PEME alone was not conclusive proof of Inocencio's state of health before deployment. However, the NLRC did find that Inocencio was, indeed, permanently totally disabled and was not at fault when he failed to undergo the necessary treatment given his condition due to the failure of Transocean and General Marine to provide the payment as earlier promised. Thus, Transocean, *et al.* were ordered to reimburse Inocencio's medical expenses.[12]

Decision of the CA

Both parties appealed the NLRC ruling before the CA, docketed as CA-G.R. SP Nos. 105601 and 105615. On July 28, 2010, the CA rendered its Decision, modifying the NLRC Decision by setting aside the award of sickness allowance of USD4,616 but affirming the grant of reimbursement of medical expenses. The *fallo* reads:

ACCORDINGLY:

(a) In CA-G.R. SP No. 105601, the petition is GRANTED IN PART. The *Decision* dated May 29, 2008 of the National Labor

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[10] *Id.* at 103. Penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[11] *Id.* at 139 (Annex "9", Transocean, *et al.*'s Position Paper).

[12] *Id.* at 102. As regards medical expenses, the NLRC's Decision states, "[T]he records reflect, and [Transocean, Salinas, and General Marine] admit, that **[Transocean, *et al.*] agreed to shoulder the treatment/chemotherapy of (Inocencio), costing <u>php500,000</u>** x x x. Nowhere is it shown that such offer was withdrawn by [Transocean, *et al.*]." (Emphases supplied.)

Relations Commission in NLRC LAC No. 12-000379-07(8) is MODIFIED so that the portion therein awarding Inocencio Vedad sickness allowance, amounting to US$4,616.00 (US$1,154 x 4 months) or its peso equivalent at the time of payment, is SET ASIDE. So far as it ordered Trans Ocean Ship Management Philippines and General Marine Services Corporation to reimburse or pay for jointly and severally the medical expenses of Inocencio Vedad, the same is AFFIRMED.

(b) In CA-G.R. SP No. 105615, the petition is DISMISSED for lack of merit.

No costs.

SO ORDERED.[13]

In so ruling, the CA affirmed the NLRC's determination that Inocencio's cancer of the tonsil, based on the certification of the company-designated physician, Dr. Cruz, was not work-related. This determination, the CA observed, citing *NYK-Fil Ship Management, Inc. v. Talavera*,[14] was not rebutted by contrary findings. The CA also held that the mere allegations of Inocencio on the causal relation between his work and ailment are not substantial proof of such relation, and that the PEME before deployment did not render Inocencio's tonsil cancer work-related either, for the PEME is not considered exploratory enough to fully ascertain his health before deployment. However, the CA agreed with the NLRC and ruled that Transocean and General Marine must pay or reimburse Inocencio's medical expenses based on their offer and promise to shoulder the medical treatment, such as the "chemotherapy of [Inocencio], costing [PhP]500,000,"[15] pointing out that Inocencio, indeed, initially underwent some of the prescribed medical procedures until Transocean and General Marine unilaterally withdrew the payment of their obligation.

Hence, the parties filed these petitions.

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[13] *Rollo* (G.R. Nos. 194518 & 194524), pp. 36-37.

[14] G.R. No. 175894, November 14, 2008, 571 SCRA 183.

[15] *Rollo* (G.R. Nos. 194490-91), p. 102.

The Issues

In G.R. Nos. 194490-91, Transocean, *et al*. raise the sole ground that:

> The Honorable Court of Appeals committed grave abuse of discretion in ordering herein petitioners [Transocean, *et al*.] to pay or reimburse respondent [Inocencio's] medical expenses.[16]

On the other hand, Inocencio raises the following assignment of errors in G.R. Nos. 194518 & 194524:

1. The Honorable Court of Appeals committed a reversible error in the questioned decision and resolution sufficient to warrant the exercise of this Honorable Court's discretionary appellate jurisdiction. The factual findings of the NLRC and the Court of Appeals are not based on substantial evidence.
2. The decisions of the Court of Appeals are contrary to applicable law and jurisprudence.
3. The Court of Appeals made manifest error in not awarding attorney's fees.[17]

The Court's Ruling

The petition of Transocean, *et al.* is unmeritorious. The petitions of Inocencio, on the other hand, are partly meritorious. He is entitled to both sickness allowance and payment or reimbursement of his medical expenses as properly awarded by the NLRC.

Pertinent to the resolution of this case are the following provisos of the POEA-SEC governing the employment of Filipino seafarers on board ocean-going vessels under POEA Memorandum Circular No. 09, Series of 2000:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

[16] *Id.* at 39.

[17] *Rollo* (G.R. Nos. 194518 & 194524), p. 9.

3. **Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.**

   For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

   If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. **Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.** (Emphasis supplied.)

Inocencio entitled to sickness allowance

Inocencio got ill with what appeared to be tonsillitis while on board MV *Invicta*, for which he was treated at a foreign port where the ship docked. His malady still continued despite the treatment as he was, in fact, repatriated before the end of his 10-month contract on medical grounds.

With the foregoing facts and the application of the above-quoted pertinent POEA-SEC provisos, it is abundantly clear that Inocencio is entitled to receive sickness allowance from his repatriation for medical treatment, which is equivalent to his basic wage for a period not exceeding 120 days or four months.

The fact that Inocencio's sickness was later medically declared as not work-related does not prejudice his right to receive sickness allowance, considering that he got ill while on board the ship and was repatriated for medical treatment before the end of his

10-month employment contract. Moreover, at the time of his repatriation, his illness was not yet medically declared as not work-related by Dr. Cruz; thus, the presumption under the aforequoted Sec. 20 (B) (4) of the POEA-SEC applies. He is, therefore, entitled to sickness allowance pending assessment and declaration by the company-designated physician on the work-relatedness of his ailment. When the assessment of the company physician is that the ailment is not work-related but such assessment is duly contested by the second opinion from a physician of the seafarer's choice, then pending the final determination by a third opinion pursuant to the mechanism provided under the third paragraph of Sec. 20 (B) (3), the seafarer is still entitled to sickness allowance but not to exceed 120 days.

Considering that Inocencio's sickness in question manifested itself and that he was repatriated during the period of his employment, he is entitled to sickness allowance, his sickness being then disputably presumed to be work-related pursuant to Sec. 20 (B) above. Later he had tonsillectomy on May 10, 2006. Though Inocencio was later diagnosed with cancer of the tonsils or *tonsillar carcinoma* and the company-designated doctor certified that it is not work-related, yet that fact should not prejudice the grant of sickness allowance which the law mandates the employers to give seafarers upon their repatriation for medical reasons to cushion their needs. Here, Inocencio was unable to work for a period of more than 120 days. The NLRC is, therefore, correct in awarding Inocencio his 120-day sickness allowance as required by the POEA-SEC from the time he was repatriated on February 19, 2006.

The POEA formulated the standard employment contract for seafarers pursuant to its mandate under Executive Order No. 247, Series of 1995, to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas."[18] As in *Crystal Shipping, Inc. v.*

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[18] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006, 487 SCRA 190, 207: citing Executive Order No. 247, Sec. 3 (i) and (j).

Natividad,[19] an award of sickness allowance to Inocencio would be germane to the purpose of the benefit, which is to help the seafarer in making ends meet at the time when he is unable to work.

The law looks tenderly on laborers. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to them, the balance must be tilted in their favor consistent with the principle of social justice.[20]

Inocencio not entitled to permanent total disability benefits

Anent Inocencio's claim for permanent total disability benefits, its propriety hinges on whether or not his illness was work-related. We find no compelling reason to deviate from the factual findings of the NLRC that Inocencio failed to establish that his illness was work-related. Thus, he is not entitled to claim total permanent disability benefits. This Court has, time and again, held that the "factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court."[21] "It must be stressed that in petitions for review under Rule 45 of the Rules of Court, only questions of law must be raised"[22] before this Court.

Tonsil cancer or *tonsillar carcinoma* is, indeed, not work-related. The NLRC and the CA correctly ruled on this issue. It is not included in the list of occupational diseases. Thus, Inocencio carried the burden of showing by substantial evidence that his cancer developed or was aggravated from work-related causes.

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[19] G.R. No. 154798, October 20, 2005, 473 SCRA 559, 568.

[20] *HFS Philippines, Inc. v. Pilar*, G.R. No. 168716, April 16, 2009, 585 SCRA 315, 328. A footnote explains. "In essence, this is similar to the equipoise rule in criminal law. See CIVIL CODE, Art. 1702. Labor legislation and contracts shall be construed in favor of the safety and decent living of the laborer."

[21] *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA 590, 599-600: citing *Ramos v. Court of Appeals*, G.R. No. 145405, June 29, 2004, 433 SCRA 177, 182.

[22] *Mame v. Court of Appeals*, G.R. No. 167953, April 4, 2007, 520 SCRA 552, 561.

As both the NLRC and the CA found, he had nothing to support his claim other than his bare allegations.

We note that when Inocencio was repatriated, Dr. Cruz, the company-designated physician, conducted the examination, diagnosis and treatment of Inocencio until the hispathology report showed he had cancer of the tonsils. Significantly, Dr. Cruz issued on June 9, 2006 his assessment and medical certification that Inocencio's cancer was not work-related or work-aggravated. In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B) (3) of the POEA-SEC quoted above.

Inocencio, however, failed to seek a second opinion from a physician of his choice. As already mentioned, Inocencio did not present any proof of work-relatedness other than his bare allegations. We, thus, have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. To recapitulate, the CA properly affirmed the findings of the NLRC that Inocencio's illness was not work-related. The NLRC's findings of facts have sufficient basis in evidence and in the records of the case and, in our own view, far from the arbitrariness that characterizes excess of jurisdiction. If Inocencio had any basis at all to support his claim, such basis might have been found after considering that he was medically fit when he boarded the ship based on the requisite PEME. Under this Court's ruling in *Montoya v. Transmed Manila Corporation*,[23] work-relatedness could possibly have been shown, since the cancer of the tonsil, already latent when Inocencio boarded his ship, "flared up" after

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[23] G.R. No. 183329, August 27, 2009, 597 SCRA 334, 349: citing *Belarmino v. Employees' Compensation Commission,* G.R. No. 90204, May 11, 1990, 185 SCRA 304.

work-related stresses intervened. In the absence, however, of any duly medically proven work-relatedness, Inocencio cannot be accorded permanent total disability benefits.

Transocean, *et al.* must honor their obligation

The award granted by the NLRC and the CA for payment or reimbursement of the medical expenses of Inocencio relative to the required treatment for his cancer is proper. In fact, Transocean, *et al.* acknowledged offering to shoulder these expenses, alleging, however, that Inocencio did not continue with the treatment. They judicially admitted this in their Respondents' Position Paper filed at the outset before the Labor Arbiter, as follows:

> Upon request of the Respondents [Transocean, *et al.*], the Complainant visited undersigned counsel's office on 9 June 2006. During said meeting, the undersigned counsel explained to Complainant that his illness known as Tonsil Cancer is not work-related but, nonetheless, the **Respondents agreed to shoulder the costs of treatment estimated at PhP500,000.** The undersigned counsel then instructed Complainant to visit Dr. Cruz and arrange for the schedule of his treatment.
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> To the Respondents' dismay, the said treatment never materialized as the Complainant failed to go back to Dr. Cruz' clinic on the dates he was scheduled to be treated. It turned out that Complainant already decided to engage services of counsel to claim disability benefits from the Respondents. Despite requests from undersigned counsel coursed through Complainant's counsel for him to go back to the company doctor, the Complainant failed to do so.[24] (Emphasis supplied.)

Having obliged themselves to shoulder the medical treatment of Inocencio, Transocean, *et al.* must be held answerable to said obligation, a finding of fact not only determined by the NLRC and the CA, but is also a judicial admission of Transocean, *et al*. As aptly put by the CA, Inocencio started with the medical procedure which could not be completed, for Transocean and General Marine unilaterally withheld payment for the procedure. Notably, Inocencio's last consultation with Dr. Cruz was on

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[24] *Rollo* (G.R. Nos. 194490-91), p. 113, Position Paper dated November 9, 2006.

June 15, 2006. At such time, Transocean, *et al*. had not remitted money for his treatment.

As the NLRC's Decision dated May 29, 2008 and Resolution dated July 22, 2008 are vague as to the nature of Transocean, *et al.*'s liability, the Court rules that they are jointly and solidarily liable to Inocencio for the payment of his sickness allowance and medical expenses. In view of the unjustified refusal of Transocean, *et al*. to reimburse the medical expenses to Inocencio after they agreed to such obligation, interests of 6% per annum shall be imposed on said medical expenses and sickness allowance of USD4,616 from June 15, 2006 up to the finality of this Decision and 12% per annum from finality of this Decision until paid.[25]

WHEREFORE, the petition in G.R. Nos. 194490-91 is **DENIED** for lack of merit, while the petition in G.R. Nos. 194518 & 194524 is **PARTLY GRANTED**. The CA's July 28, 2010 Decision and November 11, 2010 Resolution in CA-G.R. SP Nos. 105601 and 105615 are hereby **REVERSED** and *SET ASIDE*, and the May 29, 2008 Decision and July 22, 2008 Resolution of the National Labor Relations Commission in NLRC LAC No. 12-000379-07(8) accordingly **REINSTATED**, with the modification that Transocean, Salinas, and General Marine shall be jointly and solidarily liable to Inocencio for the payment of Php 500,000 representing the medical expenses agreed to by them in their Position Paper before the Labor Arbiter, inclusive of the actual expenses incurred by Inocencio, and the sickness allowance of USD 4,616. Interest shall be imposed on them at the rate of 6% per annum from June 15, 2006 until the finality of this Decision and at 12% per annum from finality of this Decision until paid.

The Labor Arbiter shall determine the actual medical expenses incurred by Inocencio.

No costs.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.*, concur.

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[25] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96-97.

THIRD DIVISION

[G.R. No. 195518. March 20, 2013]

MAGSAYSAY MARITIME SERVICES and PRINCESS CRUISE LINES, LTD., *petitioners, vs.* **EARLWIN MEINRAD ANTERO F. LAUREL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF ERRORS OF LAW; EXCEPTIONS. — It is elementary that this Court is not a trier of facts and this rule applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing the decisions of the CA. Indeed, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court. In exceptional cases, however, the Court may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the LA and the NLRC came up with conflicting positions. The present case clearly falls within these exceptions as the finding of the LA, on one hand, conflicts with those of the NLRC and the CA, on the other.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; COMPENSABILITY OF INJURY OR ILLNESS; ELEMENTS. — [T]wo elements must concur for an injury or illness of a seafarer to be compensable. First, the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.

3. ID.; ID.; ID.; ID.; ID.; ID.; WORK-RELATED INJURY OR WORK-RELATED ILLNESS; DEFINED. — For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness, which are defined as "injury(ies) resulting in disability or death arising out of and in the course of employment" and as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

4. ID.; ID.; ID.; ID.; ID.; FOR ILLNESS TO BE COMPENSABLE, IT IS NOT NECESSARY THAT THE NATURE OF EMPLOYMENT BE THE SOLE REASON FOR THE ILLNESS SUFFERED BY THE SEAFARER. — [C]hronic stress can cause a lot of different problems, and if not managed, it can ultimately lead to a thyroid condition. Of course, this does not mean that all thyroid conditions are caused by stress, but there is no question that stress is a culprit in many thyroid disorders. Given the foregoing, although Graves' Disease is attributed to genetic influence, the Court finds a reasonable work connection between Laurel's condition at work as pastryman (cook) and the development of his hyperthyroidism. His constant exposure to hazards such as chemicals and the varying temperature, like the heat in the kitchen of the vessel and the coldness outside, coupled by stressful tasks in his employment caused, or at least aggravated, his illness. It is already recognized that any kind of work or labor produces stress and strain normally resulting in wear and tear of the human body. x x x Indeed, Laurel has shown a reasonable causation between his working condition and his hyperthyroidism contracted during his employment warranting the recovery of compensation. Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

5. ID.; ID.; ID.; ID.; ID.; THE PRESUMPTION OF COMPENSABILITY OF ILLNESSES NOT LISTED AS OCCUPATIONAL DISEASES OPERATES IN FAVOR OF

THE SEAFARER. — True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. Nonetheless, Section 20 (B), paragraph (4) of the said POEA -SEC states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." The said provision explicitly establishes a presumption of compensability although disputable by substantial evidence. The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands. In the case at bench, other than the alleged declaration of the attending physician that Laurel's illness was not work-related, the petitioners failed to discharge their burden. In fact, they even conceded that hyperthyroidism may be caused by environmental factor.

6. ID.; ID.; ID.; ID.; ID.; THE QUANTUM OF EVIDENCE REQUIRED TO DETERMINE THE LIABILITY OF AN EMPLOYER FOR THE ILLNESS SUFFERED BY AN EMPLOYEE IS MERE SUBSTANTIAL EVIDENCE. — Although the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability. The quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by an employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In this case, the Court finds that the decisions of both the NLRC and the CA that Laurel's illness was compensable were supported by substantial evidence.

7. ID.; ID.; ID.; ID.; ID.; IT IS NOT ONLY THE COMPANY-DESIGNATED PHYSICIAN WHO COULD ASSESS THE CONDITION AND DECLARE THE DISABILITY OF SEAMEN. — [T]he petitioners' assertion that Laurel's condition and disability can only be assessed by the company-designated physician is a blatant misconception of the provisions of x x x Section 20 (B), paragraph (3) of the POEA–SEC x x x. Based on the x x x provision, it is crystal clear that the determination by the company-designated physician pertains only to the entitlement of the seafarer to sickness allowance and nothing more. Moreover, the said provision recognizes

the right of a seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. In fact, it allows a third opinion in case the seafarer's doctor disagrees with the assessment of the company-designated physician. Therefore, the provision should not be construed that it is only the company-designated physician who could assess the condition and declare the disability of seamen. The provision does not serve as a limitation but rather a guarantee of protection to overseas workers.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Constantino Reyes for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court assailing the August 6, 2010 Decision[1] and the February 4, 2011 Resolution[2] of the Court of Appeals (*CA*), in CA-G.R. SP No. 102130 entitled *Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. National Labor Relations Commission and Earlwin Meinrad Antero F. Laurel*, affirming the September 17, 2007 Decision[3] of the National Labor Relations Commission (*NLRC*).

The Facts

Respondent Earlwin Meinrad Antero F. Laurel (*Laurel*) was employed by petitioner Princess Cruise Lines, Ltd., through its local manning agency, petitioner Magsaysay Maritime Corporation, as second pastryman on board the "M/V Star

[1] Annex "A" of Petition, *rollo*, pp. 60-68. Penned by Associate Justice Mario L. Guarina III with Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Rodil V. Zalameda, concurring.

[2] Annex "C" of Petition, *id.* at 94.

[3] Records, pp. 56-61.

Princess." In June 2004, they executed a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment[4] embodying the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels and stating in particular the terms of his employment. Laurel underwent a pre-employment medical examination at the petitioner company's accredited clinic in Makati and was declared fit for sea service. He was deployed in August 2004 to join the assigned vessel.[5]

In the course of the voyage, Laurel fell ill. He complained of fever with cough, and he was given paracetamol until reaching the shore. On April 3, 2005, he disembarked from the vessel and proceeded to a hospital in Florida, U.S.A. Due to the persistence of his illness, he was repatriated for further evaluation. He arrived in the Philippines on April 7, 2005.[6]

On April 8, 2005, Laurel was admitted to the Metropolitan Hospital in Manila, placed under the medical care of Dr. Robert Lim, and diagnosed with upper respiratory tract infection and hyperthyroidism. He was discharged on April 11, 2005 and was prescribed take-home medications.[7]

Dr. Mylene Cruz-Balbon, the hospital's assistant medical coordinator, issued a medical report,[8] dated April 11, 2005, confirming that Laurel was suffering from hyperthyroidism and that he was started on anti-thyroid medication. It was indicated in the said medical report that hyperthyroidism, an overactivity of the thyroid gland usually secondary to an immunologic reaction, was not work-related.

On April 25, 2005, during his last follow-up at the petitioner company's medical facility, Laurel was already asymptomatic

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[4] *Id.* at 119.

[5] *Rollo,* p. 60.

[6] *Id.* at 61.

[7] *Id.*

[8] Records, pp. 100-101.

for upper respiratory tract infection. As he no longer had fever, cough and cold, he was cleared of his pulmonary problem. He was advised to consult an internist on his own account with regard to his hyperthyroidism as this illness was allegedly not work-related.[9]

When Laurel returned to his hometown of Naga City, he consulted Dr. Ramon Caceres (*Dr. Caceres*), an endocrinologist. On January 21, 2006, Dr. Caceres issued a medical certificate attesting that he was treated for Euthyroid Graves' Disease. By then, he was clinically and biochemically euthyroid. His oral anti-thyroid medications were tapered off for possible discontinuation of treatment.[10]

On August 3, 2006, Laurel filed a complaint[11] against the petitioners before the NLRC, claiming medical reimbursement, sickness allowance, permanent disability benefits, damages, and attorney's fees.

Thereafter, Laurel returned to Dr. Caceres for a more extensive diagnosis. On August 12, 2006, he obtained a medical certificate[12] with these findings — Stage 1B diffuse goiter, recurrent periodic paralysis of lower extremities Wayne's Index to 27 points, and hyperthyroid TFT's (suppressed TSH, elevated T3). Dr. Caceres diagnosed Laurel's illness as Graves' Disease (hyperthyroidism stage 1B diffuse goiter) with periodic paralysis. He was advised not to undergo strenuous activity as it was dangerous for him to ambulate given his unpredictable episodes of paralysis. His illness was described as equivalent to Grave 1 impediment.[13]

The petitioners opposed Laurel's claims, contending that his illness had been categorically determined as not work-related.

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[9] *Rollo,* p. 61.

[10] *Id.* at 62.

[11] Records, pp. 135-136.

[12] Records, p. 134.

[13] *Rollo,* p. 62.

The Labor Arbiter's Decision

The Labor Arbiter (*LA*), in a Decision,[14] dated February 1, 2007, dismissed the complaint. The LA held that Laurel was not entitled to his claims, with his hyperthyroidism having been found as not work-related by petitioner's company physician. The LA reasoned out that under the POEA-Standard Employment Contract (SEC), the employer was liable for the payment of disability benefits only for work-related illnesses sustained during the term of the contract and after determination of corresponding impediment grade by the company-designated physician. According to the LA, hyperthyroidism was not listed in Section 32 of POEA-SEC as a compensable occupational disease, and Laurel was not able to discharge his burden of proving that his illness was work-related or work-aggravated.

The NLRC Ruling

On appeal, the NLRC *reversed* the LA decision and awarded disability compensation in favor of Laurel. It found that the illness was work-related for failure of the petitioners to overcome the presumption provided under the POEA-SEC that an illness occurring during the employment, even if not listed, was work-related. The NLRC added that under the said contract, the petitioners had the legal obligation to compensate Laurel for his incapability to continue his job due to his illness. Citing *Philippine Transmarine Carriers, Inc. v. NLRC*,[15] it held that it was not the illness which was being compensated, but rather the incapacity to work resulting in the impairment of his earning capacity. Finally, the NLRC pointed out that for a claimant to be entitled to disability benefits, it was not required that the employment be the sole cause of the illness. It was enough that the employment had contributed, even in a small degree, to the development of the disease. The NLRC disposed of the case as follows:

WHEREFORE, the foregoing premises considered, the instant appeal is hereby **GRANTED**.

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[14] Records, pp. 69-76.

[15] 405 Phil. 487, 494 (2001).

Accordingly, the decision appealed from is **REVERSED** and **SET ASIDE**, and a new one is issued ordering respondent Magsaysay Maritime Services and/or Agripito Milano, Jr. to pay the disability benefits of Earlwin Meinrad Antero F. Laurel in the amount of US$60,000.00 or in Philippine Currency at the conversion rate prevailing at the time of payment.

SO ORDERED.[16] [Emphasis in the original]

The CA Decision

After their motion for reconsideration was denied, the petitioners elevated the case to the CA through a petition for *certiorari*. The CA, however, *dismissed* the petition and sustained the award of disability benefits in favor of Laurel. It held that the NLRC did not commit a grave abuse of discretion in ordering the payment of disability benefits to Laurel.[17]

The CA explained that although the petitioners' medical literature spoke of hyperthyroidism as hereditary, it also alluded to the triggers of the disease and cited that stress could also be a trigger. The CA concluded that stressful conditions could result in, or could be a factor in, the emergence of hyperthyroidism. It found that the working conditions on board the MV Star Princess had contributed and aggravated the illness of Laurel. This, according to the CA, was sufficient to entitle him to disability benefits.

The petitioners filed a motion for reconsideration[18] of the said decision, but it was denied by the CA in its February 4, 2011 Resolution.

Hence, the petitioners interpose this petition before this Court anchored on the following:

GROUNDS

I.

The Honorable Court of Appeals erred in affirming the Decision of the NLRC, awarding total and permanent disability

[16] Records, pp. 60-61.

[17] *Rollo,* p. 67.

[18] Annex "B" of Petition, *id.* at 69-89.

compensation to Respondent. Respondent is not entitled to any disability compensation as his illness is not work-related. The POEA Standard Employment Contract clearly states that only those work-related illnesses or injuries which were suffered during the term of the employment contract are compensable.

II.

The Honorable Court of Appeals erred in holding that Petitioners failed to overcome the presumption of compensability. The Supreme Court has consistently held that it is the complainant (herein Respondent) who has the burden to prove entitlement to disability benefits.

III.

The Honorable Court of Appeals erred in not upholding the findings and assessment of the company-designated physician. The POEA Standard Employment Contract states that it is the company-designated physician who is tasked to assess a seafarer's condition and determine his disability, if any. Thus, the company-designated physician's declaration concerning Respondent's state of health binds him.[19]

Petitioners' Argument

The petitioners argue that the CA erred in affirming the award of disability benefits to Laurel because his illness was not work-related as convincingly proven through the expert opinion of the company-designated physician. They insist that their doctor's assessment should have been accorded weight and credence considering his detailed knowledge of, and his familiarity with, Laurel's condition and the extensive medical attention given to him. They aver that hyperthyroidism is not among those listed in the POEA-SEC as an occupational disease, hence, not compensable. They emphasize that Laurel's illness was essentially genetic and was not caused by his employment. Citing jurisprudence, the petitioners assert that the burden is placed upon the seafarer to substantiate his claim that the illness is work-related and to prove that there is a connection between

[19] *Id.* at 32.

his employment and his illness. Laurel presented no substantial proof that his hyperthyroidism was caused or aggravated by the working conditions on board MV Star Princess.

Respondent's Position

Laurel, in his Compliance and Manifestation with Comment to Petitioners' Petition for Review on *Certiorari*,[20] counters that his illness is compensable because it was acquired during the effectivity of his employment contract while performing his work aboard the petitioners' vessel. The fact that Grave's Disease may be hereditary does not bar him from entitlement to disability benefits. Compensability does not require that employment be the sole cause of the illness. It is enough that there exists a reasonable work connection. The strenuous condition of his employment on board the MV Star Princess triggered the development of his hyperthyroidism due to his exposure to varying temperature and chemical irritants. Contrary to the petitioners' contention, Laurel asserts that the burden of proof rests on the petitioners by virtue of the presumption of compensability under Section 32 of the POEA contract.

Laurel likewise contends that the jurisdiction of the Court in cases brought before it from the CA by way of petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing errors of law, and that findings of fact of the latter are conclusive. Specifically, Laurel cited the case of *Palomado v. National Labor Relations Commission*,[21] in stating the fundamental rule that the factual findings of quasi-judicial agencies like the NLRC if supported by substantial evidence are generally accorded not only great respect but even finality, and are binding upon the Court, unless the petitioner is able to show that the NLRC arbitrarily disregarded evidence before it or misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence were to be properly appreciated. In this case, according to him, the CA correctly

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[20] *Id.* at 102-114.

[21] 327 Phil. 472, 483 (1996).

affirmed the finding of the NLRC that Laurel was entitled to disability compensation and other charges.

The Court's Ruling

A perusal of the petitioners' arguments discloses that the issues raised are essentially factual in nature. Generally, factual issues are not proper subjects of the Court's power of judicial review.

It is elementary that this Court is not a trier of facts and this rule applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing the decisions of the CA. Indeed, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court. In exceptional cases, however, the Court may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the LA and the NLRC came up with conflicting positions.[22] The present case clearly falls within these exceptions as the finding of the LA, on one hand, conflicts with those of the NLRC and the CA, on the other.

The Court, nevertheless, finds for respondent Laurel, and resolves that his hyperthyroidism is compensable.

The POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, which contains the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, governs the employment contract between Laurel and the petitioners. POEA came out with it pursuant to its mandate under Executive Order (E.O.) No. 247[23] to "secure the best

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[22] *Andrada v. Agemar Manning Agency, Inc.*, G.R. No. 194758, October 24, 2012.

[23] Reorganizing the Philippine Overseas Employment Administration and for Other Purposes, dated July 21, 1987.

terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas."[24] Section 20-B of the POEA-SEC enumerates the duties of an employer to his employee who suffers work-related disease or injury during the term of his employment contract, to quote:

> Section 20 (B)
>
> COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
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> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
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> x x x x x x x x x
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> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

Pursuant to the aforequoted provision, two elements must concur for an injury or illness of a seafarer to be compensable. First, the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[25] Both requisites obtain in this case.

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness, which are defined as "injury(ies) resulting in disability or death arising out of and in the course of employment" and as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

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[24] *Fil-Star Maritime Corporation v. Rosete*, G.R. No. 192686, November 23, 2011, 661 SCRA 247, 254, citing Sec. 3 (i) and (j) of E.O. No. 247.

[25] *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 677.

Section 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

As borne by the records, Laurel was afflicted with hyperthyroidism during the term of his employment contract that caused his discharge for medical examination in Florida, U.S.A. on April 3, 2005 and his subsequent repatriation to the Philippines.

Hyperthyroidism is the medical term to describe the signs and symptoms associated with an overproduction of thyroid hormones. It is a condition in which the thyroid gland makes too much thyroid hormones affecting the tissues of the body.[26] Although there are several causes of hyperthyroidism, most of the symptoms patients experience are the same regardless of the cause. Because the body's metabolism is increased, patients often feel hotter than those around them and can slowly lose weight even though they may be eating more. The weight issue is confusing sometimes since some patients actually gain weight because of an increase in their appetite. Patients with hyperthyroidism usually experience fatigue at the end of the day, but have trouble sleeping. Trembling of the hands and a hard or irregular heartbeat (called palpitations) may develop. These individuals may become irritable and easily upset. When hyperthyroidism is severe, patients can suffer shortness of breath, chest pain and muscle weakness.[27]

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[26] http://www.endocrineweb.com/conditions/hyperthyroidism/hyperthyroidism-overactivity-thyroid-gland-0; last visited March 15, 2013.

[27] http://www.endocrineweb.com/conditions/hyperthyroidism/hyperthyroidism-overactivity-thyroid-gland-0.

The most common underlying cause of hyperthyroidism is Graves' Disease. It is classified as an autoimmune disease, caused by the patient's own immune system turning against the patient's own thyroid gland. The hyperthyroidism of Graves' Disease, therefore, is caused by antibodies that the patient's immune system makes. The antibodies attach to specific activating sites on the thyroid gland and those, in turn, cause the thyroid to make more hormones.[28]

Stress is a factor that appears to trigger the onset of Graves' Disease. Researchers have documented a definite connection between major life stressors and the onset of Graves' disease.[29] Lifestyle factors are perhaps the biggest factor that lead to a hyperthyroid condition. Two of the biggest lifestyle factors are **chronic stress** and poor eating habits. There are other risk factors for the disorder. Based on family and twin studies, genetic factors are important. Postulated environmental and lifestyle risk factors include cigarette smoking, **stress and adverse life events**, and high dietary iodine intake.[30] With regard to stress, while there is nothing that can be done to entirely eliminate it in people's lives, most can do a much better job in handling it. **Too much stress can create problems with the adrenal glands**, as while they are designed to handle acute stress situations, they cannot adequately handle chronic, prolonged stress. Problems with the adrenal glands will eventually affect other areas of the body, including the **thyroid gland**.[31] [Emphases supplied]

Laurel, in his Memorandum,[32] aptly explained how stress can lead to a thyroid condition, to quote:

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[28] http://www.endocrineweb.com/conditions/hyperthyroidism/hyperthyroidism-overactivity-thyroid-gland-1.

[29] http://thyroid.about.com/od/hyperthyroidismgraves/a/risks-symptoms.htmRisks and Symptoms of Graves' Disease and Hyperthyroidism. By Mary Shomon, About.com Guide. Updated June 17, 2008.

[30] http://archinte.jamanetwork.com/article.aspx?articleid=486661.

[31] http://drerico23.hubpages.com/hub/Hyperthyroidism-Causes-Cures.

[32] *Rollo,* pp. 150-165.

'It's important to understand that our bodies weren't designed to handle chronic stress. The adrenal glands were designed to handle acute stress situations without much of a problem. But in today's world most people are overwhelmed with stressful situations, as they have stressful jobs, stressful relationships, financial issues, and many issues that lead to chronic stress. Since the adrenal glands weren't designed to handle chronic stress situations, what happens is that for a person who deals with a lot of stress AND does a poor job of managing it, over a period of months and years their adrenal glands will weaken, which can eventually lead to adrenal fatigue. But even before these glands reach this point, this can create other problems, including dysfunction of the thyroid gland.

The way that stressed out adrenals can cause thyroid malfunction is the following: when the adrenal glands are stressed out, it puts the body in a state of catabolism, which means that the body is breaking down. Because of this, the body will slow down the thyroid gland as a protective mechanism. The reason behind this is because the thyroid gland controls the metabolism of the body, and so the body slows it down in order to slow down the catabolic process. This is why many times the thyroid gland won't respond to treatment until you address the adrenal glands.

If the adrenal glands are not addressed, this can affect other bodily systems. For example, someone with weak adrenal glands who has a thyroid disorder can develop a compromised immune system. This eventually can lead to an autoimmune thyroid disorder, such as **Graves' Disease** or Hashimoto's Thyroiditis.'[33] [Emphasis and underscoring in the original]

In sum, chronic stress can cause a lot of different problems, and if not managed, it can ultimately lead to a thyroid condition. Of course, this does not mean that all thyroid conditions are caused by stress, but there is no question that stress is a culprit in many thyroid disorders.[34]

Given the foregoing, although Graves' Disease is attributed to genetic influence, the Court finds a reasonable work connection

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[33] *Id.* at 157-158.

[34] http://www.naturalendocrinesolutions.com/articles/chronic-stress-thyroid-condition. Last visited March 15, 2013.

between Laurel's condition at work as pastryman (cook) and the development of his hyperthyroidism. His constant exposure to hazards such as chemicals and the varying temperature, like the heat in the kitchen of the vessel and the coldness outside, coupled by stressful tasks in his employment caused, or at least aggravated, his illness. It is already recognized that any kind of work or labor produces stress and strain normally resulting in wear and tear of the human body.[35] Thus, the Court sustains the finding of the CA that:

> Stressful conditions in the environment, in a word, can result in hyperthyroidism, and the employment conditions of a seafarer on board an ocean-going vessel are likely stress factors in the development of hyperthyroidism irrespective of its origin. As recounted by the respondent in his position paper, the work on board the MV Star Princess was a strenuous one. It involved day-to-day activities that brought him under pressure and strain and exposed him to chemical and other irritants, and his being away from home and family only aggravated these stresses.[36]

Indeed, Laurel has shown a reasonable causation between his working condition and his hyperthyroidism contracted during his employment warranting the recovery of compensation. Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[37]

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[35] *Government Service Insurance System v. Villareal*, G.R. No. 170743, April 12, 2007, 520 SCRA 741, 746, citing *Ranises v. Employees Compensation Commission*, 504 Phil. 340, 345 (2005).

[36] *Rollo*, p. 65.

[37] *David v. OSG Ship Management Manila, Inc.*, G.R. No. 197205, September 26, 2012, citing *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 699; *NYK-Fil Ship Management v. Talavera*, G.R. No. 175894, November 14, 2008, 571 SCRA 183, 198.

The case of *Career Philippines Shipmanagement, Inc. v. Serna*[38] may be relevant. In the said case, the Court sustained the award of disability benefits and held:

> The causal connection the petitioners cite is a factual question that we cannot touch in Rule 45. The factual question is also irrelevant to the 1996 POEA-SEC. In *Remigio v. National Labor Relations Commission*, we expressly declared that illnesses need not be shown to be work-related to be compensable under the 1996 POEA-SEC, which covers all injuries or illnesses occurring in the lifetime of the employment contract. We contrast this with the 2000 POEA-SEC which lists the compensable occupational diseases. Even granting that work-relatedness may be considered in this case, we fail to see, too, how the idiopathic character of toxic goiter and/or thyrotoxicosis excuses the petitioners, since it does not negate the probability, indeed the *possibility*, that Serna's toxic goiter was caused by the undisputed work conditions in the petitioners' chemical tankers. (Underscoring supplied)

Moreover, it should be noted that Laurel was not only diagnosed with Graves' Disease. Per medical certificate of Dr. Caceres, Laurel's physician, he was also found to be suffering from: (1) Stage 1B diffuse goiter; (2) recurrent periodic paralysis of lower extremities; (3) Wayne's Index to 27 points; and (4) hyperthyroid TFT's (suppressed TSH, elevated T3). His illness/disability was assessed as equivalent to Grade 1 Impediment. Thus, he was advised "not to undergo strenuous activity, as it may be very dangerous for him to ambulate with the unpredictable episodes of periodic paralysis." Evidently, these illnesses disabled him to continue his job on board the vessel. Therefore, there is no doubt that under the 2000 POEA-SEC, he is entitled to disability compensation.

The petitioners cannot successfully invoke the case of *Magsaysay Maritime Corp. v. NLRC*[39] to insulate themselves from liability for disability benefits. The said case is not applicable. In that case, a causal connection between the nature

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[38] G.R. No. 172086, December 3, 2012.

[39] G.R. No. 186180, March 22, 2010, 616 SCRA 362.

of claimant's employment as assistant housekeeping manager on board the vessel and his lymphoma, or the fact that the risk of contracting the illness was increased by his working conditions was not established. The petitioner, through the medical report of its company-designated physician, was able to sufficiently explain the basis in concluding that the claimant's illness was not work-related. It was shown that the claimant had not been exposed to any carcinogenic fumes or to any viral infection in his workplace. In addition, he was declared fit to resume sea duties. No contrary medical finding was presented by him. Thus, it was held that he was not entitled to disability benefits.

In the case at bench, a causal link between Laurel's ailment and his working condition was sufficiently established. Other than the specific determination by the attending company doctor that "hyperthyroidism, in which there is overactivity of the thyroid gland, usually secondary to an immunologic reaction, is not work-related,"[40] no further explanation was given to support the conclusion that the illness was indeed not work-related. There was no declaration from the company doctor as regards his fitness to return to work, while he was advised by his own physician to refrain from undergoing strenuous activities.

Anent the issue as to who has the burden to prove entitlement to disability benefits, the petitioners argue that the burden is placed upon Laurel to prove his claim that his illness was work-related and compensable. Their posture does not persuade the Court.

True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. Nonetheless, Section 20 (B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." The said provision explicitly establishes a presumption of compensability although disputable by substantial evidence. The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. Hence, unless contrary evidence is

[40] Records, p. 101.

presented by the seafarer's employer/s, this disputable presumption stands.[41] In the case at bench, other than the alleged declaration of the attending physician that Laurel's illness was not work-related, the petitioners failed to discharge their burden. In fact, they even conceded that hyperthyroidism may be caused by environmental factor.

As correctly concluded by the CA:

> In the present case, it is reasonable to conclude with the NLRC that the respondent's employment has contributed to some degree to the development of the disease. It is probable that the respondent's thyroid condition was the result of an aggravation due to exposure to chemicals and stress that accompanied his work on an ocean-going vessel. In this light, the POEA Standard Contract has created a disputable presumption in favor of compensability saying that those illnesses not listed in Section 32 are disputably presumed as work-related. This means that even if the illness is not listed under the POEA standard contract as an occupational diseases or illness, it will still be presumed as work-related, and it becomes incumbent on the employer to overcome the presumption. The petitioner has not hurdled the bar, as the medical evidence that it submits even concedes that hyperthyroidism may be caused by both environmental and congenital factors. A mere aggravation of the illness by working conditions will suffice to warrant entitlement to the benefits. The presumption of compensability stands.[42]

Although the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability.[43] The quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by an employee under the POEA-SEC is not proof beyond

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[41] *David v. OSG Ship Management Manila, Inc., supra* note 36, citing *Fil-Star Maritime Corporation v. Rosete,* G.R. No. 192686, November 23, 2011, 661 SCRA 247, 255.

[42] *Rollo,* pp. 66-67.

[43] *Fil-Star Maritime Corporation v. Rosete*, G.R. No. 192686, November 23, 2011, 661 SCRA 247, 255, citing *Seagull Shipmanagement and Transport, Inc. v. NLRC,* 388 Phil. 906, 914 (2000), citing *More Maritime Agencies, Inc. v. NLRC,* 366 Phil. 646, 654-655 (1999).

reasonable doubt but mere substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[44] In this case, the Court finds that the decisions of both the NLRC and the CA that Laurel's illness was compensable were supported by substantial evidence.

The compensability of Laurel's hyperthyroidism having been established, the opinion of the petitioners' company-designated doctor that the illness was not work-related no longer holds any particular significance. As correctly pointed out by the CA,

> In this light, the opinion of the company-designated physician that the illness is not work-related may have to be rejected. It is already idle to discuss whether his views or those of the seafarer's physician should carry more weight, where it appears by the evidence that the illness is, in fact, compensable.[45]

Nonetheless, the petitioners' assertion that Laurel's condition and disability can only be assessed by the company-designated physician is a blatant misconception of the provisions of the law. Section 20 (B), paragraph (3) of the POEA-SEC provides that:

> Section 20 (B)
>
> COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> x x x x x x x x x
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to **sickness allowance** equivalent to his basic wage until he is declared fit to work or the **degree of permanent disability has been assessed by the company-designated physician** but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician

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[44] *David v. OSG Ship Management Manila, Inc., supra* note 36, citing *Government Service Insurance System v. Besitan*, G.R. No. 178901, November 23, 2011, 661 SCRA 186, 195.

[45] *Rollo,* p. 67.

within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his **forfeiture of the right to claim the above benefits.**

If a doctor appointed by the seafarer disagrees with the assessment, a **third doctor** may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphases and underscoring supplied)

Based on the aforequoted provision, it is crystal clear that the determination by the company-designated physician pertains only to the entitlement of the seafarer to sickness allowance and nothing more. Moreover, the said provision recognizes the right of a seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. In fact, it allows a third opinion in case the seafarer's doctor disagrees with the assessment of the company-designated physician. Therefore, the provision should not be construed that it is only the company-designated physician who could assess the condition and declare the disability of seamen. The provision does not serve as a limitation but rather a guarantee of protection to overseas workers.

After all, the POEA-SEC is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must, therefore, be construed and applied fairly, reasonably and liberally in their favor. Only then can its beneficent provisions be fully carried into effect.[46]

In fine, the Court holds that the CA correctly found that the NLRC committed no grave abuse of discretion in ordering payment of disability benefits to Laurel.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Velasco, Jr., Peralta, Abad, and *Leonen, JJ.,* concur.

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[46] *Philippine Transmarine Carriers, Inc. v. NLRC*, 405 Phil. 487, 495 (2001), citing *Wallem Maritime Services, Inc. vs. NLRC,* 376 Phil. 738, 749 (1999).

THIRD DIVISION

[G.R. No. 197450. March 20, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LI CHING CHUNG, *a.k.a.* BERNABE LUNA LI, *a.k.a.* STEPHEN LEE KENG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUES; COMMONWEALTH ACT. NO. 473 (THE REVISED NATURALIZATION LAW STATUTES; DECLARATION OF INTENTION; THE REQUISITE ONE-YEAR PERIOD IS THE TIME FIXED FOR THE STATE TO MAKE INQUIRIES AS TO THE QUALIFICATIONS OF THE APPLICANT. — Section 5 of CA No. 473, as amended, expressly states: "*Section 5. Declaration of intention. —* ***One year prior to the filing of his petition for admission to Philippine citizenship, the applicant for Philippine citizenship shall file with the Bureau of Justice (now Office of the Solicitor General) a declaration under oath that it is bona fide his intention to become a citizen of the Philippines***." x x x As held in *Tan v. Republic*, "the period of one year required therein is the time fixed for the State to make inquiries as to the qualifications of the applicant. If this period of time is not given to it, the State will have no sufficient opportunity to investigate the qualifications of the applicants and gather evidence thereon. An applicant may then impose upon the courts, as the State would have no opportunity to gather evidence that it may present to contradict whatever evidence that the applicant may adduce on behalf of his petition." The period is designed to give the government ample time to screen and examine the qualifications of an applicant and to measure the latter's good intention and sincerity of purpose. Stated otherwise, the waiting period will unmask the true intentions of those who seek Philippine citizenship for selfish reasons alone, such as, but not limited to, those who are merely interested in protecting their wealth, as distinguished from those who have truly come to love the Philippines and its culture and who wish to become genuine partners in nation building.

2. ID.; ID.; ID.; ID.; MUST BE FILED ONE YEAR PRIOR TO THE FILING OF THE PETITION FOR NATURALIZATION; EXCEPTION; NOT ESTABLISHED IN CASE AT BAR. — The law is explicit that the declaration of intention must be filed one year prior to the filing of the petition for naturalization. *Republic v. Go Bon Lee* likewise decreed that substantial compliance with the requirement is inadequate. x x x The only exception to the mandatory filing of a declaration of intention is specifically stated in Section 6 of CA No. 473, to wit: "Section 6. *Persons exempt from requirement to make a declaration of intention*. — **Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application,** may be naturalized without having to make a declaration of intention upon complying with the other **requirements** of this Act. **To such requirements shall be added that which establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to any race or nationality**." x x x Unquestionably, respondent does not fall into the category of such exempt individuals that would excuse him from filing a declaration of intention one year prior to the filing of a petition for naturalization. Contrary to the CA finding, respondent's premature filing of his petition for naturalization before the expiration of the one-year period is fatal.

3. ID.; ID.; NATURALIZATION PROCEEDINGS; THE ABSENCE OF ONE JURISDICTIONAL REQUIREMENT RESULTS IN THE DISMISSAL OF THE NATURALIZATION PROCESS. — In naturalization proceedings, the burden of proof is upon the applicant to show full and complete compliance with the requirements of the law. The opportunity of a foreigner to become a citizen by naturalization is a mere matter of grace, favor or privilege extended to him by the State; the applicant does not possess any natural, inherent, existing or vested right to be admitted to Philippine citizenship. The only right that a foreigner has, to be given the chance to become a Filipino citizen, is that which the statute confers upon him; and to acquire such right, he must strictly comply with all the

statutory conditions and requirements. The absence of one jurisdictional requirement is fatal to the petition as this necessarily results in the dismissal or severance of the naturalization process.

4. ID.; ID.; ID.; CONSIDERED INFUSED WITH PUBLIC INTEREST THAT IT HAS BEEN DIFFERENTLY CATEGORIZED AND GIVEN SPECIAL TREATMENT. — [I]t should be emphasized that "a naturalization proceeding is so infused with public interest that it has been differently categorized and given special treatment. x x x [U]nlike in ordinary judicial contest, the granting of a petition for naturalization does not preclude the reopening of that case and giving the government another opportunity to present new evidence. A decision or order granting citizenship will not even constitute *res judicata* to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already granted, on the ground that it had been illegally or fraudulently procured. For the same reason, issues even if not raised in the lower court may be entertained on appeal. As the matters brought to the attention of this Court x x x involve facts contained in the disputed decision of the lower court and admitted by the parties in their pleadings, the present proceeding may be considered adequate for the purpose of determining the correctness or incorrectness of said decision, in the light of the law and extant jurisprudence."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Guico, Jr. & Kho Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by the Republic of the Philippines, represented by the Office of the Solicitor General

[1] *Rollo,* pp. 8-42.

(*OSG*), challenges the June 30, 2011 Decision[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 93374, which affirmed the June 3, 2009 Decision[3] of the Regional Trial Court, Branch 49, Manila (*RTC*), granting the petition for naturalization of respondent Li Ching Chung (*respondent*).

On August 22, 2007, respondent, otherwise known as Bernabe Luna Li or Stephen Lee Keng, a Chinese national, filed his *Declaration of Intention to Become a Citizen of the Philippines* before the OSG.[4]

On March 12, 2008 or almost seven months after filing his declaration of intention, respondent filed his Petition for Naturalization before the RTC, docketed as Civil Case No. 08-118905.[5] On April 5, 2008, respondent filed his Amended Petition for Naturalization,[6] wherein he alleged that he was born on November 29, 1963 in Fujian Province, People's Republic of China, which granted the same privilege of naturalization to Filipinos; that he came to the Philippines on March 15, 1988 *via* Philippine Airlines Flight PR 311 landing at the Ninoy Aquino International Airport; that on November 19, 1989, he married Cindy Sze Mei Ngar, a British national, with whom he had four (4) children, all born in Manila; that he had been continuously and permanently residing in the country since his arrival and is currently a resident of Manila with prior residence in Malabon; that he could speak and write in English and Tagalog; that he was entitled to the benefit of Section 3 of Commonwealth Act (*CA*) No. 473 reducing to five (5) years the requirement under Section 2 of ten years of continuous residence, because he knew English and Filipino having obtained his education from St.

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[2] *Id.* at 43-56. Penned by Associate Justice Amy C. Lazaro-Javier and concurred by Associate Justice Rebecca de Guia Salvador and Associate Justice Marlene Gonzales-Sison.

[3] *Id.* at 57-64. Penned by Pairing Judge William Simon P. Peralta.

[4] Records, pp. 20-21.

[5] *Id.* at 1-4.

[6] *Id.* at 26-29.

Stephen's High School of Manila; and that he had successfully established a trading general merchandise business operating under the name of "VS Marketing Corporation."[7] As an entrepreneur, he derives income more than sufficient to be able to buy a condominium unit and vehicles, send his children to private schools and adequately provide for his family.[8]

In support of his application, he attached his *barangay* certificate,[9] police clearance,[10] alien certification of registration,[11] immigration certificate of residence,[12] marriage contract[13] authenticated birth certificates of his children,[14] affidavits of his character witnesses,[15] passport,[16] 2006 annual income tax return,[17] declaration of intention to become a citizen of the Philippines[18] and a certification[19] from the Bureau of Immigration with a list of his travel records from January 30, 1994.[20]

Consequently, the petition was set for initial hearing on April 3, 2009 and its notice[21] was posted in a conspicuous place at the Manila City Hall and was published in the Official Gazette

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[7] *Id.* at 298. TSN dated April 3, 2009, p. 10.

[8] *Id.* at 26-27.

[9] *Id.* at 5.

[10] *Id.* at 6.

[11] *Id.* at 7.

[12] *Id.* at 8.

[13] *Id.* at 9.

[14] *Id.* at 10-13.

[15] *Id.* at 14-15.

[16] *Id.* at 16.

[17] *Id.* at 19.

[18] *Id.* at 20-21.

[19] *Id.* at 22.

[20] *Id.* at 23.

[21] *Id.* at 49.

on June 30, 2008, [22]July 7, 2008[23] and July 14, 2008,[24] and in the Manila Times,[25] a newspaper of general circulation, on May 30, 2008,[26] June 6, 2008 [27] and June 13, 2008.[28]

Thereafter, respondent filed the Motion for Early Setting[29] praying that the hearing be moved from April 3, 2009 to July 31, 2008 so he could acquire real estate properties. The OSG filed its Opposition,[30] dated August 6, 2008, arguing that the said motion for early setting was a "clear violation of Section 1, RA 530, which provides that hearing on the petition should be held not earlier than six (6) months from the date of last publication of the notice."[31] The opposition was already late as the RTC, in its July 31, 2008 Order,[32] denied respondent's motion and decreed that since the last publication in the newspaper of general circulation was on June 13, 2008, the earliest setting could only be scheduled six (6) months later or on December 15, 2008.

On December 15, 2008, the OSG reiterated, in open court, its opposition to the early setting of the hearing and other grounds that would merit the dismissal of the petition. Accordingly, the RTC ordered the suspension of the judicial proceedings until all the requirements of the statute of limitation would be completed.[33]

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[22] *Id.* at 205-208 (Exhibit "A" and Exhibit "A-1").

[23] *Id.* at 209-215 (Exhibit "B" and Exhibit "B-1").

[24] *Id.* at 216-221 (Exhibit "C" and Exhibit "C-1").

[25] *Id.* at 222 (Exhibit "D").

[26] *Id.* at 227-228 (Exhibit "G" and "G-1").

[27] *Id.* at 225-226 (Exhibit "F" and Exhibit "F-1").

[28] *Id.* at 223-224 (Exhibit "E" and Exhibit "E-1").

[29] Records, pp. 50-51.

[30] *Id.* at 55-59.

[31] *Id.* at 56.

[32] *Id.* at 54.

[33] *Id.* at 60.

The OSG filed a motion to dismiss,[34] but the RTC denied the same in its Order,[35] dated March 10, 2009, and reinstated the original hearing date on April 3, 2009, as previously indicated in the notice.

Thereafter, respondent testified and presented two character witnesses, Emelita V. Roleda and Gaudencio Abalayan Manimtim, who personally knew him since 1984 and 1998, respectively, to vouch that he was a person of good moral character and had conducted himself in a proper and irreproachable manner during his period of residency in the country.

On June 3, 2009, the RTC granted respondent's application for naturalization as a Filipino citizen.[36] The decretal portion reads:

WHEREFORE, petitioner **LI CHING CHUNG *a.k.a.* BERNABE LUNA LI *a.k.a.* STEPHEN LEE KENG** is hereby declared a **Filipino citizen** by naturalization and admitted as such.

However, pursuant to **Section 1 of Republic Act No. 530**, this Decision shall not become executory until after two (2) years from its promulgation and after the Court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant has: (1) not left the Philippines; (2) has dedicated himself continuously to a lawful calling or profession; (3) has not been convicted of any offense or violation of Government promulgated rules; (4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies.

As soon as this decision shall have become executory, as provided under **Section 1 of Republic Act No. 530**, the Clerk of Court of this Branch is hereby directed to issue to the Petitioner a Naturalization Certificate, after the Petitioner shall have subscribed to an Oath, in accordance with Section 12 of Commonwealth Act No. 472, as amended.

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[34] *Id.* at 111-128.

[35] *Id.* at 155-156.

[36] *Rollo,* pp. 57-64.

The Local Civil Registrar of the City of Manila is, likewise directed to register the Naturalization Certificate in the proper Civil Registry.

SO ORDERED.[37]

The OSG appealed the RTC decision to the CA.[38]

On June 30, 2011, the CA affirmed the RTC decision.[39] The CA held that although the petition for naturalization was filed less than one (1) year from the time of the declaration of intent before the OSG, this defect was not fatal. Moreover, contrary to the allegation of the OSG that respondent did not present his Certificate of Arrival, the fact of his arrival could be easily confirmed from the Certification, dated August 21, 2007, issued by the Bureau of Immigration, and from the stamp in the passport of respondent indicating his arrival on January 26, 1981. [40] The CA further stated that "the Republic participated in every stage of the proceedings below. It was accorded due process which it vigorously exercised from beginning to end. Whatever procedural defects, if at all they existed, did not taint the proceedings, let alone the Republic's meaningful exercise of its right to due process."[41]

Moreover, the CA noted that the OSG did not in any way question respondent's qualifications and his lack of disqualifications to be admitted as citizen of this country. Indeed, the CA was convinced that respondent was truly deserving of this privilege.[42]

Hence, this petition.[43]

To bolster its claim for the reversal of the assailed ruling, the OSG advances this pivotal issue of:

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[37] *Id.* at 63-64.

[38] Records, pp. 391-393.

[39] *Rollo,* pp. 43-56.

[40] *Id.* at 53.

[41] *Id.* at 54-55.

[42] *Id.* at 55.

[43] *Id.* at 8-42.

x x x **whether the respondent should be admitted as a Filipino citizen despite his undisputed failure to comply with the requirements provided for in CA No. 473, as amended — which are mandatory and jurisdictional in character — particularly: (i) the filing of his petition for naturalization within the one (1) year proscribed period from the date he filed his declaration of intention to become a Filipino citizen; (ii) the failure to attach to the petition his *certificate of arrival*; and (iii) the failure to comply with the publication and posting requirements prescribed by CA No. 473**.[44]

The OSG argues that "the petition for naturalization should not be granted in view of its patent jurisdictional infirmities, particularly because: 1) it was filed within the one (1) year *proscribed* period from the filing of declaration of intention; 2) no certificate of arrival, which is indispensable to the validity of the Declaration of Intention, was attached to the petition; and 3) respondent's failure to comply with the publication and posting requirements set under CA 473."[45] In particular, the OSG points out that the publication and posting requirements were not strictly followed, specifically citing that: "(a) the hearing of the petition on *15 December 2008* was set ahead of the scheduled date of hearing on *3 April 2009*; (b) the order moving the date of hearing (Order dated 31 July 2008) was not published; and, (c) the petition was heard within six (6) months (15 December 2008) from the last publication (on 14 July 2008)."[46]

The petition is meritorious.

Section 5 of CA No. 473,[47] as amended,[48] expressly states:

Section 5. *Declaration of intention. — **One year prior to the filing of his petition for admission to Philippine citizenship, the***

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[44] *Id.* at 131-132.

[45] *Id.* at 22.

[46] *Id.* at 147.

[47] An Act to Provide for the Acquisition of Philippine Citizenship by Naturalization, and to Repeal Acts Numbered Twenty-Nine Hundred and Twenty-Seven and Thirty-Four Hundred and Forty-Eight.

[48] Republic Act No. 530.

applicant for Philippine citizenship shall file with the Bureau of Justice (now Office of the Solicitor General) a declaration under oath that it is bona fide his intention to become a citizen of the Philippines. Such declaration shall set forth name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel or aircraft, if any, in which he came to the Philippines, and the place of residence in the Philippines at the time of making the declaration. No declaration shall be valid until lawful entry for permanent residence has been established and a certificate showing the date, place, and manner of his arrival has been issued. The declarant must also state that he has enrolled his minor children, if any, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government, and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. Each declarant must furnish two photographs of himself. (Emphasis supplied)

As held in *Tan v. Republic*,[49] "the period of one year required therein is the time fixed for the State to make inquiries as to the qualifications of the applicant. If this period of time is not given to it, the State will have no sufficient opportunity to investigate the qualifications of the applicants and gather evidence thereon. An applicant may then impose upon the courts, as the State would have no opportunity to gather evidence that it may present to contradict whatever evidence that the applicant may adduce on behalf of his petition." The period is designed to give the government ample time to screen and examine the qualifications of an applicant and to measure the latter's good intention and sincerity of purpose.[50] Stated otherwise, the waiting period will unmask the true intentions of those who seek Philippine citizenship for selfish reasons alone, such as, but not limited to, those who are merely interested in protecting their wealth, as distinguished from those who have truly come to love the Philippines and its

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[49] 94 Phil. 882, 884 (1954).

[50] Ledesma, *An Outline of Philippine Immigration and Citizenship Laws*, Volume I, 2006, pp. 553-554.

culture and who wish to become genuine partners in nation building.

The law is explicit that the declaration of intention must be filed one year prior to the filing of the petition for naturalization. *Republic v. Go Bon Lee*[51] likewise decreed that substantial compliance with the requirement is inadequate. In that case, Go filed his declaration of intention to become a citizen of the Philippines on May 23, 1940. After eleven months, he filed his petition for naturalization on April 18, 1941. In denying his petition, the Court wrote:

> The language of the law on the matter being express and explicit, it is beyond the province of the courts to take into account questions of expediency, good faith and other similar reasons in the construction of its provisions (De los Santos vs. Mallare, 87 Phil., 289; 48 Off. Gaz., 1787). Were we to accept the view of the lower court on this matter, there would be no good reason why a petition for naturalization cannot be filed one week after or simultaneously with the filing of the required declaration of intention as long as the hearing is delayed to a date after the expiration of the period of one year. The ruling of the lower court amounts, in our opinion, to a substantial change in the law, something which courts can not do, their duty being to apply the law and not tamper with it.[52]

The only exception to the mandatory filing of a declaration of intention is specifically stated in Section 6 of CA No. 473, to wit:

> Section 6. *Persons exempt from requirement to make a declaration of intention.* — **Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application,** may be naturalized without having to make a declaration of intention upon complying with the other **requirements** of this Act. **To such requirements shall be added that which**

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[51] 111 Phil. 805 (1961).

[52] *Id.* at 807-808.

establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to any race or nationality. The same shall be understood applicable with respect to the widow and minor children of an alien who has declared his intention to become a citizen of the Philippines, and dies before he is actually naturalized. (Emphases supplied)

Unquestionably, respondent does not fall into the category of such exempt individuals that would excuse him from filing a declaration of intention one year prior to the filing of a petition for naturalization. Contrary to the CA finding, respondent's premature filing of his petition for naturalization before the expiration of the one-year period is fatal.[53]

Consequently, the citation of the CA of the ruling in *Tam Tan v. Republic*[54] is misplaced. In that case, the Court did not excuse the non-compliance with the one-year period, but reiterated that the waiting period of one (1) year is mandatory. In reversing the grant of naturalization to Tam Tan, the Court wrote:

The appeal is predicated on the fact that the petition for naturalization was filed (26 October 1950) before the lapse of one year from and after the filing of a verified declaration of his *bona fide* intention to become a citizen (4 April 1950), in violation of Section 5 of Commonwealth Act No. 473, as amended.

The position of the Government is well taken, because no petition for naturalization may be filed and heard and hence no decree may be issued granting it under the provisions of Commonwealth Act No. 473, as amended, before the expiration of one year from and after the date of the filing of a verified declaration of his *bona fide* intention to become a citizen of the Philippines. This is mandatory.[55] Failure to raise in the lower court the question of non-compliance therewith does not preclude the Government from raising it on appeal.[56]

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[53] *Jesus Uy Yap v. Republic*, 91 Phil. 914 (1952).

[54] 95 Phil. 326 (1954).

[55] *Jesus Uy Yap v. Republic, supra* note 52.

[56] *Cruz v. Republic*, 49 Off. Gaz., 958.

Nevertheless, after the one-year period, the applicant may renew his petition for naturalization and the evidence already taken or heard may be offered anew without the necessity of bringing to court the witnesses who had testified. And the Government may introduce evidence in support of its position.[57]

The decree granting the petition for naturalization is set aside, without costs.

In naturalization proceedings, the burden of proof is upon the applicant to show full and complete compliance with the requirements of the law.[58] The opportunity of a foreigner to become a citizen by naturalization is a mere matter of grace, favor or privilege extended to him by the State; the applicant does not possess any natural, inherent, existing or vested right to be admitted to Philippine citizenship. The only right that a foreigner has, to be given the chance to become a Filipino citizen, is that which the statute confers upon him; and to acquire such right, he must strictly comply with all the statutory conditions and requirements.[59] The absence of one jurisdictional requirement is fatal to the petition as this necessarily results in the dismissal or severance of the naturalization process.

Hence, all other issues need not be discussed further as respondent failed to strictly follow the requirement mandated by the statute.

It should be emphasized that "a naturalization proceeding is so infused with public interest that it has been differently categorized and given special treatment. x x x [U]nlike in ordinary judicial contest, the granting of a petition for naturalization does not preclude the reopening of that case and giving the government another opportunity to present new evidence. A decision or order granting citizenship will not even constitute *res judicata* to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already

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[57] *Jesus Uy Yap v. Republic*, *supra* note 52.

[58] *Sy v. Republic*, 154 Phil. 673, 677-678 (1974).

[59] *Mo Yuen Tsi v. Republic*, 115 Phil. 401, 410 (1962).

granted, on the ground that it had been illegally or fraudulently procured. For the same reason, issues even if not raised in the lower court may be entertained on appeal. As the matters brought to the attention of this Court x x x involve facts contained in the disputed decision of the lower court and admitted by the parties in their pleadings, the present proceeding may be considered adequate for the purpose of determining the correctness or incorrectness of said decision, in the light of the law and extant jurisprudence."[60]

Ultimately, respondent failed to prove full and complete compliance with the requirements of the Naturalization Law. As such, his petition for naturalization must be denied without prejudice to his right to re-file his application.

WHEREFORE, the petition is **GRANTED**. The June 30, 2011 Decision of the Court of Appeals in CA-G.R. CV No. 93374 is **REVERSED** and **SET ASIDE**. The petition for naturalization of respondent Li Ching Chung, otherwise known as Bernabe Luna Li or Stephen Lee Keng, docketed as Civil Case No. 08-118905 before the Regional Trial Court, Branch 49, Manila, is **DISMISSED**, without prejudice.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

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[60] *Republic v. Reyes*, 122 Phil. 931, 934 (1965).

George Bongalon **GUILTY** beyond reasonable doubt of the crime of **SLIGHT PHYSICAL INJURIES** under paragraph 1, Article 266, of the *Revised Penal Code*; (*b*) sentencing him to suffer the penalty of 10 days of *arresto menor*; and (*c*) ordering him to pay Jayson Dela Cruz the amount of ₱5,000.00 as moral damages, plus the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170863. March 20, 2013]

ENGR. ANTHONY V. ZAPANTA, *petitioner vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; WHEN DATE OF COMMISSION OF THE OFFENSE GIVEN IN THE COMPLAINT IS NOT OF THE ESSENCE OF THE OFFENSE, IT NEED NOT BE PROVEN AS ALLEGED; CASE AT BAR. — Section 6, Rule 110 of the Rules of Criminal Procedure x x x provides: Section 6. *Sufficiency of complaint or information.* — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate date of the commission of the offense;** and the place where the offense was committed. When an offense is committed by more than one person, all of them shall be included in the complaint or information. As to the sufficiency of the allegation of the date of the commission

of the offense, Section 11, Rule 110 of the Rules of Criminal Procedure adds: It is not necessary to state in the complaint or information the precise date the offense was committed **except when it is a material ingredient of the offense.** The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. Conformably with these provisions, when the date given in the complaint is not of the essence of the offense, it need not be proven as alleged; thus, the complaint will be sustained if the proof shows that the offense was committed at any date within the period of the statute of limitations and before the commencement of the action. In this case, the petitioner had been fully apprised of the charge of qualified theft since the information stated the approximate date of the commission of the offense through the words "*sometime in the month of October, 2001*." x x x We stress that the information did not have to state the precise date when the offense was committed, as to be inclusive of the month of "November 2001" since the date was not a material element of the offense. As such, the offense of qualified theft could be alleged to be committed on a date ***as near as possible*** to the actual date of its commission. Clearly, the month of November is the month right after October.

2. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS. — The elements of qualified theft, punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (*RPC)*, are: (a) the taking of personal property; (b) the said property belongs to another; (c) the said taking be done with intent to gain; (d) it be done without the owner's consent; (e) it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and (f) it be done under any of the circumstances enumerated in Article 310 of the RPC, *i.e*., with grave abuse of confidence.

3. REMEDIAL LAW; EVIDENCE; *CORPUS DELICTI*; REFERS TO THE COMMISSION OF THE CRIME CHARGED; DISCUSSED. — "*Corpus delicti* refers to the fact of the commission of the crime charged or to the body or substance of the crime. In its legal sense, it does not refer to the ransom money in the crime of kidnapping for ransom or to the body of the person murdered" or, in this case, to the stolen steel beams. "Since the *corpus delicti* is the fact of the commission of the crime, this Court has ruled that even a single witness'

uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefore. *Corpus delicti* may even be established by circumstantial evidence." "[I]n theft, *corpus delicti* has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking."

4. CRIMINAL LAW; QUALIFIED THEFT; PENALTY IN ITS PROPER LEGAL TERMINOLOGY MUST BE SPECIFIED. — We reiterate the rule that it is necessary for the courts to employ the proper legal terminology in the imposition of penalties because of the substantial difference in their corresponding legal effects and accessory penalties. The appropriate name of the penalty must be specified as under the scheme of penalties in the RPC, the principal penalty for a felony has its own specific duration and corresponding accessory penalties. x x x In qualified theft, the appropriate penalty is *reclusion perpetua* based on Article 310 of the RPC which provides that "[t]he crime of [qualified] theft shall be punished by the penalties next higher by two degrees than those respectively specified in [Article 309]."

APPEARANCES OF COUNSEL

Rocky Thomas A. Balisong for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Engr. Anthony V. Zapanta, challenging the June 27, 2005 decision[2] and the November 24, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CR No. 28369. The CA decision affirmed the January 12, 2004 decision[4] of the Regional

[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 13-71.

[2] Penned by Associate Justice Roberto A. Barrios, and concurred in by Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso; *id.* at 76-83.

[3] *Id.* at 85-86.

[4] *Id.* at 154-163.

Trial Court (*RTC*) of Baguio City, Branch 3, in Criminal Case No. 20109-R, convicting the petitioner of the crime of qualified theft. The CA resolution denied the petitioner's motion for reconsideration.

The Factual Antecedents

An April 26, 2002 Information filed with the RTC charged the petitioner, together with Concordio O. Loyao, Jr., with the crime of qualified theft, committed as follows:

> That sometime in the month of October, 2001, in the City of Baguio, Philippines, and within the jurisdiction of [the] Honorable Court, x x x accused ANTHONY V. ZAPANTA, being then the Project Manager of the Porta Vaga Building Construction, a project being undertaken then by the Construction Firm, ANMAR, Inc. under sub-contract with A. Mojica Construction and General Services, with the duty to manage and implement the fabrication and erection of the structural steel framing of the Porta Varga building including the receipt, audit and checking of all construction materials delivered at the job site — a position of full trust and confidence, and CONCORDIO O. LOYAO, JR., *alias* "JUN", a telescopic crane operator of ANMAR, Inc., conspiring, confederating, and mutually aiding one another, with grave abuse of confidence and with intent of gain, did then and there willfully, unlawfully and feloniously take, steal and carry away from the Porta Vaga project site along Session road, Baguio City, wide flange steel beams of different sizes with a total value of ₱2,269,731.69 without the knowledge and consent of the owner ANMAR, Inc., represented by its General Manager LORNA LEVA MARIGONDON, to the damage and prejudice of ANMAR, Inc., in the aforementioned sum of ₱2,269,731.69, Philippine Currency.[5]

Arraigned on November 12, 2002, the petitioner entered a plea of "not guilty."[6] Loyao remains at-large.

In the ensuing trial, the prosecution offered in evidence the oral testimonies of Danilo Bernardo, Edgardo Cano, Roberto Buen, Efren Marcelo, private complainant Engr. Lorna

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[5] *Id.* at 154-155.

[6] *Id.* at 21.

Marigondon, and Apolinaria de Jesus,[7] as well as documentary evidence consisting of a security logbook entry, delivery receipts, photographs, letters, and sworn affidavits. The prosecution's pieces of evidence, taken together, established the facts recited below.

In 2001, A. Mojica Construction and General Services (*AMCGS*) undertook the Porta Vaga building construction in Session Road, Baguio City. AMCGS subcontracted the fabrication and erection of the building's structural and steel framing to Anmar, owned by the Marigondon family. Anmar ordered its construction materials from Linton Commercial in Pasig City. It hired Junio Trucking to deliver the construction materials to its project site in Baguio City. It assigned the petitioner as project manager with general managerial duties, including the receiving, custody, and checking of all building construction materials.[8]

On two occasions in October 2001, the petitioner instructed Bernardo, Junio Trucking's truck driver, and about 10 Anmar welders, including Cano and Buen, to unload about 10 to 15 pieces of 20 feet long wide flange steel beams at Anmar's alleged new contract project along Marcos Highway, Baguio City. Sometime in November 2001, the petitioner again instructed Bernardo and several welders, including Cano and Buen, to unload about 5 to 16 pieces of 5 meters and 40 feet long wide flange steel beams along Marcos Highway, as well as on Mabini Street, Baguio City.[9]

Sometime in January 2002, Engr. Nella Aquino, AMCGS' project manager, informed Engr. Marigondon that several wide flange steel beams had been returned to Anmar's warehouse on October 12, 19, and 26, 2001, as reflected in the security guard's logbook. Engr. Marigondon contacted the petitioner to explain the return, but the latter simply denied that the reported return took place. Engr. Marigondon requested Marcelo, her warehouseman, to conduct an inventory of the construction

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[7] *Ibid.*

[8] *Id.* at 203-204.

[9] *Id.* at 204-206.

materials at the project site. Marcelo learned from Cano that several wide flange steel beams had been unloaded along Marcos Highway. There, Marcelo found and took pictures of some of the missing steel beams. He reported the matter to the Baguio City police headquarters and contacted Anmar to send a truck to retrieve the steel beams, but the truck came weeks later and, by then, the steel beams could no longer be found. The stolen steel beams amounted to ₱2,269,731.69.[10]

In his defense, the petitioner vehemently denied the charge against him. He claimed that AMCGS, not Anmar, employed him, and his plan to build his own company had been Engr. Marigondon's motive in falsely accusing him of stealing construction materials.[11]

The RTC's Ruling

In its January 12, 2004 decision,[12] the RTC convicted the petitioner of qualified theft. It gave credence to the prosecution witnesses' straightforward and consistent testimonies and rejected the petitioner's bare denial. It sentenced the petitioner to suffer the penalty of imprisonment from 10 years and 3 months, as minimum, to 20 years, as maximum, to indemnify Anmar ₱2,269,731.69, with legal interest from November 2001 until full payment, and to pay Engr. Marigondon ₱100,000.00 as moral damages.

The CA's Ruling

On appeal, the petitioner assailed the inconsistencies in the prosecution witnesses' statements, and reiterated his status as an AMCGS employee.[13]

In its June 27, 2005 decision,[14] the CA brushed aside the petitioner's arguments and affirmed the RTC's decision convicting

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[10] *Id.* at 207-208.

[11] *Id.* at 160.

[12] *Supra* note 4.

[13] *Rollo*, p. 167.

[14] *Supra* note 2.

the petitioner of qualified theft. It found that the prosecution witnesses' testimonies deserve full credence in the absence of any improper motive to testify falsely against the petitioner. It noted that the petitioner admitted his status as Anmar's employee and his receipt of salary from Anmar, not AMCGS. It rejected the petitioner's defense of denial for being self-serving. It, however, deleted the award of moral damages to Engr. Marigondon for lack of justification.

When the CA denied[15] the motion for reconsideration[16] that followed, the petitioner filed the present Rule 45 petition.

The Petition

The petitioner submits that, while the information charged him for acts committed "*sometime in the month of October, 2001*," he was convicted for acts not covered by the information, *i.e.*, November 2001, thus depriving him of his constitutional right to be informed of the nature and cause of the accusation against him. He further argues that the prosecution failed to establish the fact of the loss of the steel beams since the *corpus delicti* was never identified and offered in evidence.

The Case for the Respondent

The respondent People of the Philippines, through the Office of the Solicitor General, counters that the issues raised by the petitioner in the petition pertain to the correctness of the calibration of the evidence by the RTC, as affirmed by the CA, which are issues of fact, not of law, and beyond the ambit of a Rule 45 petition. In any case, the respondent contends that the evidence on record indubitably shows the petitioner's liability for qualified theft.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in affirming the RTC's decision convicting the petitioner of the crime of qualified theft.

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[15] *Supra* note 3.

[16] *Rollo,* pp. 176-179.

Our Ruling

The petition lacks merit.

Sufficiency of the allegation of date of the commission of the crime

Section 6, Rule 110 of the Rules of Criminal Procedure, which lays down the guidelines in determining the sufficiency of a complaint or information, provides:

> Section 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate date of the commission of the offense**; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information. (italics supplied; emphasis ours)

As to the sufficiency of the allegation of the date of the commission of the offense, Section 11, Rule 110 of the Rules of Criminal Procedure adds:

> Section 11. *Date of commission of the offense*. — It is not necessary to state in the complaint or information the precise date the offense was committed **except when it is a material ingredient of the offense**. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. [italics supplied; emphasis ours]

Conformably with these provisions, when the date given in the complaint is not of the essence of the offense, it need not be proven as alleged; thus, the complaint will be sustained if the proof shows that the offense was committed at any date within the period of the statute of limitations and before the commencement of the action.

In this case, the petitioner had been fully apprised of the charge of qualified theft since the information stated the approximate date of the commission of the offense through the words "s*ometime in the month of October, 2001*." The petitioner

could reasonably deduce the nature of the criminal act with which he was charged from a reading of the contents of the information, as well as gather by such reading whatever he needed to know about the charge to enable him to prepare his defense.

We stress that the information did not have to state the precise date when the offense was committed, as to be inclusive of the month of "November 2001" since the date was not a material element of the offense. As such, the offense of qualified theft could be alleged to be committed on a date *as near as possible* to the actual date of its commission.[17] Clearly, the month of November is the month right after October.

The crime of qualified theft was committed with grave abuse of discretion

The elements of qualified theft, punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (*RPC*), are: (a) the taking of personal property; (b) the said property belongs to another; (c) the said taking be done with intent to gain; (d) it be done without the owner's consent; (e) it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and (f) it be done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.[18]

All these elements are present in this case. The prosecution's evidence proved, through the prosecution's eyewitnesses, that upon the petitioner's instruction, several pieces of wide flange steel beams had been delivered, twice in October 2001 and once in November 2001, along Marcos Highway and Mabini Street, Baguio City; the petitioner betrayed the trust and confidence reposed on him when he, as project manager, repeatedly took construction materials from the project site, without the authority

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[17] See *People v. Dion*, G.R. No. 181035, July 4, 2011, 653 SCRA 117, 131. See also *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 129; *People v. Domingo*, G.R. No. 177744, November 23, 2007, 538 SCRA 733, 738; and *People v. Ibañez*, G.R. No. 174656, May 11, 2007, 523 SCRA 136, 142.

[18] *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 541.

and consent of Engr. Marigondon, the owner of the construction materials.

Corpus delicti is the fact of the commission of the crime

The petitioner argues that his conviction was improper because the alleged stolen beams or *corpus delicti* had not been established. He asserts that the failure to present the alleged stolen beams in court was fatal to the prosecution's cause.

The petitioner's argument fails to persuade us.

"*Corpus delicti* refers to the fact of the commission of the crime charged or to the body or substance of the crime. In its legal sense, it does not refer to the ransom money in the crime of kidnapping for ransom or to the body of the person murdered" or, in this case, to the stolen steel beams. "Since the *corpus delicti* is the fact of the commission of the crime, this Court has ruled that even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. *Corpus delicti* may even be established by circumstantial evidence."[19] "[I]n theft, *corpus delicti* has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking."[20]

In this case, the testimonial and documentary evidence on record fully established the *corpus delicti*. The positive testimonies of the prosecution witnesses, particularly Bernardo, Cano and Buen, stating that the petitioner directed them to unload the steel beams along Marcos Highway and Mabini Street on the pretext of a new Anmar project, were crucial to the petitioner's conviction. The security logbook entry, delivery receipts and photographs proved the existence and the unloading of the steel beams to a different location other than the project site.

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[19] *Villarin v. People*, G.R. No. 175289, August 31, 2011, 656 SCRA 500, 520-521; and *Rimorin, Jr. v. People*, 450 Phil. 465, 474-475 (2003). Italics supplied.

[20] *Gulmatico v. People*, G.R. No. 146296, October 15, 2007, 536 SCRA 82, 92; citation omitted, italics supplied. See also *Tan v. People*, 372 Phil. 93, 105 (1999).

Proper Penalty

The RTC, as affirmed by the CA, sentenced the petitioner to suffer the penalty of imprisonment from 10 years and three months, as minimum, to 20 years, as maximum, and to indemnify Anmar ₱2,269,731.69, with legal interest from November 2001 until full payment. Apparently, the RTC erred in failing to specify the appropriate name of the penalty imposed on the petitioner.

We reiterate the rule that it is necessary for the courts to employ the proper legal terminology in the imposition of penalties because of the substantial difference in their corresponding legal effects and accessory penalties. The appropriate name of the penalty must be specified as under the scheme of penalties in the RPC, the principal penalty for a felony has its own specific duration and corresponding accessory penalties.[21] Thus, the courts must employ the proper nomenclature specified in the RPC, such as "*reclusion perpetua*" not "life imprisonment," or "ten days of *arresto menor*" not "ten days of imprisonment." In qualified theft, the appropriate penalty is *reclusion perpetua* based on Article 310 of the RPC which provides that "[t]he crime of [qualified] theft shall be punished by the penalties next higher by two degrees than those respectively specified in [Article 309]."[22]

To compute the penalty, we begin with the value of the stolen steel beams, which is ₱2,269,731.69. Based on Article 309 of the RPC, since the value of the items exceeds ₱22,000.00, the basic penalty is *prision mayor* in its minimum and medium periods, to be imposed in the maximum period, which is eight years, eight months and one day to 10 years of *prision mayor*.

To determine the additional years of imprisonment, we deduct ₱22,000.00 from ₱2,269,731.69, which gives us ₱2,247,731.69. This resulting figure should then be divided by ₱10,000.00,

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[21] *People v. Latupan*, 412 Phil. 477, 489 (2001); *Austria v. Court of Appeals*, 339 Phil. 486, 495-496 (1997).

[22] *People v. Mirto*, G.R. No. 193479, October 19, 2011, 659 SCRA 796, 814; *Astudillo v. People*, 538 Phil. 786, 815 (2006); and *People v. Mercado*, 445 Phil. 813, 828 (2003).

THIRD DIVISION

[A.M. OCA IPI No. 09-3243-RTJ. April 1, 2013]

JOHNWELL W. TIGGANGAY, *complainant, vs.* **JUDGE MARCELINO K. WACAS, Regional Trial Court, Branch 25, Tabuk City, Kalinga,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; QUANTUM OF PROOF REQUIRED IS ONLY SUBSTANTIAL EVIDENCE, OR THAT AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION; CASE AT BAR. —** When the issue is administrative liability, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. In administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant. In the instant case, Tiggangay failed to present substantial evidence to prove his allegations. One who alleges a fact has the burden of proof and mere allegation is not evidence.

2. **JUDICIAL ETHICS; DISQUALIFICATION OF JUDGES BY REASON OF RELATIONSHIP; CONCEPT OF AFFINITY, EXPLAINED; THERE IS NO AFFINITY BETWEEN THE BLOOD RELATIVES OF ONE SPOUSE AND THE BLOOD RELATIVES OF THE OTHER. —** The supposed relationship between Judge Wacas and Dagadag, unsubstantiated as it were by the required substantial relevant evidence, remains a mere allegation of Tiggangay. In his testimony on December 9, 2011, Tiggangay tried to assert that Judge Wacas and Dagadag are related within the sixth degree by affinity in that the aunt of Judge Wacas is married to the uncle of Dagadag. Tiggangay even drew a sketch to show the affinity. The fact, however, is that no substantial evidence was presented to prove the relationship angle. We can grant *arguendo* that the aunt of Judge Wacas is married to the uncle of Dagadag. But such reality is not a ground for

the mandatory inhibition of a Judge as required under Sec. 1 of Rule 137, Revised Rules of Procedure, since there is actually no relation of affinity between Judge Wacas and Dagadag. Affinity denotes "the relation that one spouse has to the blood relatives of the other spouse." It is a relationship by marriage or a familial relation resulting from marriage. It is a fictive kinship, a fiction created by law in connection with the institution of marriage and family relations. Relationship by affinity refers to a relation by virtue of a legal bond such as marriage. Relatives by affinity, therefore, are those commonly referred to as "in-laws," or stepfather, stepmother, stepchild and the like. Affinity may also be defined as "the relation which one spouse because of marriage has to blood relatives of the other. The connection existing, in consequence of marriage between each of the married persons and the kindred of the other. The doctrine of affinity grows out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation by affinity to his wife's blood relatives as she has by consanguinity and vice versa." Indeed, "there is no affinity between the blood relatives of one spouse and the blood relatives of the other. A husband is related by affinity to his wife's brother, but not to the wife of his wife's brother. There is no affinity between the husband's brother and the wife's sister; this is called *affinitas affinitatis*."

3. ID.; ID.; ID.; RESPONDENT JUDGE IS NOT DISQUALIFIED UNDER SECTION I OF RULE 137 TO HEAR ELECTION CASE NO. 40; THERE IS NO RELATIONSHIP BY AFFINITY BETWEEN RESPONDENT JUDGE AND MAYOR DAGADAG AS THEY ARE NOT IN-LAWS OF EACH OTHER. — In the instant case, considering that Judge Wacas is related to his aunt by consanguinity in the third degree, it follows by virtue of the marriage of his aunt to the uncle of Dagadag that Judge Wacas is the nephew-in-law of the uncle of Dagadag, *i.e.*, a relationship by affinity in the third degree. But Judge Wacas is not related by affinity to the blood relatives of the uncle of Dagadag as they are not his in-laws and, thus, are not related in any way to Dagadag. In like manner, Dagadag is the nephew-in-law of the aunt of Judge Wacas but is not related by affinity to the blood relatives of Judge Wacas' aunt, like Judge Wacas. In short, there is

no relationship by affinity between Judge Wacas and Dagadag as they are not in-laws of each other. Thus, Judge Wacas is not disqualified under Sec. 1 of Rule 137 to hear Election Case No. 40.

4. ID.; ID.; ID.; COMPLAINANT RAISED HIS OBJECTIONS AGAINST JUDGE'S IMPARTIALITY OUT OF THE PERCEIVED RELATIONSHIP BY AFFINITY ONLY AFTER AN UNFAVORABLE DECISION HAD BEEN RENDERED. — It cannot be overemphasized that Tiggangay, for all his protestations against Judge Wacas' impartiality arising out of the perceived relationship by affinity between Dagadag and Judge Wacas, never moved for the inhibition of Judge Wacas from hearing Election Case No. 40. We view this fact as a belated attempt by Tiggangay to get back at Judge Wacas for the latter's adverse ruling in Tiggangay's electoral protest. Besides, as aptly put by Justice Inting, "a litigant cannot be permitted to speculate upon the action of the court and to raise objections only after an unfavorable decision has already been rendered."

5. ID.; ID.; ID.; THE AFFIDAVIT AND UNCORROBORATED TESTIMONY OF COMPLAINANT'S DRIVER IS INCREDULOUS AND NOT WORTHY OF CREDENCE. — We find no reason to disturb Justice Inting's succinct observation that the affidavit and uncorroborated testimony of Tiggangay's driver, Gayudan, is incredulous and not worthy of credence. Gayudan supposedly followed Judge Wacas and wife to the ranch of Dagadag where the alleged victory party was celebrated on August 23, 2008 and observed for four hours the comings and goings of the people attending the party. Yet, Gayudan could not even name one attendee, aside from Judge Wacas and his wife, despite admitting that the people who allegedly attended the party are from his place. Notably, the affidavit and testimony of Aggal belies and demolishes the affidavit and testimony of Gayudan. Aggal was the driver of Congressman Tagayo from 2007 to 2011 and was staying in the place of said Congressman which is just beside the ranch of Dagadag in Spring, Tabuk City, Kalinga. Aggal attested and testified that there was no party in the place of Dagadag on August 23, 2008. Besides, the unrebutted testimony of Palicpic places the whereabouts of Judge Wacas and his wife on August 23, 2008 not in

Dagadag's place but in the place of their relative, which is just walking distance from their residence, to attend a clan gathering.

APPEARANCES OF COUNSEL

Melvin C. Suarez for complainant.

R E S O L U T I O N

VELASCO, JR., *J.*:

Before Us is a letter-complaint charging respondent Judge Marcelino K. Wacas (Judge Wacas) with Impropriety and Partiality for not inhibiting himself, in violation of the Code of Judicial Conduct, from hearing an electoral protest case pending before him and for attending the victory party of a party-litigant in said electoral case.

Judge Wacas is the Presiding Judge of the Regional Trial Court (RTC), Branch 25 in Tabuk City, Kalinga. Complainant Johnwell W. Tiggangay (Tiggangay) was the losing protestant in an electoral protest case before the sala of Judge Wacas, docketed as Election Case No. 40, entitled *Johnwell W. Tiggangay v. Rhustom L. Dagadag*.

Tiggangay ran for the mayoralty position of Tanudan, Kalinga in the May 14, 2007 election but lost to Rhustom L. Dagadag (Dagadag) by a slim margin of 158 votes. Following Dagadag's proclamation, Tiggangay filed an electoral protest which was raffled to the sala of Judge Wacas.

On August 8, 2008, Judge Wacas rendered a Decision finding Dagadag to have won the protested election but at a reduced winning margin of 97 votes. Tiggangay appealed the RTC Decision before the Commission on Elections (COMELEC) Second Division which dismissed the appeal through an Order issued on November 4, 2008. Tiggangay's motion for reconsideration of the COMELEC Second Division's dismissal

of his appeal was likewise rejected by the COMELEC *En Banc* on January 12, 2011 on the ground of mootness.

On July 31, 2009, Tiggangay filed his verified letter-complaint charging Judge Wacas with Impropriety and Partiality. Tiggangay alleged that, during the course of the proceedings in Election Case No. 40, he learned that Judge Wacas is Dagadag's second cousin by affinity, the former's aunt is married to an uncle of Dagadag. The relationship notwithstanding, Judge Wacas did not inhibit himself from hearing said electoral case in violation of the New Code of Judicial Conduct and Rule 137 of the Revised Rules of Court. Moreover, after ruling in favor of Dagadag, so Tiggangay alleged, Judge Wacas and his wife attended the victory party of Dagadag held on August 23, 2008 at Dagadag's ranch in Spring, Tabuk City. To bolster his allegation, Tiggangay submitted the affidavit of his driver, Fidel Gayudan (Gayudan),[1] who attested Judge Wacas and wife were fetched by a red Toyota Surf owned by Dagadag and were brought to the victory party. Further, Tiggangay alleged–-citing the affidavit of Corazon Somera[2] (Somera), an alleged close friend of Judge Wacas and his spouse—that Judge Wacas' sister-in-law, Rebecca Magwaki Alunday (Alunday), allegedly said in the presence of Somera and Judge Wacas and wife that Tiggangay will win the protest if he has much money. Tiggangay stated that "Judge Wacas never bothered x x x to rebuke his sister-in-law for such 'uncalled for' statement, or to outrightly deny or affirm such statement x x x."[3]

In his Comment, Judge Wacas denied being related by affinity to Dagadag, adding that Tiggangay made the allegation on the basis of "some reliable sources," not from his personal knowledge. Moreover, Judge Wacas maintained, Tiggangay never moved for his inhibition during the entire proceedings in Election Case No. 40 if, indeed, Tiggangay doubted his fairness, integrity and

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[1] *Rollo,* p. 6.

[2] *Id.* at 7.

[3] *Id.* at 3.

independence. Judge Wacas vehemently denied his alleged attendance in the victory party of Dagadag on August 23, 2008 and asserted that he was with his family in a clan gathering on that day in the house of Rafael Maduli at Purok 5, Bulanao, Tabuk City, Kalinga, where he stayed from about 8:00 a.m. until about 3:00 p.m. Thus, he submitted the affidavits of Blezilda Maduli Palicpic[4] (Palicpic) and Alunday[5] attesting to such fact aside from his own affidavit[6] and the affidavit of his wife, Rosalina Magwaki Wacas (Mrs. Wacas).[7]

On June 13, 2011, acting on the recommendation[8] of the Court Administrator, the Court referred the matter to the Court of Appeals (CA), through Associate Justice Socorro B. Inting (Justice Inting), for investigation and report with appropriate recommendations.

Justice Inting held a preliminary conference on October 3, 2011, where the parties stipulated, *inter alia*, that:

11) During the proceedings of the protest case, complainant did not file a motion to inhibit Judge Marcelino Wacas.

12) No written Motion to Inhibit was filed in Court during the proceedings of the protest case.

13) The letter-complaint dated February 19, 2009 was filed only after the decision dated August 8, 2008 was rendered by the RTC and after the Comelec in its Order dated November 4, 2008 dismissed the appeal.

14) That Fidel Gayudan, one of the witnesses, is a constant companion of the complainant.

15) That Corazon Somera is the sister of the mother of the complainant.[9]

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[4] *Id.* at 25-26.

[5] *Id.* at 27-28.

[6] *Id.* at 29-30.

[7] *Id.* at 31-32.

[8] *Id.* at 35.

[9] *Id.* at 46-47, CA Order dated October 10, 2011.

Thereafter, Justice Inting conducted hearings on December 9, 2011,[10] January 27, 2012,[11] March 2, 2012,[12] and June 22, 2012.[13] For the prosecution of the instant case, only Tiggangay and Gayudan testified on December 9, 2011. As Somera did not appear to testify, her affidavit appended to the complaint was expunged from the records. On the other hand, for the defense, Palicpic testified on March 12, 2012, while Sarado Aggal (Aggal), Mrs. Wacas and Judge Wacas testified on June 22, 2012.

Submission of Memoranda followed.

On October 18, 2012, Justice Inting transmitted to the Court her Report, recommending the dismissal of the instant complaint for lack of substantial evidence.[14]

We adopt the findings of Justice Inting supportive of her recommendations and accordingly dismiss the instant administrative complaint.

When the issue is administrative liability, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[15] In administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant.[16] In the instant case, Tiggangay failed to

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[10] *Id.* at 81-97, TSN, December 9, 2011, with the testimonies of Tiggangay and Gayudan.

[11] *Id.* at 80, CA Order dated February 16, 2012.

[12] *Id.* at 201-262, TSN, March 12, 2012, with the testimony of Palicpic.

[13] *Id.* at 388-414, TSN, June 22, 2012, with the testimony of Aggal, Mrs. Wacas and Judge Wacas.

[14] Justice Inting recommended:

WHEREFORE, in view of the foregoing, it is hereby recommended to the Third Division of the Honorable Supreme Court that the administrative complaint against respondent Judge Marcelino K. Wacas be DISMISSED for lack of merit. (Report, p. 16.)

[15] *Velasco v. Angeles*, A.M. No. RTJ-05-1908, August 15, 2007, 530 SCRA 204, 224.

[16] *Re: Letter-Complaint of Atty. Ariel Samson C. Cayetuna, et al., All Employees of Asso. Justice Michael P. Elbinias against Asso. Justice Michael*

present substantial evidence to prove his allegations. One who alleges a fact has the burden of proof and mere allegation is not evidence.[17]

The supposed relationship between Judge Wacas and Dagadag, unsubstantiated as it were by the required substantial relevant evidence, remains a mere allegation of Tiggangay. In his testimony on December 9, 2011, Tiggangay tried to assert that Judge Wacas and Dagadag are related within the sixth degree by affinity in that the aunt of Judge Wacas is married to the uncle of Dagadag. Tiggangay even drew a sketch to show the affinity. The fact, however, is that no substantial evidence was presented to prove the relationship angle.

We can grant *arguendo* that the aunt of Judge Wacas is married to the uncle of Dagadag. But such reality is not a ground for the mandatory inhibition of a Judge as required under Sec. 1[18] of Rule 137, Revised Rules of Procedure, since there is actually no relation of affinity between Judge Wacas and Dagadag.

Affinity denotes "the relation that one spouse has to the blood relatives of the other spouse."[19] It is a relationship by marriage or a familial relation resulting from marriage. It is a fictive

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P. Elbinias, CA-Mindanao Station, A.M. OCA IPI No. 08-127-CA-J, January 11, 2011, 639 SCRA 220, 234.

[17] *Heirs of Cipriano Reyes v. Calumpang*, G.R. No. 138463, October 30, 2006, 506 SCRA 56, 72; citing *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325.

[18] SECTION 1. *Disqualification of Judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity or to counsel within the fourth degree, computed according to the rules of civil law, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all the parties in interest, signed by them and entered upon the record.

A Judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above.

[19] B.A. Garner, *BLACK'S LAW DICTIONARY* 67 (9th ed., 2009).

kinship, a fiction created by law in connection with the institution of marriage and family relations.[20] Relationship by affinity refers to a relation by virtue of a legal bond such as marriage. Relatives by affinity, therefore, are those commonly referred to as "in-laws," or stepfather, stepmother, stepchild and the like.[21]

Affinity may also be defined as "the relation which one spouse because of marriage has to blood relatives of the other. The connection existing, in consequence of marriage between each of the married persons and the kindred of the other. The doctrine of affinity grows out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation by affinity to his wife's blood relatives as she has by consanguinity and vice versa."[22]

Indeed, "there is no affinity between the blood relatives of one spouse and the blood relatives of the other. A husband is related by affinity to his wife's brother, but not to the wife of his wife's brother. There is no affinity between the husband's brother and the wife's sister; this is called *affinitas affinitatis*."[23]

In the instant case, considering that Judge Wacas is related to his aunt by consanguinity in the third degree, it follows by virtue of the marriage of his aunt to the uncle of Dagadag that Judge Wacas is the nephew-in-law of the uncle of Dagadag, *i.e.*, a relationship by affinity in the third degree. But Judge Wacas is not related by affinity to the blood relatives of the uncle of Dagadag as they are not his in-laws and, thus, are not related in any way to Dagadag. In like manner, Dagadag is the nephew-in-law of the aunt of Judge Wacas but is not related by affinity to the blood relatives of Judge Wacas' aunt, like Judge Wacas. In short, there is no relationship by affinity between

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[20] *Intestate Estate of Manolita Gonzales Vda. de Carungcong v. People*, G.R. No. 181409, February 11, 2010, 612 SCRA 272, 285.

[21] *People v. Atop*, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 169.

[22] *People v. Berana*, G.R. No. 123544, July 29, 1999, 311 SCRA 664, 675-676.

[23] *BLACK'S LAW DICTIONARY*, *supra* note 19.

Judge Wacas and Dagadag as they are not in-laws of each other. Thus, Judge Wacas is not disqualified under Sec. 1 of Rule 137 to hear Election Case No. 40.

It cannot be overemphasized that Tiggangay, for all his protestations against Judge Wacas' impartiality arising out of the perceived relationship by affinity between Dagadag and Judge Wacas, never moved for the inhibition of Judge Wacas from hearing Election Case No. 40. We view this fact as a belated attempt by Tiggangay to get back at Judge Wacas for the latter's adverse ruling in Tiggangay's electoral protest. Besides, as aptly put by Justice Inting, "a litigant cannot be permitted to speculate upon the action of the court and to raise objections only after an unfavorable decision has already been rendered."[24]

We find no reason to disturb Justice Inting's succinct observation that the affidavit and uncorroborated testimony of Tiggangay's driver, Gayudan, is incredulous and not worthy of credence. Gayudan supposedly followed Judge Wacas and wife to the ranch of Dagadag where the alleged victory party was celebrated on August 23, 2008 and observed for four hours the comings and goings of the people attending the party. Yet, Gayudan could not even name one attendee, aside from Judge Wacas and his wife, despite admitting that the people who allegedly attended the party are from his place.

Notably, the affidavit and testimony of Aggal belies and demolishes the affidavit and testimony of Gayudan. Aggal was the driver of Congressman Tagayo from 2007 to 2011 and was staying in the place of said Congressman which is just beside the ranch of Dagadag in Spring, Tabuk City, Kalinga. Aggal attested and testified that there was no party in the place of Dagadag on August 23, 2008. Besides, the unrebutted testimony of Palicpic places the whereabouts of Judge Wacas and his wife on August 23, 2008 not in Dagadag's place but in the place of their relative, which is just walking distance from their residence, to attend a clan gathering.

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[24] Report, p. 9.

In sum, We find nothing in the records to support a case of impropriety, much less manifest bias and partiality against Tiggangay.

WHEREFORE, the instant administrative complaint against Judge Marcelino K. Wacas, Presiding Judge of the RTC, Branch 25 in Tabuk City, Kalinga, is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.*, concur.

THIRD DIVISION

[G.R. No. 176985. April 1, 2013]

RICARDO E. VERGARA, JR., *petitioner, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS, WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR RESPECTIVE JURISDICTION, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT FINALITY AND BIND THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE. — This case does not fall within any of the recognized exceptions to the rule that only questions of law are proper in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.

Certainly, it is not Our function to assess and evaluate the evidence all over again, particularly where the findings of both the CA and the NLRC coincide. In any event, even if this Court would evaluate petitioner's arguments on its supposed merits, We still find no reason to disturb the CA ruling that affirmed the NLRC. The findings and conclusions of the CA show that the evidence and the arguments of the parties had all been carefully considered and passed upon. There are no relevant and compelling facts to justify a different resolution which the CA failed to consider as well as no factual conflict between the CA and the NLRC decisions.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS; FOUNDED ON THE CONSTITUTIONAL MANDATE TO PROTECT THE RIGHTS OF THE WORKERS, TO PROMOTE THEIR WELFARE, AND TO AFFORD THEM FULL PROTECTION. — Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer. Thus, any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer. The principle of non- diminution of benefits is actually founded on the Constitutional mandate to protect the rights of workers, to promote their welfare, and to afford them full protection. In turn, said mandate is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations, shall be rendered in favor of labor."

3. ID.; ID.; ID.; REQUISITES THAT MUST BE PRESENT TO PROVE DIMINUTION OF BENEFITS; THE BENEFIT MUST BE CHARACTERIZED BY REGULARITY, VOLUNTARY AND DELIBERATE INTENT OF THE EMPLOYER TO GRANT THE BENEFIT OVER A CONSIDERABLE PERIOD OF TIME. — There is diminution of benefits when the following requisites are present: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done

unilaterally by the employer. To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof. In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.

4. ID.; ID.; ID.; NO SUBSTANTIAL EVIDENCE IN CASE AT BAR TO PROVE THAT THE GRANT OF SALES MANAGEMENT INCENTIVES (SMI) TO ALL RETIRED DISTRICT SALES SUPERVISORS (DSS) REGARDLESS OF WHETHER OR NOT THEY QUALIFY TO THE SAME HAD RIPENED INTO A COMPANY PRACTICE. — Upon review of the entire case records, We find no substantial evidence to prove that the grant of SMI to all retired DSSs regardless of whether or not they qualify to the same had ripened into company practice. Despite more than sufficient opportunity given him while his case was pending before the NLRC, the CA, and even to this Court, petitioner utterly failed to adduce proof to establish his allegation that SMI has been consistently, deliberately and voluntarily granted to all retired DSSs without any qualification or conditions whatsoever. The only two pieces of evidence that he stubbornly presented throughout the entirety of this case are the sworn statements of Renato C. Hidalgo (Hidalgo) and Ramon V. Velazquez (Velasquez), former DSSs of respondent who retired in 2000 and 1998, respectively. They claimed that the SMI was included in their retirement package even if they did not meet the sales and collection qualifiers. However, juxtaposing these with the evidence presented by respondent would reveal the frailty of their statements.

5. ID.; ID.; ID.; RESPONDENT COMPANY'S ISOLATED ACT OF INCLUDING THE SMI IN THE RETIREMENT

PACKAGE OF ONE OF ITS EMPLOYEES COULD HARDLY BE CLASSIFIED AS A COMPANY PRACTICE THAT MAY BE CONSIDERED AN ENFORCEABLE OBLIGATION. — Respondent's isolated act of including the SMI in the retirement package of Velazquez could hardly be classified as a company practice that may be considered an enforceable obligation. To repeat, the principle against diminution of benefits is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period of time which is consistent and deliberate; it presupposes that a company practice, policy and tradition favorable to the employees has been clearly established; and that the payments made by the company pursuant to it have ripened into benefits enjoyed by them. Certainly, a *practice* or *custom* is, as a general rule, not a source of a legally demandable or enforceable right. Company practice, just like any other fact, habits, customs, usage or patterns of conduct, must be proven by the offering party who must allege and establish specific, repetitive conduct that might constitute evidence of habit or company practice.

6. **ID.; ID.; ID.; PETITIONER COULD HAVE SALVAGED HIS CASE HAD HE STEPPED UP TO DISPROVE RESPONDENT'S CONTENTION THAT HE MISERABLY FAILED TO MEET THE COLLECTION QUALIFIERS OF THE SMI. —** We rule that petitioner could have salvaged his case had he stepped up to disprove respondent's contention that he miserably failed to meet the collection qualifiers of the SMI. Respondent argues that — An examination of the Company's aged trial balance reveals that petitioner did not meet the trade receivable qualifier. On the contrary, the said trial balance reveals that petitioner had a large amount of uncollected overdue accounts. x x x The above data was repeatedly raised by respondent in its Rejoinder (To Complainant's Reply) before the LA, Memorandum of Appeal and Opposition (To Complainant-Appellee's Motion for Reconsideration) before the NLRC, and Comment (On the Petition), Memorandum (For the Private Respondent), and Comment (On the Motion for Reconsideration) before the CA. Instead of frontally rebutting the data, petitioner treated them with deafening silence; thus, reasonably and logically implying lack of evidence to support the contrary.

APPEARANCES OF COUNSEL

Rolando A. Villacorta for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

PERALTA, *J.*:

Before Us is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure assailing the January 9, 2007 Decision[1] and March 6, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 94622, which affirmed the January 31, 2006 Decision[3] and March 8, 2006 Resolution[4] of the National Labor Relations Commission (NLRC) modifying the September 30, 2003 Decision[5] of the Labor Arbiter (LA) by deleting the sales management incentives in the computation of petitioner's retirement benefits.

Petitioner Ricardo E. Vergara, Jr. was an employee of respondent Coca-Cola Bottlers Philippines, Inc. from May 1968 until he retired on January 31, 2002 as a District Sales Supervisor (DSS) for Las Piñas City, Metro Manila. As stipulated in respondent's existing Retirement Plan Rules and Regulations at the time, the Annual Performance Incentive Pay of RSMs, DSSs, and SSSs shall be considered in the computation of retirement benefits, as follows: Basic Monthly Salary + Monthly Average Performance Incentive (which is the total performance incentive earned during the year immediately preceding ÷ 12 months) × No. of Years in Service.[6]

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Jose Catral Mendoza (now a member of this Court Justice) and Ramon M. Bato, Jr., concurring; *rollo*, pp. 16-32.

[2] *Id.* at 34-35.

[3] CA *rollo*, pp. 12-20.

[4] *Id.* at 25-27.

[5] *Id.* at 28-36.

[6] *Rollo*, p. 37.

Claiming his entitlement to an additional PhP474,600.00 as Sales Management Incentives (SMI)[7] and to the amount of PhP496,016.67 which respondent allegedly deducted illegally, representing the unpaid accounts of two dealers within his jurisdiction, petitioner filed a complaint before the NLRC on June 11, 2002 for the payment of his "Full Retirement Benefits, Merit Increase, Commission/Incentives, Length of Service, Actual, Moral and Exemplary Damages, and Attorney's Fees."[8]

After a series of mandatory conference, both parties partially settled with regard the issue of merit increase and length of service.[9] Subsequently, they filed their respective Position Paper and Reply thereto dealing on the two remaining issues of SMI entitlement and illegal deduction.

On September 30, 2003, the LA rendered a Decision[10] in favor of petitioner, directing respondent to reimburse the amount illegally deducted from petitioner's retirement package and to integrate therein his SMI privilege. Upon appeal of respondent, however, the NLRC modified the award and deleted the payment of SMI.

Petitioner then moved to partially execute the reimbursement of illegal deduction, which the LA granted despite respondent's opposition.[11] Later, without prejudice to the pendency of petitioner's petition for *certiorari* before the CA, the parties executed a Compromise Agreement[12] on October 4, 2006, whereby petitioner acknowledged full payment by respondent of the amount of PhP496,016.67 covering the amount illegally deducted.

The CA dismissed petitioner's case on January 9, 2007 and denied his motion for reconsideration two months thereafter.

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[7] Previously termed as Sales Performance Incentive (SPI).

[8] Records, pp. 3-4, 22.

[9] *Id.* at 16; CA *rollo*, p. 4.

[10] *Id.* at 115-123.

[11] *Id.* at 347-349, 351-358, 369-373.

[12] *Id.* at 391-392.

Hence, this present petition to resolve the singular issue of whether the SMI should be included in the computation of petitioner's retirement benefits on the ground of consistent company practice. Petitioner insistently avers that many DSSs who retired without achieving the sales and collection targets were given the average SMI in their retirement package.

We deny.

This case does not fall within any of the recognized exceptions to the rule that only questions of law are proper in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.[13] Certainly, it is not Our function to assess and evaluate the evidence all over again, particularly where the findings of both the CA and the NLRC coincide.

In any event, even if this Court would evaluate petitioner's arguments on its supposed merits, We still find no reason to disturb the CA ruling that affirmed the NLRC. The findings and conclusions of the CA show that the evidence and the arguments of the parties had all been carefully considered and passed upon. There are no relevant and compelling facts to justify a different resolution which the CA failed to consider as well as no factual conflict between the CA and the NLRC decisions.

Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer.[14] Thus, any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer.[15] The

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[13] *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*, G.R. No. 145561, June 15, 2005, 460 SCRA 186, 191-192.

[14] *University of the East v. University of the East Employees' Association*, G.R. No. 179593, September 14, 2011, 657 SCRA 637, 650.

[15] *Eastern Telecommunications Philippines, Inc., v. Eastern Telecoms Employees Union*, G.R. No. 185665, February 8, 2012, 665 SCRA 516, 533;

principle of non-diminution of benefits is actually founded on the Constitutional mandate to protect the rights of workers, to promote their welfare, and to afford them full protection.[16] In turn, said mandate is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations, shall be rendered in favor of labor."[17]

There is diminution of benefits when the following requisites are present: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.[18]

To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately.[19] Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company

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University of the East v. University of the East Employees' Association, supra; and *Arco Metal Products, Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, May 14, 2008, 554 SCRA 110, 118.

[16] *Eastern Telecommunications Philippines, Inc., v. Eastern Telecoms Employees Union, supra*; and *Arco Metal Products, Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU), supra* note 15.

[17] *Arco Metal Products, Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU), supra* note 15.

[18] *Supreme Steel Corporation v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL)*, G.R. No. 185556, March 28, 2011, 646 SCRA 501, 527.

[19] See *Eastern Telecommunications Philippines, Inc., v. Eastern Telecoms Employees Union, supra* note 15, at 532; *Supreme Steel Corporation v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL), supra*, at 528; and *Metropolitan Bank and Trust Company v. National Labor Relations Commission*, G.R. No. 152928, June 18, 2009, 589 SCRA 376, 384.

practice should have been exercised in order to constitute voluntary employer practice.[20] The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time.[21] It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof.[22] In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.[23]

Upon review of the entire case records, We find no substantial evidence to prove that the grant of SMI to all retired DSSs regardless of whether or not they qualify to the same had ripened into company practice. Despite more than sufficient opportunity given him while his case was pending before the NLRC, the CA, and even to this Court, petitioner utterly failed to adduce proof to establish his allegation that SMI has been consistently, deliberately and voluntarily granted to all retired DSSs without any qualification or conditions whatsoever. The only two pieces of evidence that he stubbornly presented throughout the entirety of this case are the sworn statements of Renato C. Hidalgo (Hidalgo) and Ramon V. Velazquez (Velasquez), former DSSs

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[20] *Metropolitan Bank and Trust Company v. National Labor Relations Commission*, *supra*, at 385-386; *Arco Metal Products, Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, *supra* note 15, at 119; and *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*, *supra* note 13, at 195.

[21] *Metropolitan Bank and Trust Company v. National Labor Relations Commission*, *supra* note 19, at 386.

[22] See *Eastern Telecommunications Philippines, Inc., v. Eastern Telecoms Employees Union*, *supra* note 15, at 532; *University of the East v. University of the East Employees' Association*, *supra* note 14; and *Metropolitan Bank and Trust Company v. National Labor Relations Commission*, *supra* note 19.

[23] See *University of the East v. University of the East Employees' Association*, *supra* note 14, at 650-651.

of respondent who retired in 2000 and 1998, respectively. They claimed that the SMI was included in their retirement package even if they did not meet the sales and collection qualifiers.[24] However, juxtaposing these with the evidence presented by respondent would reveal the frailty of their statements.

The declarations of Hidalgo and Velazquez were sufficiently countered by respondent through the affidavits executed by Norman R. Biola (Biola), Moises D. Escasura (Escasura), and Ma. Vanessa R. Balles (Balles).[25] Biola pointed out the various stop-gap measures undertaken by respondent beginning 1999 in order to arrest the deterioration of its accounts receivables balance, two of which relate to the policies on the grant of SMI and to the change in the management structure of respondent upon its re-acquisition by San Miguel Corporation. Escasura represented that he has personal knowledge of the circumstances behind the retirement of Hidalgo and Velazquez. He attested that contrary to petitioner's claim, Hidalgo was in fact qualified for the SMI. As for Velazquez, Escasura asserted that even if he (Velazquez) did not qualify for the SMI, respondent's General Manager in its Calamba plant still granted his (Velazquez) request, along with other numerous concessions, to achieve industrial peace in the plant which was then experiencing labor relations problems. Lastly, Balles confirmed that petitioner failed to meet the trade receivable qualifiers of the SMI. She also cited the cases of Ed Valencia (Valencia) and Emmanuel Gutierrez (Gutierrez), both DSSs of respondent who retired on January 31, 2002 and December 30, 2002, respectively. She noted that, unlike Valencia, Gutierrez also did not receive the SMI as part of his retirement pay, since he failed to qualify under the policy guidelines. The verity of all these statements and representations stands and holds true to Us, considering that petitioner did not present any iota of proof to debunk the same.

Therefore, respondent's isolated act of including the SMI in the retirement package of Velazquez could hardly be classified

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[24] Records, pp. 110-111.

[25] *Id.* at 140-142, 157-160.

as a company practice that may be considered an enforceable obligation. To repeat, the principle against diminution of benefits is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period of time which is consistent and deliberate; it presupposes that a company practice, policy and tradition favorable to the employees has been clearly established; and that the payments made by the company pursuant to it have ripened into benefits enjoyed by them.[26] Certainly, a *practice* or *custom* is, as a general rule, not a source of a legally demandable or enforceable right.[27] Company practice, just like any other fact, habits, customs, usage or patterns of conduct, must be proven by the offering party who must allege and establish specific, repetitive conduct that might constitute evidence of habit or company practice.[28]

To close, We rule that petitioner could have salvaged his case had he stepped up to disprove respondent's contention that he miserably failed to meet the collection qualifiers of the SMI. Respondent argues that —

An examination of the Company's aged trial balance reveals that petitioner did not meet the trade receivable qualifier. On the contrary, the said trial balance reveals that petitioner had a large amount of uncollected overdue accounts. For the year 2001, his percentage collection efficiency for current issuance was at an average of 13.5% a month as against the required 70%. For the same, petitioner's collection efficiency was at an average of 60.25% per month for receivables aged 1-30 days, which is again, way below the required 90%. For receivables aged 31-60 days during said year, petitioner's collection efficiency was at an average of 56.17% per month, which is approximately half of the required 100%. Worse, for receivables over 60 days old, petitioner's average

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[26] *University of the East v. University of the East Employees' Association*, *supra* note 14.

[27] *Makati Stock Exchange, Inc. v. Campos*, G.R. No. 138814, April 16, 2009, 585 SCRA 120, 131.

[28] *Supreme Steel Corporation v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL)*, *supra* note 18, at 522.

collection efficiency per month was a reprehensively low 14.10% as against the required 100%.[29]

The above data was repeatedly raised by respondent in its Rejoinder (To Complainant's Reply) before the LA,[30] Memorandum of Appeal[31] and Opposition (To Complainant-Appellee's Motion for Reconsideration)[32] before the NLRC, and Comment (On the Petition),[33] Memorandum (For the Private Respondent),[34] and Comment (On the Motion for Reconsideration)[35] before the CA. Instead of frontally rebutting the data, petitioner treated them with deafening silence; thus, reasonably and logically implying lack of evidence to support the contrary.

WHEREFORE, the petition is **DENIED.** The January 9, 2007 Decision and March 6, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 94622, which affirmed the January 31, 2006 Decision and March 8, 2006 Resolution of the NLRC deleting the LA's inclusion of sales management incentives in the computation of petitioner's retirement benefits, is hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Leonen, JJ.,* concur.

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[29] *Rollo,* pp. 68-69.

[30] Records, pp. 136-137.

[31] *Id.* at 198.

[32] *Id.* at 333.

[33] CA *rollo,* p. 134.

[34] *Id.* at 432-433.

[35] *Id.* at 480.

[*] Designated Acting Member, in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated February 22, 2013.

SECOND DIVISION

[G.R. No. 179041. April 1, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNEL NOCUM,** [*] **REY JOHNNY RAMOS, CARLOS JUN POSADAS, PANDAO POLING PANGANDAG** (all at large), *accused,*

REYNALDO MALLARI, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-CARNAPPING ACT OF 1972 (R.A. NO. 6539); CARNAPPING, DEFINED; BURDEN OF THE PROSECUTION IN A CASE FOR CARNAPPING WITH HOMICIDE. — Section 2 of RA 6539 defines carnapping as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." The crime of carnapping with homicide is punishable under Section 14 of the said law, as amended by Section 20 of RA 7659. To prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof." Thus, the prosecution in this case has the burden of proving that: (1) Mallari took the Toyota FX taxi; (2) his original criminal design was carnapping; (3) he killed the driver, Medel; and (4) the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof." The trial and appellate courts held that the prosecution was able to discharge its burden of proving that Mallari was guilty beyond reasonable doubt of carnapping with homicide. These courts ruled that Mallari stole the FX taxi driven by Medel after he agreed to illegally supply his co-accused with this type of vehicle. The trial and appellate courts found that Mallari killed Medel in the course of the commission of the carnapping.

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[*] Also spelled as Nocom in some parts of the record.

2. ID.; SPECIAL COMPLEX CRIMES; CARNAPPING WITH HOMICIDE; DULY ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE IN CASE AT BAR. — The culpability of Mallari for the complex crime of carnapping with homicide is duly established by the confluence of circumstantial evidence. Mahilac testified that he was present when Mallari and his co-accused, all members of the "FX Gang," gathered in Muntinlupa City to plan and conspire to steal vehicles and sell them to unscrupulous buyers in Mindanao. Immediately after said meeting, Mahilac saw Mallari hail the FX taxi driven by Medel, talk to him, board it together with two other conspirators, and head south towards the direction of Quezon province. A few days later, Mallari and his companions met Mahilac in Cagayan De Oro City on board the same FX taxi they rode in Muntinlupa City. All these show that Mallari's original criminal design was to carnap the taxi and that he accomplished his purpose without the consent of its owner. In addition, when the vehicle was brought to Cagayan de Oro City, its driver, Medel, was no longer with them. The vehicle also reeked of dried human blood. Upon inquiry by Mahilac, Mallari admitted that the dried blood belonged to Medel who had to be killed for resisting the group. Mallari also told him that Medel's body was dumped along Zigzag Road in Atimonan, Quezon. Mallari and his co-accused received ₱250,000.00 upon delivery of the FX taxi to its final destination. These prove that Medel was killed in the course of the commission of the carnapping. The identity of Medel as the driver of the taxi was established by his mother and wife who both stated that he was the driver of the taxi on the day it was stolen by Mallari and his co-conspirators. The two later on identified his corpse when it was discovered in the same vicinity which Mallari told Mahilac to be the place where they dumped the dead body of Medel. In fine, all the elements of the special complex crime of carnapping with homicide, as well as the identity of Mallari as one of the perpetrators of the crime, were all proved beyond reasonable doubt. The foregoing circumstances inevitably lead to the lone, fair and reasonable conclusion that Mallari participated in stealing the FX taxi driven by Medel and in killing him.

3. ID.; ID.; ID.; PROPER IMPOSABLE PENALTY CONSIDERING THE ABSENCE OF ANY AGGRAVATING CIRCUMSTANCES. — Under the last clause of Section 14

of the Anti-Carnapping Act of 1972 as amended by Section 20 of RA 7659, the penalty of *reclusion perpetua* to death shall be imposed when the owner or driver of the vehicle is killed in the course of the commission of the carnapping or on the occasion thereof. In this case, the trial court considered as aggravating circumstance the commission of the offense by a member of an organized or syndicated crime group under Article 62 of the RPC as amended by RA 7659 and, hence, imposed upon Mallari the death penalty. However, under Rule 110, Section 8 of the Rules of Court, all aggravating and qualifying circumstances must be alleged in the Information. This new rule took effect on December 1, 2000, but applies retroactively to pending cases since it is favorable to the appellant. Here, there is no allegation in the Information that Mallari was a member of a syndicate or that he and his companions "had formed part of a group organized for the general purpose of committing crimes for gain, which is the essence of a syndicated or organized crime group." Hence, the same cannot be appreciated as an aggravating circumstance against Mallari. Thus, in consonance with Article 63(2) of the RPC, which provides that in the absence of any aggravating circumstance in the commission of the offense, the lesser penalty shall be applied. Mallari must, therefore, suffer the lesser penalty of *reclusion perpetua*. Mallari is also not eligible for parole pursuant to Section 3 of RA 9346.

4. ID.; ID.; ID.; CIVIL LIABILITY; DAMAGES; ONLY DULY RECEIPTED EXPENSES CAN BE THE BASIS OF ACTUAL DAMAGES; TEMPERATE DAMAGES IN LIEU OF ACTUAL DAMAGES, AWARDED. — For the killing of Medel, we award to his heirs the amount of ₱50,000.00 as civil indemnity pursuant to prevailing jurisprudence. Said heirs are also entitled to an award of moral damages in the sum of ₱50,000.00 as in all cases of murder and homicide, without need of allegation and proof other than the death of the victim. We cannot, however, award actual damages due to the absence of receipts to substantiate the expenses incurred for Medel's funeral. The rule is that only duly receipted expenses can be the basis of actual damages. Nonetheless, under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved." We therefore award the sum of ₱25,000.00 as temperate damages in lieu of

actual damages to the heirs of Medel. "In addition, and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid."

5. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; APPELLANT'S DEFENSE OF ALIBI DESERVES NO CREDENCE. — Mallari's claim that he was helping his wife with household chores at the time the crime was committed does not deserve credence. This defense of alibi cannot prevail over the testimony of Mahilac which, taken in its entirety, leads to the reasonable conclusion that Mallari participated in the commission of the crime. Moreover, alibi is inherently weak, unreliable, and can be easily fabricated. Hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused. Here, Mallari could have presented evidence to support his alibi, but oddly, he did not. Thus, such a defense fails.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the January 31, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00930, which dismissed the appeal of appellant Reynaldo Mallari (Mallari) and affirmed with modification the December 15, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 276, Muntinlupa City in Criminal Case No. 00-551 finding Mallari guilty beyond reasonable doubt of the crime of carnapping with homicide.

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[1] CA *rollo*, pp. 105-114; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[2] Records, pp. 199-208; penned by Judge N. C. Perello.

Factual Antecedents

On May 25, 2000, an Information[3] was filed charging Mallari and co-accused Arnel Nocum (Nocum), Rey Johnny Ramos (Ramos), Carlos Jun Posadas (Posadas) and Pandao Poling Pangandag *alias* Rex Pangandag (Pangandag) with violation of Republic Act (RA) No. 6539, otherwise known as the Anti-Carnapping Act of 1972, as amended by RA 7659.[4] The accusatory portion of the Information reads:

> That on or about September 12, 1998 in Muntinlupa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent to gain for themselves and without the consent of the owner, did then and there, willfully, unlawfully and feloniously take and carry away one motor vehicle more particularly described as follows:
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> | | | | |
> |---|---|---|---|
> | Make/Type | : | - | Toyota Tamaraw FX |
> | Motor No. | : | - | 7K-0157101 |
> | Chassis No. | : | - | KF52-011609 |
> | Plate No. | : | - | PXT- 143 |
> | Color | : | - | Med. Grey Net |
>
> valued at more or less Three Hundred Thousand Pesos (₱300,000.00) to the damage and [prejudice] of its owner, Lourdes Eleccion, in the aforestated amount and in the course of the commission thereof, Erico Medel, the driver of the said vehicle, was killed.
>
> CONTRARY TO LAW.[5]

When the case was called for arraignment on November 10, 2000, only Mallari appeared as his co-accused remain at-large. He pleaded "not guilty" to the charge.[6] Thereafter, trial ensued.

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[3] *Id.* at 1-3.

[4] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES.

[5] Records, pp. 1-2.

[6] *Id.* at 65.

The Prosecution's Version

The prosecution's lone witness was Chris Mahilac (Mahilac), a self-confessed member of "FX gang," a syndicate notorious for carjacking Toyota FX vehicles. The *modus operandi* of the gang is to carnap Toyota FX vehicles, transport them to Mindanao, and have them registered and sold to prospective buyers there. Together with Mallari and several others, Mahilac was previously charged with carnapping[7] before the RTC of Parañaque City but was later on discharged to be a state witness.[8] Consequently, Mahilac was placed under the Witness Protection Program of the Department of Justice (DOJ).[9]

Mahilac testified that the "FX gang" was active in Metro Manila and Mindanao.[10] Nocum led the syndicate's criminal activities in Metro Manila while Pangandag, who was the head of the Land Transportation Office in Lanao Del Norte,[11] led the Mindanao operations.[12] Ramos, Posadas and Mallari were members of the gang.[13]

On September 6, 1998, while in Calamba, Laguna, Mahilac received a call from Nocum[14] informing him of Pangandag's arrival in Manila on September 12, 1998.[15] Subsequently, Mahilac, Nocum, Pangandag, Ramos, Posadas and Mallari met in Chowking fastfood restaurant in Poblacion, Muntinlupa City.[16] During the said meeting, Pangandag demanded that their group

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[7] See Information in Criminal Case No. 99-704 filed before the RTC of Parañaque City, Branch 259, *id.* at 187-189.

[8] TSN, March 21, 2003, pp. 14-15.

[9] TSN, September 8, 2002, pp. 3-4.

[10] TSN, September 18, 2002, p. 5.

[11] *Id.* at 22.

[12] *Id.* at 5.

[13] *Id.*

[14] *Id.* at 6-7.

[15] *Id.* at 7-8.

[16] *Id.* at 8-10.

deliver two Toyota FX vehicles to him in Lanao Del Norte by Monday or Tuesday of the following week.[17] Nocum agreed and gave Mallari ₱20,000.00 for operating expenses. Mahilac received ₱3,500.00 and was instructed to meet the group in Cagayan de Oro City.[18]

As the group was departing from the restaurant, a Toyota FX taxi with plate number PXT-143 passed-by.[19] Mallari flagged it down, talked to the driver, and boarded the same together with Ramos and Posadas.[20] They proceeded south.[21]

On September 14, 1998, Mahilac arrived in Cagayan de Oro City and proceeded to McDonald's Restaurant on Limketkai Street.[22] Mallari, Ramos and Posadas arrived at around 4:14 p.m. on board the same Toyota FX taxi that Mallari flagged down in Muntinlupa City.[23] They agreed to proceed to Iligan City en route to Tubod, Lanao del Norte, where said vehicle was to be delivered to Pangandag.[24] Mallari told Mahilac not to board the said vehicle because its back portion reeked of the dried blood of the FX taxi driver, Erico[**] Medel (Medel), who was stabbed to death while resisting the group.[25] Mallari also informed Mahilac that Medel's corpse was dumped somewhere in Atimonan, Quezon.[26] Mahilac thus took a taxi to Iligan City.[27]

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[17] *Id.* at 8-13.

[18] *Id.*

[19] *Id.* at 13-14.

[20] *Id.* at 14-15.

[21] *Id.* at 15.

[22] *Id.* at 15-16.

[23] *Id.* at 16-17.

[24] *Id.* at 17-18.

[**] Also spelled as Eric in some parts of the records.

[25] TSN September 18, 2002, pp. 18-20.

[26] *Id.* at 20.

[27] *Id.*

Upon their arrival in Iligan City, Pangandag instructed them to take the vehicle to his residence in Tubod, Lanao del Norte.[28] They arrived at Pangandag's residence and were given ₱250,000.00 as consideration for the vehicle.[29] Mahilac received ₱20,000.00 as his share.

The gang continued to engage in this nefarious activity until Mahilac's arrest by law enforcement officers.[30]

In the meantime, on September 27, 1999, a cadaver in advance state of decomposition was found along Zigzag Road, *Barangay* Malinao Ilaya, Atimonan, Quezon. It was interred in the municipal cemetery of Atimonan, Quezon but was later on exhumed for identification.[31] Based on the four extracted teeth and a piece of white "FILA" shoe,[32] the mother and the wife of the victim positively identified the cadaver to be that of Medel.

Appellant's Version

Mallari denied any knowledge of the carnapping incident.[33] He also denied knowing Nocum, Ramos and Posadas.[34] He testified that he was with his wife and two children in their home in Tunasan, Muntinlupa City at the time the alleged carnapping occurred.[35] He claimed that on June 25, 1999, four men in civilian clothes came to his house and forced him to board a van[36] where he was blindfolded. He was then taken to Camp Crame, Quezon City.[37]

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[28] *Id.* at 21.

[29] *Id.* at 22-24.

[30] *Id.* at 25-26.

[31] Exhibit "D", records, p. 157.

[32] *Id.*

[33] TSN, September 19, 2003, p. 4.

[34] *Id.* at 15.

[35] *Id.* at 3.

[36] *Id.* at 4.

[37] *Id.* at 5.

According to Mallari, Mahilac was his employer.[38] He was unaware of Mahilac's reason for implicating him in the case.[39]

Mallari further testified that while in detention, he was made to sign a document which he cannot remember.[40] He was taken to the DOJ and told that his case would be studied if he signs a document the contents of which were duly explained to him.[41] Should he not sign the same, he will be charged immediately with carnapping with homicide.[42] He therefore decided to sign the documents without the assistance of a lawyer, but continued to be detained in Camp Crame, Quezon City.[43]

Ruling of the Regional Trial Court

On December 15, 2003, the RTC rendered its Decision[44] finding Mallari guilty beyond reasonable doubt of carnapping with homicide. The trial court ruled that the testimony of Mahilac that Mallari participated in the theft of the FX taxi and the killing of its driver, Medel, cannot be negated by Mallari's denial and uncorroborated alibi. It also found that the commission of the crime was a result of a planned operation with Mallari and all the accused doing their assigned tasks to ensure the consummation of their common criminal objective.[45]

The trial court further held that Mahilac would not have known about the killing of Medel if he had not been informed by Mallari. He had no reason to falsely accuse Mallari and even implicated himself by: (1) admitting his presence during the planned theft of the FX taxi; (2) admitting his presence in Cagayan De Oro

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[38] *Id.* at 6.

[39] *Id.* at 7-8.

[40] *Id.*

[41] *Id.* at 9.

[42] *Id.*

[43] *Id.* at 10 and 12.

[44] Records, pp. 199-208.

[45] *Id.* at 207.

City together with Mallari; (3) directing Mallari and his co-accused to proceed with him to Pangandag in Lanao Del Norte; and (4) receiving the sum of ₱20,000.00 as his share in the criminal operation.

The dispositive portion of the Decision reads:

> PREMISES CONSIDERED, Accused Reynaldo Mallari is found guilty beyond reasonable doubt for the crime of CARNAPPING WITH HOMICIDE and is hereby sentenced to die by lethal injection.
>
> The Jail Warden of Muntinlupa City is hereby directed to bring Reynaldo Mallari to the New Bilibid Prison where he may serve his sentence.
>
> It Is SO ORDERED.[46]

Ruling of the Court of Appeals

On January 31, 2007, the CA rendered its Decision[47] affirming with modification the ruling of the trial court. The appellate court held that Mahilac's positive identification of Mallari as a member of the "FX gang" and his participation in the theft of the FX taxi and killing of its driver, Medel, sufficiently established his guilt beyond reasonable doubt of the crime charged. The discovery of the remains of Medel in the vicinity mentioned by Mallari to Mahilac also gave credence to the latter's testimony.

The CA further held that the trial court's determination on the credibility of Mahilac must be given great respect and, as a rule, will not be reversed on appeal in the absence of cogent reason. The CA also found no ill-motive on the part of Mahilac to testify falsely against Mallari.

According to the CA, the fact that the prosecution presented Mahilac as its sole witness is of no moment. His positive and credible testimony is sufficient to convict Mallari,[48] whose defense

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[46] *Id.* at 208.

[47] CA *rollo*, pp. 105-114.

[48] *Id.* at 113.

of denial and alibi cannot prevail over the straightforward testimony of the former.[49]

However, the CA modified the penalty from death to *reclusion perpetua* pursuant to RA 9346[50] which prohibited the imposition of the death penalty.[51]

The dispositive portion of the CA Decision reads:

> **WHEREFORE,** premises considered, the appeal is hereby **DISMISSED**. The assailed December 15, 2003 Decision of the Regional Trial Court of Muntinlupa City, Branch 276, in Criminal Case No. 00-551, is hereby **AFFIRMED** with **MODIFICATION** in that the death penalty imposed is reduced to *reclusion perpetua*, pursuant to Republic Act No. 9346, which did away with the imposition of death penalty.
>
> **SO ORDERED**.[52]

Mallari filed a Notice of Appeal.[53] On October 15, 2007,[54] we accepted the appeal and notified the parties to file their supplemental briefs. However, Mallari opted not to file a supplemental brief in the absence of new issues to be raised. For its part, the Office of the Solicitor General manifested that it is likewise adopting the Appellee's Brief it filed with the CA as its Supplemental Brief.[55]

The Assignment of Errors

The errors assigned in the Appellant's Brief are as follows:

> I. THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS

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[49] *Id.*

[50] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[51] CA *rollo*, p. 114.

[52] *Id.* Emphases in the original.

[53] *Id.* at 117.

[54] *Rollo*, p. 17.

[55] *Id.* at 13-20.

BEEN PROVEN BEYOND REASONABLE DOUBT DESPITE THE LACK OF MATERIAL EVIDENCE TO JUSTIFY HIS CONVICTION; and

II. GRANTING WITHOUT ADMITTING THAT THE ACCUSED-APPELLANT COMMITTED THE CRIME CHARGED, THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE LACK OF EVIDENCE OTHER THAN THE MERE ALLEGATION BY THE LONE PROSECUTION WITNESS CHRIS MAHILAC THAT THE ACCUSED-APPELLANT PARTICIPATED IN THE KILLING OF ERIC MEDEL.[56]

Mallari assails the credibility of Mahilac. He contends that as a state witness under the Witness Protection Program of the DOJ, Mahilac would implicate just any person as his cohort to justify his inclusion in the program.[57] Mallari also argues that the evidence of the prosecution is not sufficient to prove his guilt beyond reasonable doubt.[58]

On the other hand, the prosecution maintains that the circumstantial evidence was sufficient to convict Mallari.[59] Finally, the prosecution sought civil indemnity and moral damages of ₱50,000.00 each.[60]

Our Ruling

The appeal is unmeritorious.

Carnapping defined; Burden of the prosecution in a case for Carnapping with Homicide.

Section 2 of RA 6539 defines carnapping as "the taking, with intent to gain, of a motor vehicle belonging to another

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[56] CA *rollo*, p. 55.

[57] *Id.* at 60.

[58] *Id.* at 61-64.

[59] *Id.* at 91-94.

[60] *Id.* at 96.

without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." The crime of carnapping with homicide is punishable under Section 14[61] of the said law, as amended by Section 20 of RA 7659. To prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof." Thus, the prosecution in this case has the burden of proving that: (1) Mallari took the Toyota FX taxi; (2) his original criminal design was carnapping; (3) he killed the driver, Medel; and (4) the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof."[62]

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[61] Republic Act No. 6539, Section 14 previously reads:

Penalty of carnapping. Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of life imprisonment to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed in the commission of the carnapping.

As amended, it now provides as follows:

Penalty for carnapping. Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

[62] *People v. Latayada*, 467 Phil. 682, 692 (2004).

The trial and appellate courts held that the prosecution was able to discharge its burden of proving that Mallari was guilty beyond reasonable doubt of carnapping with homicide. These courts ruled that Mallari stole the FX taxi driven by Medel after he agreed to illegally supply his co-accused with this type of vehicle. The trial and appellate courts found that Mallari killed Medel in the course of the commission of the carnapping.

We find no reason to deviate from these courts' evaluation as to Mallari's culpability.

The crime of carnapping with homicide, as well as the identity of Mallari as one of the perpetrators of the crime, is duly established by circumstantial evidence.

The culpability of Mallari for the complex crime of carnapping with homicide is duly established by the confluence of circumstantial evidence. Mahilac testified that he was present when Mallari and his co-accused, all members of the "FX Gang," gathered in Muntinlupa City to plan and conspire to steal vehicles and sell them to unscrupulous buyers in Mindanao. Immediately after said meeting, Mahilac saw Mallari hail the FX taxi driven by Medel, talk to him, board it together with two other conspirators, and head south towards the direction of Quezon province. A few days later, Mallari and his companions met Mahilac in Cagayan De Oro City on board the same FX taxi they rode in Muntinlupa City. All these show that Mallari's original criminal design was to carnap the taxi and that he accomplished his purpose without the consent of its owner. In addition, when the vehicle was brought to Cagayan de Oro City, its driver, Medel, was no longer with them. The vehicle also reeked of dried human blood. Upon inquiry by Mahilac, Mallari admitted that the dried blood belonged to Medel who had to be killed for resisting the group. Mallari also told him that Medel's body was dumped along Zigzag Road in Atimonan, Quezon. Mallari and his co-accused received ₱250,000.00 upon delivery of the FX taxi to its final destination. These prove that Medel was killed in the course of the commission of the carnapping.

The identity of Medel as the driver of the taxi was established by his mother and wife who both stated that he was the driver of the taxi on the day it was stolen by Mallari and his co-conspirators.[63] The two later on identified his corpse when it was discovered in the same vicinity which Mallari told Mahilac to be the place where they dumped the dead body of Medel.[64]

In fine, all the elements of the special complex crime of carnapping with homicide, as well as the identity of Mallari as one of the perpetrators of the crime, were all proved beyond reasonable doubt. The foregoing circumstances inevitably lead to the lone, fair and reasonable conclusion that Mallari participated in stealing the FX taxi driven by Medel and in killing him.

Mallari's defense of alibi deserves no credence.

Mallari's claim that he was helping his wife with household chores at the time the crime was committed does not deserve credence. This defense of alibi cannot prevail over the testimony of Mahilac which, taken in its entirety, leads to the reasonable conclusion that Mallari participated in the commission of the crime. Moreover, alibi is inherently weak, unreliable, and can be easily fabricated.[65] Hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.[66] Here, Mallari could have presented evidence to support his alibi, but oddly, he did not. Thus, such a defense fails.

The Penalty

Under the last clause of Section 14 of the Anti-Carnapping Act of 1972 as amended by Section 20 of RA 7659, the penalty

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[63] Exhibit "B", *Sinumpaang Salaysay* of Velma De Jesus Medel, records, pp. 151-153 and Exhibit "C", *Sinumpaang Salaysay* of Florence Aduan Medel, *id.* at 154-156.

[64] *Id.*

[65] *People v. Calope*, G.R. No. 97284, January 21, 1994, 229 SCRA 413, 420.

[66] *Id.*

of *reclusion perpetua* to death shall be imposed when the owner or driver of the vehicle is killed in the course of the commission of the carnapping or on the occasion thereof.[67] In this case, the trial court considered as aggravating circumstance the commission of the offense by a member of an organized or syndicated crime group under Article 62 of the RPC as amended by RA 7659[68] and, hence, imposed upon Mallari the death penalty.

However, under Rule 110, Section 8 of the Rules of Court, all aggravating and qualifying circumstances must be alleged in the Information. This new rule took effect on December 1, 2000, but applies retroactively to pending cases since it is favorable to the appellant.[69] Here, there is no allegation in the Information that Mallari was a member of a syndicate or that he and his companions "had formed part of a group organized for the general purpose of committing crimes for gain, which is the essence of a syndicated or organized crime group."[70] Hence, the same cannot be appreciated as an aggravating circumstance against Mallari. Thus, in consonance with Article 63(2) of the RPC, which provides that in the absence of any aggravating circumstance in the commission of the offense, the lesser penalty shall be applied. Mallari must, therefore, suffer the lesser penalty

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[67] *Supra* note 61, 2nd paragraph.

[68] ART. 62. *Effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency.* — Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

x x x x x x x x x

The maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.

An organized/syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for the purpose of gain in the commission of any crime.

x x x x x x x x x

(Italics supplied)

[69] *People v. Fernandez*, 460 Phil. 194, 216 (2003).

[70] *Id.* at 217.

of *reclusion perpetua*.[71] Mallari is also not eligible for parole pursuant to Section 3[72] of RA 9346.

The Damages

For the killing of Medel, we award to his heirs the amount of ₱50,000.00 as civil indemnity pursuant to prevailing jurisprudence.[73] Said heirs are also entitled to an award of moral damages in the sum of ₱50,000.00 as in all cases of murder and homicide, without need of allegation and proof other than the death of the victim.[74] We cannot, however, award actual damages due to the absence of receipts to substantiate the expenses incurred for Medel's funeral. The rule is that only duly receipted expenses can be the basis of actual damages.[75] "Nonetheless, under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved."[76] We therefore award the sum of ₱25,000.00 as temperate damages in lieu of actual damages to the heirs of Medel. "In addition, and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid."[77]

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 00930 finding appellant Reynaldo Mallari guilty beyond reasonable doubt of

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[71] *Id.*

[72] Section 3. Persons convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

[73] *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 383.

[74] *Id.* at 383-384.

[75] *Id.* at 384.

[76] *Id.*

[77] *Id.*

the special complex crime of carnapping with homicide is **AFFIRMED** with the following modifications: (1) appellant Reynaldo Mallari is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; and, (2) appellant Reynaldo Mallari is ordered to pay the heirs of Erico Medel the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages in lieu of actual damages, and interest on all these damages assessed at the legal rate of 6% from date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, Brion, Perez, and *Reyes,*[**] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 184333. April 1, 2013]

SIXTO N. CHU, *petitioner, vs.* **MACH ASIA TRADING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SUBSTITUTED SERVICE OF SUMMONS; THERE SHOULD BE A REPORT INDICATING THAT THE PERSON WHO RECEIVED THE SUMMONS IN THE DEFENDANT'S BEHALF WAS ONE WITH WHOM THE DEFENDANT HAD A RELATION OF CONFIDENCE, ENSURING THAT THE LATTER WOULD ACTUALLY RECEIVE THE SUMMONS. — Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is

[**] Per raffle dated February 18, 2013.

acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority. As a rule, summons should be personally served on the defendant. It is only when summons cannot be served personally within a reasonable period of time that substituted service may be resorted to. Section 7, Rule 14 of the Rules of Court. x x x It is to be noted that in case of substituted service, there should be a report indicating that the person who received the summons in the defendant's behalf was one with whom the defendant had a relation of confidence, ensuring that the latter would actually receive the summons. Also, impossibility of prompt personal service must be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character, hence, may be used only as prescribed and in the circumstances authorized by statute. The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.

2. **ID.; ID.; ID.; ID.; THE SERVICE ON THE SECURITY GUARD IN CASE AT BAR COULD NOT BE CONSIDERED AS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF SUBSTITUTED SERVICE. —** It was not shown that the security guard who received the summons in behalf of the petitioner was authorized and possessed a relation of confidence that petitioner would definitely receive the summons. This is not the kind of service contemplated by law. Thus, service on the security guard could not be considered as substantial compliance with the requirements of substituted service.

3. **ID.; ID.; ID.; ID.; SINCE THE REGIONAL TRIAL COURT NEVER ACQUIRED JURISDICTION OVER THE PERSON OF THE PETITIONER, THE JUDGMENT RENDERED BY THE COURT COULD NOT BE CONSIDERED BINDING UPON HIM FOR BEING NULL AND VOID. —** The service of summons is a vital and indispensable ingredient of due process. As a rule, if defendants have not been validly summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void. Since the RTC never acquired jurisdiction

over the person of the petitioner, the judgment rendered by the court could not be considered binding upon him for being null and void.

APPEARANCES OF COUNSEL

Geovanni S. Omega for petitioner.
Celso K. Inocente for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorar*i assailing the Decision[1] dated June 25, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 70666, and the Resolution[2] dated August 28, 2008 denying petitioner's Motion for Reconsideration.

The factual and procedural antecedents are as follows:

Respondent Mach Asia Trading Corporation is a corporation engaged in importing dump trucks and heavy equipments. On December 8, 1998, petitioner Sixto N. Chu purchased on installment one (1) Hitachi Excavator worth ₱900,000.00 from the respondent. Petitioner initially paid ₱180,000.00 with the balance of ₱720,000.00 to be paid in 12 monthly installments through Prime Bank postdated checks. On March 29, 1999, petitioner again purchased two (2) heavy equipments from the respondent on installment basis in the sum of ₱1,000,000.00, namely: one (1) motorgrader and one (1) payloader. Petitioner made a down payment of ₱200,000.00 with the balance of ₱800,000.00 payable in 12 monthly installments through Land Bank postdated checks.[3]

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring; *rollo*, pp. 16-25.

[2] *Rollo*, pp. 27-29.

[3] *Rollo*, p. 17.

However, upon presentment of the checks for encashment, they were dishonored by the bank either by reason of "closed account," "drawn against insufficient funds," or "payment stopped." Respondent informed petitioner that the checks were dishonored and invited him to its office to replace the checks. On September 16, 1999, respondent sent petitioner a formal demand letter urging the latter to settle his accounts within five days from receipt of the letter. In response, petitioner sent respondent a letter explaining that his business was badly hit by the Asian economic crisis and that he shall endeavor to pay his obligation by giving partial payments. He said that he shall also voluntarily surrender the subject units should he fail to do so.[4]

On November 11, 1999, respondent filed a complaint before the Regional Trial Court (RTC) of Cebu City for sum of money, replevin, attorney's fees and damages against the petitioner. Respondent prayed for the payment of the unpaid balance of ₱1,661,947.27 at 21% per annum until full payment, 25% of the total amount to be recovered as attorney's fees, litigation expenses and costs.[5]

On November 29, 1999, the RTC issued an Order[6] allowing the issuance of a writ of replevin on the subject heavy equipments.

On December 9, 1999, Sheriff Doroteo P. Cortes proceeded at petitioner's given address for the purpose of serving the summons, together with the complaint, writ of replevin and bond. However, the Sheriff failed to serve the summons personally upon the petitioner, since the latter was not there. The Sheriff then resorted to substituted service by having the summons and the complaint received by a certain Rolando Bonayon, a security guard of the petitioner.[7]

Petitioner failed to file any responsive pleading, which prompted respondent to move for the declaration of defendant

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[4] *Id.*

[5] *Id.* at 17-18.

[6] *Id.* at 18.

[7] *Id.*

in default. On January 12, 2000, the RTC issued an Order declaring defendant in default and, thereafter, allowed respondent to present its evidence *ex parte*.

On December 15, 2000, after respondent presented its evidence, the RTC rendered a Decision against the petitioner, thus:

> 1. By adjudicating and adjudging plaintiff's right of ownership and possession over the subject units mentioned and described in the complaint, and which were already seized and turned over to the plaintiff by virtue of the writ of replevin.
>
> 2. Ordering defendants to pay to plaintiff the sum of (sic) equivalent to 25% of the total amount recovered or value of the heavy equipments possessed as attorney's fees, and to reimburse no less than ₱15,000.00 as expenses for litigation, plus the cost of the premium of replevin bond in the amount of ₱11,333.50.[8]

Aggrieved, petitioner sought recourse before the CA, docketed as CA-G.R. CV No. 70666. Petitioner argued that the RTC erred in concluding that the substituted service of summons was valid, and that, consequently, there was error on the part of the RTC when it declared him in default, in proceeding with the trial of the case, and rendering an unfavorable judgment against him.

On July 25, 2007, the CA rendered a Decision[9] affirming the Decision of the RTC, the decretal portion of which reads:

> WHEREFORE, IN LIGHT OF THE FOREGOING, the Decision of the Regional Trial Court of Cebu, Branch 17, in Civil Case No. CEB-24551, rendered on December 15, 2000, is hereby AFFIRMED with the sole modification as to award of attorney's fees, which is hereby reduced to 10% of the value of the heavy equipments recovered.
>
> SO ORDERED.[10]

Ruling in favor of the respondent, the CA opined, among others, that the requirement of due process was complied with,

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[8] *Id.* at 19.

[9] *Id.* at 16-25.

[10] *Id.* at 24-25.

considering that petitioner actually received the summons through his security guard. It held that where the summons was in fact received by the defendant, his argument that the Sheriff should have first tried to serve summons on him personally before resorting to substituted service of summons deserves scant consideration. Thus, in the interest of fairness, the CA said that the process server's neglect or inadvertence in the service of summons should not unduly prejudice the respondent's right to speedy justice.

The CA also noted that petitioner failed to set up a meritorious defense aside from his contention that summons was not properly served. It went further and decided the case on the merits and ruled that petitioner has an unpaid obligation due to respondent for the heavy machineries he purchased from the latter. It, however, reduced the amount of attorney's fees awarded to 10% of the value of the heavy equipments recovered.

Petitioner filed a Motion for Reconsideration, but it was denied in the Resolution[11] dated August 28, 2008.

Hence, the petition assigning the following errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR IN DEFIANCE OF LAW AND JURISPRUDENCE IN FINDING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF THE DEFENDANT EVEN WHEN THE SUBSTITUTED SERVICE OF SUMMONS WAS IMPROPER.[12]

II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR IN DEFIANCE OF LAW AND JURISPRUDENCE IN HOLDING THAT HEREIN PETITIONER SHOULD HAVE SET UP A MERITORIOUS DEFENSE EVEN WHEN THE SUMMONS WAS IMPROPERLY SERVED.[13]

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[11] *Id.* at 27-29.

[12] *Id.* at 7.

[13] *Id.* at 11.

Petitioner argues that there was no valid substituted service of summons in the present case. He maintains that jurisdiction over the person of the defendant is acquired only through a valid service of summons or the voluntary appearance of the defendant in court. Hence, when there is no valid service of summons and no voluntary appearance by the defendant, any judgment of a court, which acquired no jurisdiction over the defendant, is null and void.

On its part, respondent posits that the RTC acquired jurisdiction over the person of the petitioner and the judgment by default of the RTC was based on facts, law, and jurisprudence and, therefore, should be enforced against the petitioner.

The petition is meritorious.

Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.[14]

As a rule, summons should be personally served on the defendant. It is only when summons cannot be served personally within a reasonable period of time that substituted service may be resorted to.[15] Section 7, Rule 14 of the Rules of Court provides:

> 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 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.

It is to be noted that in case of substituted service, there should be a report indicating that the person who received the

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[14] *Kukan International Corporation v. Reyes*, G.R. No.182729, September 29, 2010, 631 SCRA 596, 612, citing *Orion Security Corporation v. Kalfam Enterprises, Inc.*, G.R. No. 163287, April 27, 2007, 522 SCRA 617, 622.

[15] *Orion Security Corporation v. Kalfam Enterprises, Inc.*, *supra*, at, 622.

summons in the defendant's behalf was one with whom the defendant had a relation of confidence, ensuring that the latter would actually receive the summons.[16]

Also, impossibility of prompt personal service must be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character, hence, may be used only as prescribed and in the circumstances authorized by statute. The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.[17]

In the case at bar, the Sheriff's Return provides:

> Respectfully returned to the Honorable Regional Trial Court, Branch 17, Cebu City, the Summons and writ issued in the above-entitled case with the following information, to wit:
>
> 1. That the Summons, together with the complaint, writ of replevin and bond was received on December 7, 1999, by *Rolando Bonayon, a security guard* on defendant Sixto Chu at his given address who received and signed receipt thereof.
>
> 2. That the writ of replevin was duly executed on the same date, December 7, 1999, Tacloban City and San Jorge, Samar of the following properties subject of the writ.
>
>   a) Excavator Hitachi with Serial No. WHO44-116-0743
>   b) Motorgrader with Serial No. N525PS-1014
>   c) Payloader with Serial No. KLD70-54224

After the issuance of the Sheriff's inventory receipt, the units were turned over to Al Caballero and companion, representatives of plaintiff, who shipped the same to Cebu to be deposited with MACH ASIA TRADING CORPORATION, Block 26 MacArthur

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[16] *Casimina v. Legaspi*, 500 Phil. 560, 569 (2005).

[17] *B.D. Long Span Builders, Inc. v. R.S. Ampeloquio Realty Development, Inc.*, G.R. No. 169919, September 11, 2009, 599 SCRA 468, 474-475.

Highway, Reclamation Area, Cebu City, for safekeeping, subject to the provision of Sec. 6, Rule 60 of the Rules of Court.[18]

Clearly, it was not shown that the security guard who received the summons in behalf of the petitioner was authorized and possessed a relation of confidence that petitioner would definitely receive the summons. This is not the kind of service contemplated by law. Thus, service on the security guard could not be considered as substantial compliance with the requirements of substituted service.

Moreover, the reasoning advanced by the CA in ruling against the petitioner was based merely on conjectures and surmises. The CA even went as far as to conclude that the process server's neglect should not have unduly prejudiced the respondent, thus:

> Hence, if Chu had actually received the summons through his security guard, the requirement of due process would have nevertheless been complied with. x x x. Based on the presumption that a person takes ordinary care of his concerns, the security guard would not have allowed the sheriff to take possession of the equipments without the prior permission of Chu; otherwise he would be accountable to Chu for the said units. Chu, for his part, would not have given his permission without being informed of the fact of the summons and the writ of replevin issued by the lower court, which permission includes the authority to receive the summons and the writ of replevin.
>
> Thus, where summons was in fact received by defendant, his argument that the sheriff should have tried first to serve summons on him personally before resorting to substituted service of summons is not meritorious.
>
> x x x x x x x x x.
>
> Evidently, plaintiff-appellee cannot be penalized, through no fault of its own, for an irregular or defective return on service of summons. x x x.
>
> x x x x x x x x x.

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[18] *Id.* at 18. (Emphasis supplied)

In the interest of fairness, the process server's neglect or inadvertence in the service of summons should not, thus, unduly prejudice plaintiff-appellee's right to speedy justice. x x x[19]

The service of summons is a vital and indispensable ingredient of due process. As a rule, if defendants have not been validly summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void.[20] Since the RTC never acquired jurisdiction over the person of the petitioner, the judgment rendered by the court could not be considered binding upon him for being null and void.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision of the Court of Appeals, dated June 25, 2007, as well as its Resolution dated August 28, 2008, in CA-G.R. CV No. 70666 is hereby **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court dated December 15, 2000 is declared NULL and VOID. The Regional Trial Court is hereby **ORDERED** to validly serve summons upon Sixto N. Chu and, thereafter, proceed with the trial of the main action with dispatch.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.*, concur.

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[19] *Id.* at 21-23.

[20] *B.D. Long Span Builders, Inc. v. R.S. Ampeloquio Realty Development, Inc.*, *supra* note 17, at 473.

THIRD DIVISION

[G.R. No. 197353. April 1, 2013]

ALEXANDER B. BAÑARES, *petitioner, vs.* **TABACO WOMEN'S TRANSPORT SERVICE[1] COOPERATIVE (TAWTRASCO), represented by DIR. RENOL BARCEBAL, *ET AL.*,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REINSTATEMENT MEANS THE ADMISSION OF AN EMPLOYEE BACK TO WORK UNDER THE SAME TERMS AND CONDITIONS PREVAILING PRIOR TO HIS DISMISSAL; CASE AT BAR NOT A REAL, *BONA FIDE*, REINSTATEMENT IN THE CONTEXT OF THE LABOR CODE AND PERTINENT DECISIONAL LAW. — Reinstatement, as a labor law concept, means the admission of an employee back to work prevailing prior to his dismissal; restoration to a state or position from which one had been removed or separated, which presupposes that there shall be no demotion in rank and/or diminution of salary, benefits and other privileges; if the position previously occupied no longer exists, the restoration shall be to a substantially equivalent position in terms of salary, benefits and other privileges. Management's prerogative to transfer an employee from one office or station to another within the business establishment, however, generally remains unaffected by a reinstatement order, as long as there is no resulting demotion or diminution of salary and other benefits and/or the action is not motivated by consideration less than fair or effected as a punishment or to get back at the reinstated employee. Guided by the foregoing reasonable albeit exaction norm, the "reinstatement" of petitioner as general manager of TAWTRASCO, effected by TAWTRASCO pursuant to the February 5, 2007 compromise agreement, was not a real, *bona fide* reinstatement in the context of the Labor Code and pertinent decisional law.

[1] "Services" in some parts of the records.

2. ID.; ID.; ID.; ID.; ID.; PETITIONER WAS ASSIGNED WITH DUTIES AND RESPONSIBILITIES NOT BEFITTING A GENERAL MANAGER OF A TRANSPORT COMPANY BUT THAT OF A CHECKER; THE ASSIGNMENT PARTOOK OF THE NATURE OF DEMOTION. — TAWTRASCO at the outset, *i.e.*, after the compromise agreement signing, directed petitioner to report to the Virac terminal with duties and responsibilities not befitting a general manager of a transport company. In fine, the assignment partook of the nature of a demotion. x x x A cursory reading of items (2) and (3) of Memorandum Order No. 4; Series of 2007 would readily reveal that petitioner was tasked to discharge menial duties, such as maintaining a record of the "in" and "out" of freight loaded on all TAWTRASCO buses and signing the trip records of the buses going out daily. To be sure, these tasks cannot be classified as pertaining to the office of a general manager, but that of a checker. x x x *Apropos* to what petitioner viewed as a demeaning treatment dealt him by TAWTRASCO, x x x Annex "F", the photograph adverted to by the LA, tells it all. Indeed, petitioner could not reasonably be expected to work in such a messy condition without any office space, office furniture, equipment and supplies. A nd much less can petitioner lodge there.

3. ID.; ID.; ID.; ID.; ID.; EMPLOYEES HAVE A DEMANDABLE RIGHT OVER EXISTING BENEFITS VOLUNTARILY GRANTED TO THEM BY THEIR EMPLOYERS; CASE AT BAR. — Under Article 223 of the Labor Code, an employee entitled to reinstatement "shall either be admitted back to work **under the same terms and conditions** prevailing prior to his dismissal or separation x x x." Verily, an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and to other established employment privileges, and to his full backwages. The boarding house privilege being an established perk accorded to petitioner ought to have been granted him if a real and authentic reinstatement to his former position as general manager is to be posited.

4. ID.; ID.; ID.; ID.; ID.; PETITIONER'S REFUSAL TO WORK DOES NOT TRANSLATE TO ABANDONMENT. — Contrary to TAWTRASCO's posture and what the CA Decision implied, petitioner's refusal, during the period material, to report for work at the Virac terminal does not, without more,

translate to abandonment. For abandonment to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. These concurring elements of abandonment are not present in the instant case. As reflected above, the reinstatement order has not been faithfully complied with. And varied but justifiable reasons obtain which made petitioner's work at the Virac terminal untenable. To reiterate, there was a lack of a viable office: no proper office space, no office furniture and equipment, no office supplies. Petitioner's request for immediate remediation of the above unfortunate employment conditions fell on deaf ears. This is not to mention petitioner's board and lodging privilege which he was deprived of without so much as an explanation. Thus, it could not be said that petitioner's absence is without valid or justifiable cause.

5. ID.; ID.; ID.; ID.; ID.; ID.; FILING OF AN ILLEGAL DISMISSAL SUIT IS INCONSISTENT WITH ABANDONMENT; CASE AT BAR. — [P]etitioner has not manifested, by overt acts, a clear intention to sever his employment with TAWTRASCO. In fact, after submitting his April 24, 2007 letter-explanation to, but not receiving a reaction one way or another from, TAWTRASCO, petitioner lost no time in filing a complaint against the former for, *inter alia*, nonpayment of salaries and forfeiture of boarding house privilege. Thereafter, via a Manifestation, he sought the early issuance of an *alias* writ of execution purposely for the full implementation of the final and executory LA August 22, 2006 Decision, *i.e.*, for the payment of his salaries and full reinstatement. These twin actions clearly argue against a finding of abandonment on petitioner's part. It is a settled doctrine that the filing of an illegal dismissal suit is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.

6. ID.; ID.; ID.; SINCE THE RELATIONSHIP BETWEEN THE PARTIES HAS BEEN STRAINED DUE TO THE PROTRACTED LABOR SUIT, REINSTATEMENT IS NO LONGER A VIABLE OPTION; PAYMENT OF

SEPARATION PAY IN LIEU OF REINSTATEMENT IS THE BEST ALTERNATIVE IN CASE AT BAR. — Supervening events, however, had transpired which inexorably makes the reinstatement infeasible. For one, on November 12, 2007, TAWTRASCO already appointed a new general manager. Petitioner no less has raised this fact of appointment. As a matter of settled law, reinstatement and payment of backwages, as the normal consequences of illegal dismissal, presuppose that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee. For another, a considerable period of time has elapsed since petitioner last reported to work in early 2007 or practically a six-year period. And this protracted labor suit has likely engendered animosity and exacerbated already strained relations between petitioner and his employer. Reinstatement is no longer viable where, among other things, the relations between the employer and employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement. Under the doctrine of strained relations, payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. x x x In lieu of reinstatement, petitioner is entitled to separation pay equivalent to one (1) month salary for every year of service reckoned from the time he commenced his employment with TAWTRASCO until finality of this Decision.

7. ID.; ID.; ID.; ID.; PETITIONER IS ALSO ENTITLED TO BACKWAGES AND OTHER EMOLUMENTS DUE HIM PLUS 12% INTEREST FROM THE FINALITY OF THIS DECISION; PETITIONER SHALL ALSO BE PAID ATTORNEY'S FEES IN THE AMOUNT EQUIVALENT TO 10% OF THE MONETARY AWARD. — In addition, petitioner is entitled to backwages and other emoluments due him from the time he did not report for work on March 31, 2007 until the finality of this Decision. Said backwages and emoluments shall earn 12% interest from finality of this Decision until fully paid. The payment of legal interest becomes a necessary consequence of the finality of the Court's Decision, because, reckoned from that time, the said decision becomes a judgment for money which shall earn interest at the rate of 12% per annum. In accordance with Art. 111 of the Labor

Code and in line with current jurisprudence, petitioner shall be paid attorney's fees in the amount equivalent to 10% of the monetary award.

APPEARANCES OF COUNSEL

Benjamin B. Bulalacao for petitioner.
G. Evasco & Associates Law Office for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

In this Petition for Review on *Certiorari* under Rule 45, Alexander B. Bañares assails and seeks the reversal of the Decision[2] dated October 14, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 112542 and its Resolution[3] of June 15, 2011 denying petitioner's motion for reconsideration. The CA Decision set aside the July 7, 2009 Decision[4] and November 18, 2009 Resolution[5] of the National Labor Relations Commission (NLRC) as well as the April 14, 2008 Order[6] of the Labor Arbiter.

The facts are undisputed.

Petitioner was for some time the general manager of Tabaco Women's Transport Service Cooperative (TAWTRASCO) until its management, on March 6, 2006, terminated his services. On March 7, 2006, before the Labor Arbiter (LA) in RAB V of the NLRC in Legaspi City, petitioner filed a complaint for

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[2] *Rollo*, pp. 67-87. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante.

[3] *Id.* at 126-127.

[4] *Id.* at 145-151. Penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro.

[5] *Id.* at 153-156.

[6] *Id.* at 140-143. Penned by Executive Labor Arbiter Jose C. Del Valle, Jr.

illegal dismissal and payment of monetary claims which was docketed as NLRC RAB V Case No. 03-00092-06.

On August 22, 2006, the LA rendered a Decision[7] finding for petitioner, as complainant, with the *fallo* reading:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed from his employment. Consequently, respondent Tabaco Women's Transport Service Cooperative (TAWTRASCO) is hereby ordered to immediately reinstate complainant to his former position, without loss of seniority right and to pay complainant the total amount of ONE HUNDRED NINETEEN THOUSAND SIX HUNDRED PESOS (₱119,600.00), representing the latter's backwages and damages, as computed above.
>
> All other claims and/or charges are hereby dismissed for lack of factual and legal basis.
>
> SO ORDERED.

Since TAWTRASCO opted not to appeal, the LA Decision soon became final and executory. In fact, TAWTRASCO in no time paid petitioner the amount of PhP 119, 600 by way of damages and backwages corresponding to the period March 6, 2006 to August 22, 2006. But petitioner was not immediately reinstated. Owing to the strained employer-employee relationship perceived to exist between them, TAWTRASCO offered to pay petitioner separation pay of PhP 172, 296, but petitioner rejected the offer. Eventually, the two entered into a Compromise Agreement, in which petitioner waived a portion of his monetary claim, specifically his backwages for the period from August 23, 2006 to February 5, 2007, and agreed that the amount due shall be payable in three (3) installments. In turn, TAWTRASCO undertook to reinstate the petitioner effective February 6, 2007. Accordingly, the LA issued, on February 5, 2007, an Order[8]

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[7] *Id.* at 224-235.

[8] *Id.* at 238. The Order reads:

> Considering that the decision rendered hereat, including the reinstatement salaries due [petitioner] have already been fully satisfied, wherein complainant shall be reinstated back to his former position effective February 6, 2007

based on the compromise agreement thus executed, and declared the instant case closed and terminated.

On February 24, 2007, petitioner received a copy of Memorandum Order No. 04,[9] Series of 2007, with a copy of a resolution passed by the Board of Directors (BOD) of TAWTRASCO, requiring him to report at the company's Virac, Catanduanes terminal. The memorandum order contained an enumeration of petitioner's duties and responsibilities.

A day after, petitioner went to see Oliva Barcebal (Oliva), the BOD Chairman, to decry that the adverted return-to-work memorandum and board resolution contravene the NLRC-approved compromise agreement which called for his reinstatement as general manager without loss of seniority rights. Petitioner would later reiterate his concerns in a letter[10] dated March 12, 2007.

On March 20, 2007, TAWTRASCO served petitioner a copy of Memorandum No. 10,[11] Series of 2007 which set forth his location assignment, as follows: temporarily assigned at the Virac, Catanduanes terminal/office for two months, after which he is to divide his time between the Virac Terminal and the Araneta Center Bus Terminal (ACBT), three days (Monday to Wednesday) in Virac and two days (Friday and Saturday) in Cubao, utilizing Thursday as his travel day in between offices. As ordered, petitioner reported to the Virac terminal which purportedly needed his attention due to its flagging operations and management problems.

Barely a week into his new assignment, petitioner, thru a memorandum report, proposed the construction/rehabilitation

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and paid his three (3) months reinstatement salaries in three (3) monthly installments, let this case be, as it is hereby ordered CLOSED, TERMINATED and ARCHIVED.

SO ORDERED.

[9] *Id.* at 103-104.

[10] *Id.* at 105, erroneously dated as March 12, 2006.

[11] *Id.* at 106.

of the passenger lounge in the Virac terminal, among other improvements. The proposal came with a request for a monthly lodging accommodation allowance of PhP 1,700 for the duration of his stay in Virac.

While the management eventually approved the desired construction projects, it denied petitioner's plea for cash lodging allowance. Instead of a straight cash allowance, the company urged petitioner to use the Virac office for lodging purposes.

Subsequent events saw petitioner requesting and receiving an allocation of PhP 3,000 for his travel, accommodation, representation and communication allowance subject to liquidation. No replenishment, however, came after.

On April 12, 2007, Oliva, while conducting, in the company of another director, an ocular inspection of the Virac terminal, discovered that petitioner had not reported for work since March 31, 2007. Thus, the issuance of a company memorandum[12] asking petitioner to explain his absence.

In response, petitioner addressed a letter-reply[13] to management stating the underlying reason for not reporting and continue reporting for work in his new place of assignment and expressing in detail his grievances against management. Some excerpts of petitioner's letter:

x x x *[T]he very reason why I don't go back to Virac Catanduanes x x x is because I realized* ***that in truth my reinstatement effected by your office which is supposed to be in pursuance to the NLRC decision is nothing but an artificial, fake, fictitious and a sham kind of return to work order.***

I regret to say it so on the following grounds:

1. *Our garage/terminal in Virac Catanduanes wherein you would want me to stay is in total disarray and dirty as it looks until the time that I stayed there and despite having reported that matter to you and despite having requested*

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[12] CA *rollo,* p. 92.

[13] *Rollo,* pp. 111-112.

by me that the necessary funding for the reconstruction or rebuilding of the necessary facilities we at least used to have before should be immediately allocated and released and yet you were too slow in granting it;

2. *Despite x x x my request for the allocation of the indispensable travel, representation and accommodation allowances I need to have while staying in Virac because the garage/terminal facilities remains in a messy condition but still you fail until now to provide it to me x x x;*

3. *The manner and nature of work you would want me to do while in Virac is utterly a deviation from my original work and in effect a demotion in rank;*

4. *The place of work x x x was completely devoid of any office materials and equipments needed in the nature of my work.* ***To put in details there was no office table and chairs, no filing cabinets for safekeeping of important documents, no ball-pens, no bond papers etc.*** *x x x [T]here is nothing at all in said place of work for me to say that there was really an office of the General Manager.* ***As a matter of fact, you know that all my reports being submitted x x x are made possible by using my own personal computer, my computer printer, my computer inks and even my own bond papers.***

5. *Just recently, I found out that there are employees in our company who are under my jurisdiction and x x x that are being instructed not to follow my lawful orders. This matter needs no further explanation because I have already reported it and yet you did nothing to correct it.*

6. *The free place of accommodation I used to have before when staying in Cubao, Quezon City remains non-existent x x x despite the fact that x x x I need to be [back] also in Cubao to facilitate the restoration of our transport operation x x x.*

In essence, ***there is an ongoing mockery of the mandate of the NLRC decision that I should be reinstated to my former position as General Manager without loss of seniority rights****. What is truly happening now is the obvious evidence that you don't want me to work the way I was doing it before and the way as mandated by the by-laws of our transport cooperative.*

In sum, ***you cannot charge me for abandonment of work because you are in fact causing me an inhumane and degrading treatment as General Manager and giving an embarrassing kind of work****.*

Therefore, in view of the foregoing circumstances, ***may I hereby demand that my salary should be paid immediately as soon as you receive this letter of mine*** *that explains in full details the logical reasons why I really cannot go back to my new place of assigned but temporary work x x x.*

x x x *x x x* *x x x*

Finally, ***let me just frankly tell you that I can only go back to Virac Catanduanes when everything I need in my work as General Manager is sufficiently given to me and when all employees of TAWTRASCO are duly advised that in effect I'm truly [back] to work and all the employees need to follow my orders.*** *Meantime, as General Manager I will utilize my time to do some other works x x x.*

On April 27, 2007, petitioner filed a complaint against TAWTRASCO for nonpayment of salaries and withholding of privileges before the LA. Via a Manifestation with application for the issuance of an *alias* writ of execution, petitioner prayed that his complaint be deemed withdrawn "for the purpose of not confusing the essence of consolidation and in order to give way to the smooth proceedings and fast adjudication on the merits."[14]

By Order of April 14, 2008, the LA effectively issued the desired *alias* writ of execution, as follows:

Consequently, there being no compliance of the reinstatement aspect of the Decision, [petitioner] is therefore, entitled to his reinstatement salaries less the amount he already received, reckoned from date of receipt by respondent [TAWTRASCO] of the decision on October 11, 2006 to date of this order, subject to further computation until reinstatement is actually carried out religiously plus monthly allowance of ₱1,000.00 without prejudice on the part of the respondent to avail of the remedy available to it under the rules. Hence, the same is computed as follows:

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[14] CA *rollo*, p. 152.

October 11, 2006 to April 18, 2008 = 18 mos.

Basic + Allowance – ₱19,000.00 x 18 mos. = ₱342,00[0].00

LESS:

BPI Check:	2/11/07	–	₱18,000.00	
BPI Check:	2/12/07	–	18,000.00	
BPI Check:	3/6/07	–	18,000.00	
BPI Check:	4/6/07	–	18,000.00	
CY	2/13/08	–	7,500.00	
	2/27/08	–	7,500.00	87,000.00
				₱255,000.00

x x x x x x x x x

Responsive to all the foregoing, respondent [TAWTRASCO] is hereby ordered to reinstate complainant to his former position as General Manager, without loss of seniority right and pay [petitioner] the amount of ₱255,000.00, representing the latter's reinstatement salaries (after deducting the amount he already received) and monthly allowance, as computed above.

Respondent is also ordered to show proof of compliance of complainant's reinstatement immediately upon receipt hereof.

SO ORDERED.[15]

TAWTRASCO appealed to the NLRC which dismissed the appeal per its Decision dated July 7, 2009, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered DISMISSING respondents' appeal for lack of merit. The assailed Order of the Labor Arbiter dated 14 April 2008, is hereby AFFIRMED.

SO ORDERED.

In so ruling, the NLRC held that TAWTRASCO only partially complied with the final and executory August 22, 2006 Decision of the LA, *i.e.*, by paying the PhP 119,000 backwages of petitioner as ordered. The reinstatement aspect of the LA Decision, however, has yet to be wholly complied with. To the NLRC, the LA acted

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[15] *Rollo*, pp. 142-143.

within his sound discretion in ordering the authentic and full reinstatement of petitioner and the payment of PhP 255,000 as reinstatement salaries as computed from October 11, 2006 to April 18, 2008.

The NLRC denied, through its November 18, 2009 Resolution, TAWTRASCO's motion for reconsideration.

TAWTRASCO went to the CA on *certiorari*. On October 14, 2010, the appellate court rendered the assailed Decision, the *fallo* of which reads:

> WHEREFORE, the instant petition for *certiorari* is GRANTED. The assailed Decision and Resolution of the public respondent National Labor Relations Commission, in NLRC LAC No. 08-002800-08 [NLRC RAB V Case No. 03-000092-06], as well as the Order dated 14 April 2008 of the Labor Arbiter are SET ASIDE.
>
> SO ORDERED.

Contrary to the LA's holding, as affirmed by the NLRC, the CA found TAWTRASCO to have fully reinstated petitioner to his former post. And without expressly declaring so, the unmistakable thrust of the CA disposition was that petitioner veritably abandoned his work when he stopped reporting to his Virac terminal assignment.

His motion for reconsideration having been denied per the CA's assailed Resolution of June 15, 2011, petitioner went to this Court. His petition is predicated on the following assignment of errors:

(A)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN FAILING TO OBSERVE AND UPHOLD THE FORMAL AND PROCEDURAL REQUIREMENTS IN THE FILING OF THE PETITION FOR *CERTIORARI* UNDER RULE 65.

(B)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN IGNORING THE STRICT RULE ON NON-FORUM SHOPPING AND WHEN DESPITE KNOWLEDGE OF A

PRIOR FINAL JUDGMENT INVOLVING THE SAME AND IDENTICAL ISSUES AND THE SAME AND IDENTICAL PARTIES, THE COURT *A QUO* FAILED TO DISMISS OUTRIGHT THE PETITION FOR *CERTIORARI* IN VIOLATION OF THE DOCTRINE ON *"RES JUDICATA"* AND THE PRINCIPLE OF *"LITIS PENDENCIA"*.

(C)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN THE COURT *A QUO* HAS DECIDED IT IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THIS SUPREME COURT WITH RESPECT TO THE FORMAL APPEARANCES OF COUNSEL.

(D)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN THE COURT *A QUO* HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN DELVING INTO THE FACTS OF THE CASE.[16]

The petition is meritorious.

Essentially, the issues raised boil down to: was there a proper and genuine reinstatement of petitioner to his former position of General Manager of TAWTRASCO without loss of seniority rights and privileges? Subsumed in this core issue is the question of whether petitioner's refusal to report in the Virac terminal in early April 2007 constitutes abandonment, not constructive dismissal.

The parallel finding and conclusion of the LA and the NLRC contradict that of the CA which, as earlier indicated, categorically resolved the first factual poser in the negative. In light of the divergence between the findings of facts of the LA and the NLRC, on one hand, and the appellate court, on the other, a review of the records and the clashing arguments of the parties is in order.[17]

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[16] *Id.* at 35-36.

[17] *Union Motor Corporation v. NLRC*, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 689-690.

Reinstatement, as a labor law concept, means the admission of an employee back to work prevailing prior to his dismissal;[18] restoration to a state or position from which one had been removed or separated, which presupposes that there shall be no demotion in rank and/or diminution of salary, benefits and other privileges; if the position previously occupied no longer exists, the restoration shall be to a substantially equivalent position in terms of salary, benefits and other privileges.[19] Management's prerogative to transfer an employee from one office or station to another within the business establishment, however, generally remains unaffected by a reinstatement order, as long as there is no resulting demotion or diminution of salary and other benefits and/or the action is not motivated by consideration less than fair or effected as a punishment or to get back at the reinstated employee.[20]

Guided by the foregoing reasonable albeit exaction norm, the "reinstatement" of petitioner as general manager of TAWTRASCO, effected by TAWTRASCO pursuant to the February 5, 2007 compromise agreement, was not a real, *bona fide* reinstatement in the context of the Labor Code and pertinent decisional law. Consider:

First, TAWTRASCO at the outset, *i.e.*, after the compromise agreement signing, directed petitioner to report to the Virac terminal with duties and responsibilities not befitting a general manager of a transport company. In fine, the assignment partook of the nature of a demotion. The aforementioned Memorandum Order No. 04, Series of 2007, in its pertinently part, states and directs:

DUTIES AND RESPONSIBILITIES

1) To supervise all TAWTRASCO bus employees, personnels and including authorized callers for the success of the terminal operation;

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[18] LABOR CODE, Art. 223.

[19] *Pfizer, Inc. v. Velasco*, G.R. No. 177467, March 9, 2011, 645 SCRA 135, 146-147.

[20] *Norkis Trading Co., Inc. v. Gnilo*, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 289.

2) To have a record of the in and out of freight loaded on all TAWTRASCO buses, regulate freight charge/s and minimize problems and complaints regarding the freight/cargoes loaded at these buses;

3) As General Manager to sign on the manifesto or trip records of the buses going out daily at Virac Terminal attesting his approval except on day-off schedule;

4) To unite, settle differences or disputes between TAWTRASCO key personnels at TAWTRASCO Virac terminal affecting its management operation particularly x x x;

5) To explore all possibilities and restore the said terminal to its former successful operation;

6) To find solution to all other problems relative to its management operation and to report complaints affecting transport operations; and

7) To give a written report to the Board of Directors on your accomplishments.

ADDENDUM: On Day-off Schedule

1) Authorized Day-Off – Once a week

2) To give Notice three (3) days before regarding vacation leave except on emergency cases.

APPROVED: TAWTRASCO BOARD OF DIRECTORS[21]

A cursory reading of items (2) and (3) above would readily reveal that petitioner was tasked to discharge menial duties, such as maintaining a record of the "in" and "out" of freight loaded on all TAWTRASCO buses and signing the trip records of the buses going out daily. To be sure, these tasks cannot be classified as pertaining to the office of a general manager, but that of a checker. As may reasonably be expected, petitioner promptly reacted to this assignment. A day after he received the memorandum in question, or on February 25, 2007, he repaired to the office of Oliva to personally voice out his misgivings

[21] *Rollo*, p. 103.

about the set up and why he believed that the above memorandum contravened their compromise agreement and the February 5, 2007 Order of the LA specifically providing for his reinstatement as general manager without loss of seniority rights and privileges.

Nevertheless, 15 days after the uneventful personal meeting with Oliva, petitioner addressed a letter to top management inquiring about his reinstatement and assignment. The BOD Secretary of TAWTRASCO received this letter on March 13, 2007.

TAWTRASCO's action on petitioner's aforementioned letter came, as narrated earlier, in the form of Memorandum No. 10, Series of 2007, which temporarily assigned him to the Virac terminal for two months. And after the two-month period, he shall divide his time between the Virac and the ACBT terminals, with Thursday as his travel day in between offices. Notably, this time, TAWTRASCO explained that its Virac terminal needs petitioner's attention due to its flagging operations and management problems. Thus, petitioner acquiesced and reported to the Virac terminal of TAWTRASCO.

In a rather unusual turn of events, however, the assailed CA decision made no mention of the foregoing critical facts despite their being pleaded by petitioner and duly supported by the records, although that court made a perfunctory reference to the adverted Memorandum Order No. 04.

And **second**, while Memorandum No. 10 was couched as if TAWTRASCO had in mind the reinstatement of petitioner to his former position, there cannot be any quibble that TAWTRASCO withheld petitioner's customary boarding house privilege. What is more, TAWTRASCO did not provide him with a formal office space.

As evidence on record abundantly shows, TAWTRASCO was made aware of its shortcomings as employer, but it opted not to lift a finger to address petitioner's reasonable requests for office space and free lodging while assigned at the Virac terminal. Thus, the stand-off between employer and employee led to petitioner writing on April 24, 2007 to TAWTRASCO, an

explanatory letter explaining his failure to report back to work at the Virac terminal. We reproduce anew highlights of that letter:

> *I regret to say it so on the following grounds:*
>
> *1. Our garage/terminal in Virac Catanduanes wherein you would want me to stay is in total disarray and dirty as it looks until the time that I stayed there and despite having reported that matter to you and despite having requested by me that the necessary funding for the reconstruction or rebuilding of the necessary facilities we at least used to have before should be immediately allocated and released and yet you were too slow in granting it;*
>
> *2. Despite x x x my request for the allocation of the indispensable travel, representation and accommodation allowances I need to have while staying in Virac because the garage/terminal facilities remains in a messy condition but still you fail until now to provide it to me because probably you want me to sleep at night along the sidewalks x x x;*
>
> *3. The manner and nature of work you would want me to do while in Virac is utterly a deviation from my original work and in effect a demotion in rank;*
>
> *4. The place of work x x x was completely devoid of any office materials and equipments needed in the nature of my work.* ***To put in details there was no office table and chairs, no filing cabinets for safekeeping of important documents, no ball-pens, no bond papers etc.*** *x x x [T]here is nothing at all in said place of work for me to say that there was really an office of the General Manager.* ***As a matter of fact, you know that all my reports being submitted x x x are made possible by using my own personal computer, my computer printer, my computer inks and even my own bond papers.***
>
> *x x x* *x x x* *x x x*
>
> *6. The free place of accommodation I used to have before when staying in Cubao, Quezon City remains non-existent x x x despite the fact that x x x I need to be [back] also in Cubao to facilitate the restoration of our transport operation x x x.*

Apropos to what petitioner viewed as a demeaning treatment dealt him by TAWTRASCO, the LA had stated the ensuing observations in his April 14, 2008 Order:

> In this case, however, this Branch finds that respondent [TAWTRASCO] indeed, complied with the reinstatement of the complainant [petitioner Bañares], however, the office where he was assigned in Virac, Catanduanes is not in good and tenantable condition. As shown in complainant's Annex "F" which is the photograph of the place, it is unsafe, dilapidated and in a messy situation. Confronted with this problem, complainant requested fund from respondent for the rehabilitation of the office. However, this was not favorably acted upon. To further rub salt in an open wound, respondent appointed a new General Manager effective November 12, 2007 (Annexes "H" and "I", complainant's Memorandum). This conduct on the part of respondent gave complainant the correct impression that the respondent did not intend to be bound by the compromise agreement, and its non-materialization negated the very purpose for which it was executed.[22]

Annex "F", the photograph[23] adverted to by the LA, tells it all. Indeed, petitioner could not reasonably be expected to work in such a messy condition without any office space, office furniture, equipment and supplies. And much less can petitioner lodge there. TAWTRASCO pointedly told petitioner through the March 26, 2007 letter of Oliva denying his request for a PhP 1,700 lodging allowance that petitioner could instead use the Virac office for his accommodation. It must be borne in mind—and TAWTRASCO has not controverted the fact—that, prior to his illegal dismissal, petitioner was enjoying PhP 5,000-a-month free lodging privilege while stationed in the Cubao terminal. Accordingly, this lodging privilege was supposed to continue under the reinstatement package. But as it turned out, TAWTRASCO discontinued the accommodation when it posted petitioner in Virac.

Under Article 223 of the Labor Code, an employee entitled to reinstatement "shall either be admitted back to work **under**

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[22] *Id.* at 142.

[23] *Id.* at 110.

the same terms and conditions prevailing prior to his dismissal or separation x x x."[24] Verily, an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and to other established employment privileges, and to his full backwages.[25] The boarding house privilege being an established perk accorded to petitioner ought to have been granted him if a real and authentic reinstatement to his former position as general manager is to be posited.

It cannot be stressed enough that TAWTRASCO withheld petitioner's salaries for and after his purported refusal to report for work at the Virac terminal. The reality, however, is that TAWTRASCO veritably directed petitioner to work under terms and conditions prejudicial to him, the most hurtful cut being that he was required to work without a decent office partly performing a checker's job. And this embarrassing work arrangement is what doubtless triggered the refusal to work, which under the premises appears very much justified.

Generally, employees have a demandable right over existing benefits voluntarily granted to them by their employers. And if the grant or benefit is founded on an express policy or has, for a considerable period of time, been given regularly and deliberately, then the grant ripens into a vested right[26] which the employer cannot unilaterally diminish, discontinue or eliminate[27] without offending the declared constitutional policy

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[24] *Pfizer, Inc. v. Velasco, supra* note 19, at 146.

[25] *Genuino Ice Company, Inc. v. Lava*, G.R. No. 190001, March 23, 2011, 646 SCRA 385, 389; citing *FF Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, April 8, 2005, 455 SCRA 155.

[26] *Barroga v. Data Center College of the Philippines*, G.R. No. 174158, June 27, 2011, 652 SCRA 676, 688; citing *TSPIC Corporation v. TSPIC Employees Union (FFW)*, G.R. No. 163419, February 13, 2008, 545 SCRA 215, 232.

[27] *University of the East v. University of the East Employees' Association*, G.R. No. 179593, September 14, 2011, 657 SCRA 637, 650; citing Labor Code, Art. 100.

on full protection to labor.[28] So it must be here with respect, at the minimum, to the lodging accommodation which TAWTRASCO, as found by the NLRC, appears to have regularly extended for free for some time to petitioner.

Contrary to TAWTRASCO's posture and what the CA Decision implied, petitioner's refusal, during the period material, to report for work at the Virac terminal does not, without more, translate to abandonment. For abandonment to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[29] These concurring elements of abandonment are not present in the instant case.

As reflected above, the reinstatement order has not been faithfully complied with. And varied but justifiable reasons obtain which made petitioner's work at the Virac terminal untenable. To reiterate, there was a lack of a viable office: no proper office space, no office furniture and equipment, no office supplies. Petitioner's request for immediate remediation of the above unfortunate employment conditions fell on deaf ears. This is not to mention petitioner's board and lodging privilege which he was deprived of without so much as an explanation. Thus, it could not be said that petitioner's absence is without valid or justifiable cause.

But more to the point, petitioner has not manifested, by overt acts, a clear intention to sever his employment with TAWTRASCO. In fact, after submitting his April 24, 2007 letter-explanation to, but not receiving a reaction one way or another from, TAWTRASCO, petitioner lost no time in filing a complaint

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[28] *Arco Metal Products Co., Inc. v Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, May 14, 2008, 554 SCRA 110, 118.

[29] *E.G. & I. Construction Corporation v. Sato*, G.R. No. 182070, February 16, 2011, 643 SCRA 492, 499-500; citing *Padilla Machine Shop v. Javilgas*, G.R. No. 175960, February 19, 2008, 546 SCRA 351, 357.

against the former for, *inter alia*, nonpayment of salaries and forfeiture of boarding house privilege. Thereafter, via a Manifestation, he sought the early issuance of an *alias* writ of execution purposely for the full implementation of the final and executory LA August 22, 2006 Decision, *i.e.*, for the payment of his salaries and full reinstatement. These twin actions clearly argue against a finding of abandonment on petitioner's part. It is a settled doctrine that the filing of an illegal dismissal suit is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.[30]

Given the convergence of events and circumstances above described, the Court can readily declare that TAWTRASCO admitted petitioner back to work under terms and conditions adversely dissimilar to those prevailing before his illegal dismissal. Put a bit differently, petitioner was admitted back, but required to work under conditions crafted to cause unnecessary hardship to or meant to be rejected by him. And to reiterate, these conditions entailed a demotion in rank and diminution of perks and standard privileges. The shabby and unfair treatment accorded him or her by the management of TAWTRASCO is definitely not genuine reinstatement to his former position.

The Court finds, as did the NLRC and the LA, that petitioner was not truly reinstated by TAWTRASCO consistent with the final and executory August 22, 2006 Decision of the LA and the February 5, 2007 Compromise Agreement inked by the parties in the presence of the hearing LA. Perforce, the assailed decision and resolution of the CA must be set aside, and the April 14, 2008 Order of the LA, as effectively affirmed in the July 7, 2009 Decision and November 18, 2009 Resolution of the NLRC, accordingly reinstated.

Supervening events, however, had transpired which inexorably makes the reinstatement infeasible. For one, on November 12,

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[30] *Automotive Engine Rebuilders, Inc. (AER) v. Progresibong Unyon ng mag Manggagawa sa AER*, G.R. No. 160138, July 13, 2011, 653 SCRA 738, 758.

2007, TAWTRASCO already appointed a new general manager. Petitioner no less has raised this fact of appointment. As a matter of settled law, reinstatement and payment of backwages, as the normal consequences of illegal dismissal, presuppose that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee.[31]

For another, a considerable period of time has elapsed since petitioner last reported to work in early 2007 or practically a six-year period. And this protracted labor suit have likely engendered animosity and exacerbated already strained relations between petitioner and his employer.

Reinstatement is no longer viable where, among other things, the relations between the employer and employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement.[32] Under the doctrine of strained relations, payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[33] Indeed, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, such as: (1) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (2) reinstatement is inimical to the employer's interest; (3) reinstatement is no longer feasible; (4) reinstatement does not serve the best interests of

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[31] *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 34 (citations omitted).

[32] *DUP Sound Phils. v. Court of Appeals*, G.R. No. 168317, November 21, 2011, 660 SCRA 461, 473; citing *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289; *AFI International Trading Corp. (Zamboanga Buying Station) v. Lorenzo*, G.R. No. 173256, October 9, 2007, 535 SCRA 347, 355; *City Trucking, Inc. v. Balajadia*, G.R. No. 160769, August 9, 2006, 498 SCRA 309, 317; *Cabatulan v. Buat*, G.R. No. 147142, February 14, 2005, 451 SCRA 234, 247.

[33] *Uy v. Centro Ceramica Corporation*, G.R. No. 174631, October 19, 2011, 659 SCRA 604, 618; citing *Century Canning Corporation v. Ramil*, G.R. No. 171630, August 9, 2010, 627 SCRA 192, 206.

the parties involved; (5) the employer is prejudiced by the workers' continued employment; (6) facts that make execution unjust or inequitable have supervened; or (7) strained relations between the employer and the employee.[34]

Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative.[35] In lieu of reinstatement, petitioner is entitled to separation pay equivalent to one (1) month salary for every year of service reckoned from the time he commenced his employment with TAWTRASCO until finality of this Decision.

In addition, petitioner is entitled to backwages and other emoluments due him from the time he did not report for work on March 31, 2007 until the finality of this Decision. Said backwages and emoluments shall earn 12% interest from finality of this Decision until fully paid. The payment of legal interest becomes a necessary consequence of the finality of the Court's Decision, because, reckoned from that time, the said decision becomes a judgment for money which shall earn interest at the rate of 12% per annum.[36]

In accordance with Art. 111[37] of the Labor Code and in line with current jurisprudence,[38] petitioner shall be paid attorney's fees in the amount equivalent to 10% of the monetary award.

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[34] *Abaria v. NLRC*, G.R. No. 154113, December 7, 2011, 661 SCRA 686, 715; citing *Escario v. NLRC (Third Division)*, G.R. No. 160302, September 27, 2010, 631 SCRA 261, 275.

[35] *DUP Sound Phils. v. Court of Appeals*, *supra* note 32, at 474; citing *Diversified Security, Inc. v. Bautista*, G.R. No. 152234, April 15, 2010, 618 SCRA 289, 296 and *Macasero v. Southern Industrial Gases Philippines, Inc.*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

[36] *Molina v. Pacific Plans, Inc.*, G.R. No. 165476, August 15, 2011, 655 SCRA 356, 362.

[37] ART. 111. *Attorney's Fees.* — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

[38] *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, G.R. No. 174179, November

WHEREFORE, the instant petition is **GRANTED**. Accordingly, the assailed Decision and Resolution dated October 14, 2010 and June 15, 2011, respectively, of the CA in CA-G.R. SP No. 112542 are **SET ASIDE**. The NLRC July 7, 2009 Decision and November 18, 2009 Resolution as well as the April 14, 2008 Order of the Labor Arbiter are hereby **REINSTATED** with **MODIFICATION** in that the Tabaco Women's Transport Service Cooperative is **ORDERED** to pay petitioner Alexander B. Bañares the following:

(1) Backwages and other emoluments due to petitioner from March 31, 2007 when petitioner did not report for work until finality of this Decision with interest thereon at 12% per annum from finality of this Decision until paid;

(2) Separation pay equivalent to one (1) month salary for every year of service reckoned from the time he started his employment with TAWTRASCO until the finality of this Decision; and

(3) 10% attorney's fees computed from the total monetary benefits.

The case is **REMANDED** to the RAB V of the NLRC in Legaspi City for the computation, as expeditiously as possible, of the monetary awards.

No pronouncement as to costs.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

16, 2011, 660 SCRA 263, 273-274; *RTG Construction, Inc. v. Facto*, G.R. No. 163872, December 21, 2009, 608 SCRA 615; *Ortiz v. San Miguel Corporation*, G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654.

EN BANC

[A.M. No. P-04-1785. April 2, 2013]
(Formerly A.M. No. 03-11-671 RTC)

THE OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **DEVELYN GESULTURA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; GRAVE MISCONDUCT AND DISHONESTY; THE ACT OF MISAPPROPRIATING JUDICIARY FUNDS CONSTITUTES DISHONESTY AND GRAVE MISCONDUCT WHICH ARE GRAVE OFFENSES PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE. — We are in accord with the OCA insofar as it recommended Gesultura's dismissal from the service. 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. Those charged with the dispensation of justice, from justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. Not only must their conduct at all times be characterized by propriety and decorum but, above all else, it must be beyond suspicion. No position demands greater moral righteousness and uprightness from the occupant than does the judicial office. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice. The act of misappropriating judiciary funds constitutes dishonesty and grave misconduct which are grave offenses punishable by dismissal upon the commission of even the first offense. Time and again, we have reminded court personnel tasked with collections of court funds, such as Clerks of Courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected, because they are not authorized to keep funds in their custody. In *Re: Deceitful Conduct of Ignacio S. Del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA,* the Court dismised from the service cash clerk Ignacio S. Del Rosario who had admitted

to misappropriating money entrusted to him by one Noel G. Primo. In *In Re: Report of Regional Coordinator Felipe Kalalo on Alleged Anomalies Involving JDF Collections in MTCC, Angeles City and MCTC, Minalin, Pampanga*, the Court found sufficient evidence for the guilt of Records Officer and officer-in-charge of JDF Collections Josephine Calaguas for the misappropriation of ₱92,737.00 worth of JDF collections; Calaguas had admitted to using the JDF collections for the medical treatment of her father. She was accordingly dismissed from the service on the ground of dishonesty. We accept the findings of the Fiscal Management and Budget Office, the Court Management Office, and the Office of the Court Administrator that Gesultura is liable for misappropriating collections for the Judiciary Development Fund. We are convinced that she has committed dishonesty in the service.

2. ID.; ID.; ID.; ID.; ID.; PROPER AMOUNT TO BE RESTITUTED BY RESPONDENT; AMOUNT RECOMMENDED BY THE OFFICE OF THE COURT ADMINISTRATOR (OCA), CORRECTED. — After a conscientious review of the record, however, we do not accept the OCA 's recommendation with respect to the amount that Gesultura must restitute. It remains uncontroverted that Gesultura stopped reporting for work on September 15, 2003; it is also noteworthy that the Court placed her under suspension by order of the February 2, 2004 Resolution. Hence, we adopt the recommendation of the Court Management Office Financial Audit Team that Gesultura must restitute the undeposited collections of the OCC RTC-Pasig City for the period December 1996 to December 2003, which is Five Million Four Hundred Sixty Three Thousand Nine Hundred Thirty One Pesos and Thirty Centavos (₱5,463,931.30). Incidentally, this amount is consistent with Atty. Velasco's complaint against Gesultura for malversation and falsification of official or public documents filed before the Office of the ombudsman.

R E S O L U T I O N

LEONEN, *J.*:

This case concerns the administrative liability of Develyn A. Gesultura, Cashier II, Office of the Clerk of Court, Regional

Trial Court Pasig City, for an anomaly involving the Judiciary Development Fund and the General Fund**.**

The Facts

On June 17, 2003, Paz M. Facun, an officer of the Land Bank of the Philippines (*LBP*), informed the Chief of Office of the Supreme Court Fiscal Management and Budget Office (*FMBO*), Corazon M. Ordoñez, that an investigation conducted by the LBP Internal Audit Group showed discrepancies between LBP records and FMBO records on the Judiciary Development Fund *(JDF)* deposit account of the Regional Trial Court of Pasig City *(the account)*.[1] On July 29, 2003, Ordoñez obtained permission from Chief Justice Hilario G. Davide, Jr. to examine the deposits made by the Office of the Clerk of Court of RTC-Pasig City (*OCC RTC-Pasig City*) on the account.[2]

On August 11, 2003, FMBO accountant Rogelio M. Valdezco, Jr. submitted a Reconciliation Report stating that the account was missing Three Million Seven Hundred Seven Thousand Four Hundred Seventy One Pesos and Seventy Six Centavos (₱3,707,471.76) for the period of January 2001 to June 2003.[3]

On August 26, 2003, Chief Justice Davide directed Deputy Court Administrator Christopher O. Lock to determine the officer accountable for the missing amount.[4]

In a November 10, 2003 memorandum[5] titled "Anomaly in the Deposit of Judiciary Development Fund in the OCC, RTC, Pasig City" and addressed to DCA Lock, CMO Judicial Staff Head Nicandro A. Cruz observed that while the January 2001 to June 2003 records of the OCC RTC-Pasig City indicated its total JDF collection and deposit to be Eight Million Nine Hundred Two Thousand One Hundred Eighty Seven Pesos and Ninety

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[1] *Rollo*, pp. 11-12.

[2] *Id.* at 8.

[3] *Id.* at 9-10.

[4] *Id.* at 6.

[5] *Id.* at 3-5.

Five Centavos (₱8,902,187.95), the amount actually deposited in the account was Five Million One Hundred Ninety Four Thousand Seven Hundred Sixteen Pesos and Twenty One Centavos (₱5,194,716.21). Cruz identified Develyn A. Gesultura *(Gesultura)* as the person responsible for the discrepancy:

> The person responsible for the loss was the head of the Cashier's section at the OCC, Ms. DEVELYN A. GESULTURA. Ms. Gesultura had earlier confessed her transgression to RTC Executive Judge JOSE R. HERNANDEZ and Clerk of Court GRACE S. BELVIS. She executed an affidavit to that effect (Annex "L") and has been relieved of her duties as cashier.
>
> The undersigned together with the team of the Fiscal Monitoring Division of the OCA interviewed Ms. Gesultura and the latter admitted taking money from the JDF collection. She also described how she was able to balance her books and escape detection inspite of the audit conducted by the COA last October 2001. Lately, Ms. Gesultura has not reported for work since 15 September 2003.
>
> Ms. Gesultura, Cashier II, was in charge of depositing the JDF daily collections with the Land Bank of the Philippines, Capitol Branch, Pasig City and she alone signs the deposit slips. She stated during the interview above mentioned that she deposits with the LBP a smaller amount than that collected in a particular day and pockets the difference. In order to avoid detection, she accomplishes another deposit slip that states the correct amount and dispose[s] of the deposit slip she actually presented to the bank. This way, her JDF book would tally with the total amount stated in all the deposit slips.
>
> She runs the "fake" deposit slips into a computer printer to make it appear that they were validated by the LBP. The font of the validating machine of the LBP is actually different from the font used by Ms. Gesultura. The font Ms. Gesultura used was slightly bigger and the spacing wider than the letters and numbers the LBP uses; but the "fake" deposit slips could pass detection from anybody merely glancing to check whether there was a validation print in the deposit slips
>
> To complete her scheme, she had a rubber stamp made that reads:
>
> "DUPLICATE COPY"
> "LAND BANK OF THE PHILIPPINES"
> "PASIG CAPITOL BR. FX DEPT."
> "TELLER NO. 2"

She then stamped this to the "fake" deposit slips to make it appear that those were the true duplicate copies of the deposit slips as stamped by the bank.[6]

Attached to Cruz's memorandum was Gesultura's Affidavit dated August 29, 2003,[7] which was subscribed to before Executive Judge Jose R. Fernandez. In the affidavit Gesultura declares as follows:

"5. That I am executing this Affidavit to honestly accept and declare that I am solely liable and answerable to whatever shortages or undeposited collections that may happen or occur during the duration of my term as Ca[s]hier II at the Cash Section, Office of the Clerk of Court, Regional Trial Court, Pasig City and amenable to any punishment rendered against me."

With the approval of Court Administrator Presbitero J. Velasco, Jr., DCA Lock transmitted Cruz's memorandum to Chief Justice Davide together with his recommendations.[8] On February 2, 2004, the Third Division adopted DCA Lock's recommendations and resolved:

(a) to RE-DOCKET the report of the Office of the Court Administrator as well as that of Mr. Rogelio Valdezco, Jr. as an administrative complaint against Ms. Develyn A. Gesultura, Cashier II, Office of the Clerk of CourtRTC Pasig City;

(b) to PLACE Ms. Develyn A. Gesultura under SUSPENSION pending resolution of this Administrative Matter;

(c) to DIRECT Ms. Develyn A. Gesultura to RESTITUTE the partial amount of Three Million Seven Hundred Seven Thousand Four Hundred Seventy One Pesos and Seventy Four Centavos (₱3,707,471.74) subject to the final outcome of the audit by the Fiscal Monitoring Division;

(d) to AUTHORIZE Atty. Grace Belvis, Clerk of Court, Office of the Clerk of Court, Regional Trial Court, Pasig City to

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[6] *Id.* at 3-4.

[7] *Id.* at 41.

[8] *Id.* at 1-2.

FILE the proper criminal complaint against Ms. Gesultura and to DIRECT her to take the necessary steps to recover the amount malversed;

(e) to AUTHORIZE the Office of the Court Administrator to ISSUE a Circular directing Executive Judges and the Clerks of Courts of the Offices of the Clerk of Court to demand from their LBP depository branch copies of bank confirmation of all General Fund and JDF deposits made therein, to reconcile this bank record with their own record, and to ATTACH said bank confirmation to their monthly report of collections and deposits submitted to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, Supreme Court; and

(f) to ISSUE a Hold Departure Order against Ms. Gesultura to prevent her from leaving the country.[9]

On June 15, 2004, a Financial Audit Team[10] at the Court Management Office submitted its final report[11] assessing the total undeposited collections of the OCC RTC-Pasig City for the period December 1996 to December 2003 to be in the amount of Five Million Four Hundred Sixty Three Thousand Nine Hundred Thirty One Pesos and Thirty Centavos (₱5,463,931.30). The audit team recommended that Gesultura be directed to restitute this amount to the Judiciary Development Fund.[12]

On July 18, 2007, in view of the compulsory retirement of Atty. Grace Belvis, the Court authorized the Assistant Clerk of Court of the OCC RTC-Pasig City, Atty. Minerva I. Velasco, to file the proper criminal complaint against Gesultura.[13]

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[9] *Id.* at 42. Resolution dated February 2, 2004.

[10] Composed of Management and Audit Analyst IV Soledad R. Ho as Team Leader, Management and Audit Assistant Christopher T. Pablo, Field Auditors Ma. Aimee M. Alto, Kristoffer L. Bugna, Nelson I. Elento, Jr., Hannah M. Mendoza, Hanziel D. Dimaano, Luzviminda A. Jabagat, Ana Girleeh N. Sampayan as members.

[11] *Rollo*, pp. 79-84.

[12] *Id.* at 83.

[13] *Id.* at 57.

In a November 26, 2007 memorandum addressed to Chief Justice Reynato S. Puno,[14] Court Administrator Zenaida N. Elepaño reported that the total computed shortages in the Judiciary Development Fund and General Fund collections of the OCC RTC-Pasig City from December 1999 to October 2006 are as follows:[15]

		JDF	GF
Tampered Official Receipts	₱	184,000.00	159,000.00
Undeposited Collections		5,463,931.30	
TOTAL	**₱**	**5,647,931.30**	**159,000.00**

Citing *In Re: Financial Audit Conducted in the Books of Accounts of Clerk of Court Laura D. Delantar, MTC, Leyte, Leyte*, the Court Administrator found that Gesultura had committed acts of dishonesty and misappropriated the collections of judiciary funds. OCA Elepaño's memorandum ended in this wise:

Premises considered, it is respectfully recommended for the Honorable Court's consideration the following recommendations:

1. Ms. DEVELYN A. GESULTURA, Cashier II, Office of the Clerk of Court, Regional Trial Court, Pasig City:

   1.1. be **DISMISSED** from the service for gross dishonesty with forfeiture of all her benefits and with prejudice to reemployment in any government agency, including government-owned or controlled corporations;

   1.2. be **DIRECTED** to **RESTITUTE** the computed shortages on Judiciary Development Fund and General Fund (sic) amounting to Five Million six Hundred Forty Seven Thousand Nine Hundred Thirty One and 30/100 (₱5,647,931.30) and One Hundred Fifty Nine Thousand (₱159,000.00), respectively.

2. Atty. MINERVA I. VELASCO, Assistant Clerk of Court, Office of the Clerk of Court, Regional Trial Court, Pasig City, be **DIRECTED**

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

[15] *Id.* at 77.

to **REPORT** to the Office of the Court Administrator her compliance with the Court's resolution dated July 17, 2007.

Respectfully submitted.[16]

The Court noted the memorandum in the Resolution of February 11, 2008.[17]

In a November 28, 2008 Memorandum addressed to Chief Justice Puno, the Office of the Court Administrator reaffirmed Court Administrator Elepaño's recommendations in the November 26, 2007 memorandum *in toto*.[18]

On March 26, 2010, pursuant to the Court's July 18, 2007 Resolution, Atty. Velasco filed a complaint for malversation of public funds and falsification of official or public documents against Gesultura before the Office of the Ombudsman. The complaint was sworn to before 1st Vice Executive Judge Isagani A. Geronimo.[19]

We are in accord with the OCA insofar as it recommended Gesultura's dismissal from the service.

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. Those charged with the dispensation of justice, from justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. Not only must their conduct at all times be characterized by propriety and decorum but, above all else, it must be beyond suspicion.[20]

No position demands greater moral righteousness and uprightness from the occupant than does the judicial office. The

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[16] *Id.* at 78.

[17] *Id.* at 74.

[18] *Id.* at 148.

[19] *Id.* at 155.

[20] *Re: Financial Audit on the Books of Account of Ms. Laura D. Delantar, Clerk of Court, MTC, Leyte, Leyte*, 520 Phil. 434, 441-442 (2006).

safekeeping of funds and collections is essential to the goal of an orderly administration of justice.[21] The act of misappropriating judiciary funds constitutes dishonesty and grave misconduct which are grave offenses punishable by dismissal upon the commission of even the first offense.[22] Time and again, we have reminded court personnel tasked with collections of court funds, such as Clerks of Courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected, because they are not authorized to keep funds in their custody.[23] In *Re: Deceitful Conduct of Ignacio S. Del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA,*[24] the Court dismised from the service cash clerk Ignacio S. Del Rosario who had admitted to misappropriating money entrusted to him by one Noel G. Primo. In *In Re: Report of Regional Coordinator Felipe Kalalo on Alleged Anomalies Involving JDF Collections in MTCC, Angeles City and MCTC, Minalin, Pampanga*,[25] the Court found sufficient evidence for the guilt of Records Officer and officer-in-charge of JDF Collections Josephine Calaguas for the misappropriation of ₱92,737.00 worth of JDF collections; Calaguas had admitted to using the JDF collections for the medical treatment of her father. She was accordingly dismissed from the service on the ground of dishonesty.

We accept the findings of the Fiscal Management and Budget Office, the Court Management Office, and the Office of the Court Administrator that Gesultura is liable for misappropriating collections for the Judiciary Development Fund. We are convinced that she has committed dishonesty in the service.

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[21] *Financial Audit on the Books of Account of Ms. Laura D. Delantar, supra,* citing *Re: Final Report on the Financial Audit Conducted at the Municipal Trial Court of Midsayap, North Cotabato,* A.M. No. 05-8-233-MTC, January 31, 2006, 485 SCRA 562.

[22] *Concerned Citizen vs. Gabral, Jr.*, 514 Phil. 209, 220 (2005).

[23] *Office of the Court Administrator vs. Penaranda et al.*, A.M. No. P-07-2355, March 19, 2010, 616 SCRA 178, 187.

[24] A.M. No. 2011-05-SC, September 6, 2011, 656 SCRA 731.

[25] 326 Phil. 703 (1996).

After a conscientious review of the record, however, we do not accept the OCA's recommendation with respect to the amount that Gesultura must restitute. It remains uncontroverted that Gesultura stopped reporting for work on September 15, 2003; it is also noteworthy that the Court placed her under suspension by order of the February 2, 2004 Resolution. Hence, we adopt the recommendation of the Court Management Office Financial Audit Team that Gesultura must restitute the undeposited collections of the OCC RTC-Pasig City for the period December 1996 to December 2003, which is Five Million Four Hundred Sixty Three Thousand Nine Hundred Thirty One Pesos and Thirty Centavos (₱5,463,931.30). Incidentally, this amount is consistent with Atty. Velasco's complaint against Gesultura for malversation and falsification of official or public documents filed before the Office of the Ombudsman.

WHEREFORE, above premises considered, respondent **DEVELYN A. GESULTURA**, Cashier II at the Office of the Clerk of Court, Regional Trial Court, Pasig City, is found GUILTY of grave misconduct and dishonesty and is ordered **DISMISSED** from the service effectively immediately. All her retirement benefits, excluding accrued leave credits, are ordered FORFEITED in favor of the government with prejudice to reemployment in any government office, including government-owned or controlled corporations.

She is further ordered to restitute the amount of Five Million Four Hundred Sixty Three Thousand Nine Hundred Thirty One Pesos and Thirty Centavos (₱5,463,931.30).

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, and *Reyes, JJ.,* concur.

Velasco, Jr., J., took no part due to prior action in OCA.

Perez, J., took no part. Acted on matter as Court Administrator.

Perlas-Bernabe, J., on official leave.

EN BANC

[A.M. No. MTJ-07-1691. April 2, 2013]
(Formerly A.M. No. 07-7-04-SC)

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **JUDGE ANATALIO S. NECESSARIO, Branch 2; JUDGE GIL R. ACOSTA, Branch 3; JUDGE ROSABELLA M. TORMIS, Branch 4; and JUDGE EDGEMELO C. ROSALES, Branch 8; all of MTCC-Cebu City; CELESTE P. RETUYA, Clerk III, MTCC Branch 6, Cebu City; CORAZON P. RETUYA, Court Stenographer, MTCC, Branch 6, Cebu City; RHONA F. RODRIGUEZ, Administrative Officer I, Office of the Clerk of Court, Regional Trial Court (RTC) Cebu City; EMMA D. VALENCIA, Court Stenographer III, RTC, Branch 18, Cebu City; MARILOU CABANEZ, Court Stenographer, MTCC, Branch 4, Cebu City; DESIDERIO S. ARANAS, Process Server, MTCC, Branch 3, Cebu City; REBECCA ALESNA, Court Interpreter, MTCC, Branch 1, Cebu City; and HELEN MONGGAYA, Court Stenographer, MTCC, Branch 4, Cebu City,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; THE ARGUMENTS OF RESPONDENT JUDGES THAT THE ASCERTAINMENT OF THE VALIDITY OF THE MARRIAGE LICENSE IS BEYOND THE SCOPE OF DUTY OF THE SOLEMNIZING OFFICER IS NOT ACCEPTABLE ESPECIALLY WHEN THERE ARE GLARING PIECES OF EVIDENCE THAT POINT TO THE CONTRARY. — The Court does not accept the arguments of the respondent judges that the ascertainment of the validity of the marriage license is beyond the scope of the duty of a solemnizing officer especially when there are glaring pieces of evidence that point to the contrary. As correctly observed by the OCA, the presumption of regularity accorded to a marriage license disappears the moment the marriage documents do not

appear regular on its face. In *People v. Jansen,* this Court held that: . . . the solemnizing officer is not duty-bound to investigate whether or not a marriage license has been duly and regularly issued by the local civil registrar. All the solemnizing officer needs to know is that the license has been issued by the competent official, and it may be presumed from the issuance of the license that said official has fulfilled the duty to ascertain whether the contracting parties had fulfilled the requirements of law. However, this Court also said in *Sevilla v. Cardenas*, that "the presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty." The visible superimpositions on the marriage licenses should have alerted the solemnizing judges to the irregularity of the issuance. It follows also that although Article 21 of the Family Code requires the submission of the certificate from the embassy of the foreign party to the local registrar for acquiring a marriage license, the judges should have been more diligent in reviewing the parties' documents and qualifications. As noted by the OCA, the absence of the required certificates coupled with the presence of mere affidavits should have aroused suspicion as to the regularity of the marriage license issuance.

2. ID.; ID.; ID.; THE JUDGES' GROSS IGNORANCE OF THE LAW IS EVIDENT WHEN THEY SOLEMNIZED MARRIAGES UNDER ARTICLE 34 OF THE FAMILY CODE WITHOUT THE REQUIRED QUALIFICATIONS AND WITH EXISTENCE OF LEGAL IMPEDIMENTS. — The judges' gross ignorance of the law is also evident when they solemnized marriages under Article 34 of the Family Code without the required qualifications and with the existence of legal impediments such as minority of a party. Marriages of exceptional character such as those made under Article 34 are, doubtless, the exceptions to the rule on the indispensability of the formal requisite of a marriage license. Under the rules of statutory construction, exceptions as a general rule should be strictly but reasonably construed. The affidavits of cohabitation should not be issued and accepted pro forma particularly in view of the settled rulings of the Court on this matter. The five-year period of cohabitation should be one of a perfect union valid under the law but rendered imperfect only by the absence of the marriage contract. The parties should

have been capacitated to marry each other during the entire period and not only at the time of the marriage.

3. ID.; ID.; ID.; THE ACTIONS OF THE JUDGES HAVE RAISED A VERY ALARMING ISSUE REGARDING THE VALIDITY OF MARRIAGES THEY SOLEMNIZED SINCE THEY DID NOT FOLLOW THE PROPER PROCEDURE OR CHECK THE REQUIRED DOCUMENTS AND QUALIFICATIONS. — The absence of a marriage license will clearly render a marriage void *ab initio*. The actions of the judges have raised a very alarming issue regarding the validity of the marriages they solemnized since they did not follow the proper procedure or check the required documents and qualifications. In *Aranes v. Judge Salvador Occiano*, the Court said that a marriage solemnized without a marriage license is void and the subsequent issuance of the license cannot render valid or add even an iota of validity to the marriage. It is the marriage license that gives the solemnizing officer the authority to solemnize a marriage and the act of solemnizing the marriage without a license constitutes gross ignorance of the law. As held by this Court in *Navarro v. Domagtoy*: The judiciary should be composed of persons who, if not experts are at least proficient in the law they are sworn to apply, more than the ordinary layman. They should be skilled and competent in understanding and applying the law. It is imperative that they be conversant with basic legal principles like the ones involved in the instant case. It is not too much to expect them to know and apply the law intelligently.

4. ID.; ID.; ID.; THE ACTUATION OF RESPONDENT JUDGES ARE NOT ONLY CONDEMNABLE, IT IS OUTRIGHT SHAMEFUL. — The respondent judges violated Canons 2 and 6 of the Canons of Judicial Ethics which exact competence, integrity and probity in the performance of their duties. This Court previously said that "Ignorance of the law is a mark of incompetence, and where the law involved is elementary, ignorance thereof is considered as an indication of lack of integrity." In connection with this, the administration of justice is considered a sacred task and upon assumption to office, a judge ceases to be an ordinary mortal. He or she becomes the visible representation of the law and more importantly of justice. The actuations of these judges are not only condemnable, it is outright shameful.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; GRAVE MISCONDUCT; DELIBERATELY GIVING FALSE INFORMATION FOR PURPOSE OF PERPETRATING AN ILLEGAL SCHEME CONSTITUTES GRAVE MISCONDUCT. — Helen Monggaya, Court Interpreter of Judge Rosabella M. Tormis, MTCC, Branch 4, Cebu City, is guilty of grave misconduct when she informed the female lawyer of the judicial audit team that she can facilitate the marriage and the requirements on the same day of the lawyer's visit. What Monggaya was proposing was an open-dated marriage in exchange for a fee of ₱3,000. Section 2, Canon I of the Code of Conduct for Court Personnel prohibits court personnel from soliciting or accepting gifts, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions. Monggaya's claim that she was merely relating to the lady lawyer what she knew from other offices as the usual practice is inexcusable. As found by the OCA in its Memorandum, "Monggaya deliberately gave false information for the purpose of perpetrating an illegal scheme. This, in itself, constitutes grave misconduct." Sec. 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service defines grave misconduct as "a grave offense that carries the extreme penalty of dismissal from the service even on a first offense. x x x Monggaya acted improperly and in a manner opposite of what is expected of court personnel. Her actions placed doubts on the integrity of the courts.

6. ID.; ID.; ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; DEMANDING AND ACCEPTING MONEY FROM COUPLES WHO WANTED TO GET MARRIED IS GRAVE MISCONDUCT; IMPROPER SOLICITATIONS PROHIBITED BY SECTION 2, CANON I OF THE CODE OF CONDUCT FOR COURT PERSONNEL MERITS THE GRAVE PENALTY OF DISMISSAL FROM SERVICE. — Rhona Rodriguez, Administrative Officer I of the Office of the Clerk of Court of the MTCC, Cebu City, is guilty of gross misconduct. She assisted the couple, Moreil Sebial and Maricel Albater, and demanded and accepted ₱4,000 from them. The act was a violation of Section 2, Canon I of the Code of Conduct for Court Personnel. As found by the OCA and adopted by this Court, Rodriguez induced Albater to falsify the application for marriage license by instructing her to indicate her residence

as Barili, Cebu. The claim that she gave the amount to a certain Borces who was allegedly the real facilitator belies her participation in facilitating the marriage. According to the OCA, when the couple went back for their marriage certificate, they approached Rodriguez and not Borces. When Borces told Rodriguez that the marriage certificate had been misplaced, it was Rodriguez who instructed Sebial to fill up another marriage certificate. This Court has held that improper solicitations prohibited by Section 2, Canon I of the Code of Conduct for Court Personnel, merits a grave penalty. Such penalty can be dismissal from service.

7. **ID.; ID.; ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; ACTS OF COURT PERSONNEL OUTSIDE OF THEIR OFFICIAL FUNCTIONS CONSTITUTE CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE BECAUSE THE ACTS VIOLATE WHAT IS PRESCRIBED FOR COURT PERSONNEL. —** Desiderio Aranas, Branch 3 Process Server, MTCC, Cebu City and Rebecca Alesna are guilty of conduct prejudicial to the best of interest of the service. Aranas provided couples who were to be married under Article 34 of the Family Code with the required affidavit of cohabitation. On the other hand, Alesna refers such couples to Aranas to acquire the said affidavit which according to Alesna costs ₱10. As aptly put by the OCA, even if the amount involved in the transaction is minimal, the act of soliciting money still gives the public the wrong impression that court personnel are making money out of judicial transactions. The Court said in *Roque v. Grimaldo* that acts of court personnel outside their official functions constitute conduct prejudicial to the best interest of the service because these acts violate what is prescribed for court personnel. The purpose of this is to maintain the integrity of the Court and free court personnel from suspicion of any misconduct.

8. **ID.; ID.; ID.; ID.; THE CODE OF CONDUCT FOR COURT PERSONNEL PROHIBITS THE EMPLOYEES FROM RECEIVING TIPS OR OTHER REMUNERATION FOR ASSISTING OR ATTENDING TO PARTIES ENGAGED IN TRANSACTIONS OR INVOLVED IN ACTIONS FOR PROCEEDINGS WITH THE JUDICIARY. —** Celeste P. Retuya, Clerk III of Branch 6 of the MTCC, Cebu City, Emma

Valencia, Stenographer III of Branch 18, RTC, Cebu City, and Rebecca Alesna, Court Interpreter of Branch 1, MTCC, Cebu City, admitted to the audit team that they received food from couples they assisted. This is in violation of Section 2(b), Canon III of the Code of Conduct for Court Personnel which prohibits court personnel from receiving tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary. As recommended by the OCA, they are admonished considering that this is their first offense and the tips were of minimal value. In *Reyes-Domingo v. Morales*, this Court held that commission of an administrative offense for the first time is an extenuating circumstances.

D E C I S I O N

***PER CURIAM*:**

This Court has long held that "[the] administration of justice is circumscribed with a heavy burden of responsibility. It requires that everyone involved in its dispensation — from the presiding judge to the lowliest clerk — live up to the strictest standards of competence, honesty, and integrity in the public service."[1]

THE CASE

This is an administrative case that stemmed from the 6 July 2007 Memorandum of the Office of the Court Administrator (OCA).[2] The judicial audit team created by the OCA reported alleged irregularities in the solemnization of marriages in several branches of the Municipal Trial Court in Cities (MTCC) and Regional Trial Court (RTC) in Cebu City.[3] Certain package

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[1] *Re: Anonymous letter-complaint against Hon. Marilou Runes-Tamang, Presiding Judge, MeTC Pateros, Metro Manila and Presiding Judge, MeTC San Juan, Metro Manila*, A.M. MTJ-04-1558 (Formerly OCA IPI No. 04-1594-MTJ), 617 SCRA 428, April 7, 2010, *citing Re: Withholding of Other Emoluments of the Following Clerks of Court: Elsie C. Remoroza, et. al.*, A.M. No. 01-4-133-MTC, August 26, 2003, 409 SCRA 574, 581-582.

[2] *Rollo*, pp. 1-2.

[3] *Id.*

fees were offered to interested parties by "fixers" or "facilitators" for instant marriages.[4]

THE FACTS

On 3 July 2007, Atty. Rullyn Garcia, Region 7 Judicial Supervisor, proceeded to Cebu City and headed the audit team created by OCA in investigating Branches 2, 3, 4, and 8 of the MTCC in Cebu City.[5] A female and male lawyer of the audit team went undercover as a couple looking to get married. They went to the Palace of Justice and were directed by the guard on duty to go to Branch 4 and look for a certain "Meloy". The male lawyer feared that he would be recognized by other court personnel, specifically the Clerk of Court of Branch 4 who was a former law school classmate. The two lawyers then agreed that only the female lawyer would go inside and inquire about the marriage application process. Inside Branch 4, a woman named Helen approached and assisted the female lawyer. When the female lawyer asked if the marriage process could be rushed, Helen assured the lawyer that the marriage could be solemnized the next day, but the marriage certificate would only be dated the day the marriage license becomes available. Helen also guaranteed the regularity of the process for a fee of three thousand pesos (₱3,000) only.[6]

In its 10 July 2007 Resolution, this Court treated the Memorandum dated 6 July 2007 of the judicial audit team as a formal administrative complaint and directed Judge Anatalio S. Necessario, Judge Gil R. Acosta, Judge Rosabella M. Tormis, and Judge Edgemelo C. Rosales to submit their respective comments.[7] The Court also suspended the judges pending resolution of the cases against them.[8]

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[4] *Id.* at 3.

[5] *Id.* at 2.

[6] Office of the Court Administrator Memorandum dated 15 June 2010.

[7] *Rollo,* pp. 24-25.

[8] *Id.*

On 24 August 2007, the OCA through Senior Deputy Court Administrator Zenaida N. Elepaño submitted its Memorandum dated 29 August 2007[9] and Supplemental Report.[10] Six hundred forty-three (643) marriage certificates were examined by the judicial audit team.[11] The team reported that out of the 643 marriage certificates examined, 280 marriages were solemnized under Article 34[12] of the Family Code.[13] The logbooks of the MTCC Branches indicate a higher number of solemnized marriages than the number of marriage certificates in the courts' custody.[14] There is also an unusual number of marriage licenses obtained from the local civil registrars of the towns of Barili and Liloan, Cebu.[15] There were even marriages solemnized at 9 a.m. with marriage licenses obtained on the same day.[16] The town of Barili, Cebu is more than sixty (60) kilometers away from Cebu City and entails a travel time of almost two (2) hours.[17] Liloan, Cebu, on the other hand, is more than ten (10) kilometers away from Cebu City.[18]

The judicial audit team, after tape-recording interviews with other court and government personnel, also reported the following:

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[9] *Id.* at 106.

[10] *Id.* at 107.

[11] *Id.* at 5.

[12] Art. 34. No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties are found no legal impediment to the marriage. (76a)

[13] *Rollo,* p. 9.

[14] *Id.* at 2.

[15] *Id.* at 109.

[16] *Id.* at 5.

[17] *Supra* note 15.

[18] *Id.*

1) Celeste P. Retuya admitted that she assisted couples who wanted to get married by checking whether their documents were complete and referred them to Judges Tormis, Necessario, and Rosales afterwards;[19]

2) Corazon P. Retuya referred couples who wanted to get married to Judge Necessario. There were also "assistants" who would go over the couples' documents before these couples would be referred to Judge Necessario. Retuya also narrated several anomalies involving foreign nationals and their acquisition of marriage licenses from the local civil registrar of Barili, Cebu despite the fact that parties were not residents of Barili. Those anomalous marriages were solemnized by Judge Tormis;[20]

3) Rhona F. Rodriguez assisted couples and referred them to any of the available judges. She admitted that after the payment of the solemnization fee of three hundred pesos (₱300), a different amount, as agreed upon by the parties and the judge, was paid to the latter.[21] She admitted that she accepted four thousand pesos (₱4,000) for facilitating the irregular marriage of Moreil Baranggan Sebial and Maricel Albater although she gave the payment to a certain "Mang Boy";[22]

4) Emma D. Valencia admitted that she assisted couples seeking to get married and that most of the marriage licenses were obtained from the local civil registrar of Barili and Liloan, Cebu because the registrars in those towns were not strict about couples' attendance in the family planning seminar. She also admitted that couples gave her food while the judge received five hundred pesos (₱500) if the marriage was solemnized inside the chambers. Foreigners were said to have given twice the

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[19] *Rollo*, p. 179.

[20] *Id.* at 180-182.

[21] *Id.* at 183-184.

[22] *Id.* at 197.

said amount. The judge accepted one thousand five hundred pesos (₱1,500) for gasoline expenses if the marriage was celebrated outside the chambers;[23]

5) Marilou Cabañez admitted that she assisted couples and referred them to Judges Tormis, Necessario, or Rosales. However, she denied receiving any amount from these couples. She told the audit team that during the 8th, 18th, and 28th of the month, seven (7) to eight (8) couples would go directly to Judge Rosabella M. Tormis for a fifteen-minute marriage solemnization;[24]

6) Desiderio S. Aranas admitted that he started assisting couples in 2003. He told the investigating team that Judge Gil Acosta would talk to couples wishing to get married without a license. He would produce a joint affidavit of cohabitation form on which he or the clerk of court would type the entries. The judge would then receive an envelope containing money from the couple. Aranas also confirmed the existence of "open-dated" marriage certificates;[25]

7) Antonio Flores, Branch 9 Process Server of RTC Cebu City, told the investigating team that couples looked for Judge Geraldine Faith A. Econg, Presiding Judge, Regional Trial Court, Branch 9, Cebu City, "*para menos ang bayad*."[26] The excess of three hundred pesos (₱300) that couples paid to Judge Econg as solemnization fee went to a certain "sinking fund" of Branch 9;[27]

8) Rebecca L. Alesna admitted that she usually referred couples to Judges Necessario or Tormis. Couples who wanted to get married under Article 34 of the Family

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[23] *Supra* note 6, at 12.

[24] *Id.*

[25] *Id.*

[26] *Rollo,* p. 188.

[27] *Supra* note 6.

Code were advised to buy a pro-forma affidavit of joint cohabitation for ten pesos (₱10);[28]

9) Arvin Oca, Branch 1 Process Server of the MTCC of Cebu City, admitted that he referred couples to Branch 2, Clerk of Court, Harrish Co. Oca declared that on 28 June 2007, he accompanied a couple to the chambers of Judge Necessario.[29] He informed the judge that the couple only had birth certificates.[30] The respondent judge then inquired about their ages and asked them if they had been previously married then proceeded to solemnize the marriage;[31] and

10) Filomena C. Lopez, local civil registrar of Barili, Cebu, declared that she does not scrutinize marriage applications.[32] Couples who are non-Barili residents are able to obtain marriage licenses from her Barili office because these couples have relatives residing in Barili, Cebu.[33] She also added that while couples still need to submit a certificate of attendance in the family planning seminar, they may attend it before or after the filing of the application for marriage license.[34]

Affidavits of private persons were also attached to the records. Jacqui Lou Baguio-Manera was a resident of Panagdait, Mabolo, Cebu and on 21 May 2007, she and her then fiancé wanted to set a marriage date.[35] Her younger sister who was married in a civil wedding last year gave her the number of a certain "Meloy". After talking to Meloy on the phone, the wedding was scheduled

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[28] *Id.* at 13.

[29] *Rollo*, p. 189.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 192.

[33] *Id.*

[34] *Id.*

[35] Affidavit dated 5 July 2007.

at 2 p.m. on 23 May 2007 and the couple were asked to bring their birth certificates. No marriage license was required from them. Meloy asked for a fee of one thousand five hundred pesos (₱1,500). According to Baguio-Manera, their marriage certificate was marked as "No marriage license was necessary, the marriage being solemnized under Art. 34 of Executive Order No. 209". Their marriage was solemnized that day by Judge Rosabella M. Tormis. Baguio-Manera claimed that they did not understand what that statement meant at that time. However, in her affidavit, she declared that the situation premised under Article 34 did not apply to her and her fiancé.

Mary Anne Flores-Patoc was a resident of Barrio Luz, Cebu City. In her 5 July 2007 affidavit, she recounted how she and her boyfriend went to the Provincial Capitol to get married in February 2006. While logging in at the entrance, they were offered assistance by the guards for a fee of one thousand five hundred pesos (₱1,500). The guard also offered to become "*Ninong*" or a witness to the wedding. The couple became suspicious and did not push through with the civil wedding at that time.

On 27 November 2007, the Court *En Banc* issued a resolution: a) requiring Judges Anatalio S. Necessario, Gil R. Acosta, Rosabella M. Tormis, and Edgemelo C. Rosales of the MTCC, Branches 2, 3, 4, and 8, respectively, of Cebu City, to comment on the findings of the 14 August 2007 Supplemental Report of the OCA, within fifteen (15) days from notice; b) directing the Process Servicing Unit to furnish the judges with a copy of the Supplemental Report; c) requiring the court personnel listed below to show cause within fifteen (15) days from notice why no disciplinary action should be taken against them for their alleged grave misconduct and dishonesty and impleading them in this administrative matter:

1) Celeste P. Retuya, Clerk III, MTCC, Branch 6, Cebu City;
2) Corazon P. Retuya, Court Stenographer, MTCC, Branch 6, Cebu City;
3) Rhona F. Rodriguez, Administrative Officer I, Office of the Clerk of Court, RTC, Cebu City;

4) Emma D. Valencia, Court Stenographer III, RTC, Branch 18, Cebu City;
5) Marilou Cabañez, Court Stenographer, MTCC, Branch 4, Cebu City;
6) Desiderio S. Aranas, Process Server, MTCC, Branch 3, Cebu City;
7) Rebecca Alesna, Court Interpreter, MTCC, Branch 1, Cebu City;
8) Helen Mongaya,Court Stenographer, MTCC, Branch 4, Cebu City.

The Court in the same resolution also: a) ordered the referral to the Office of the Deputy Ombudsman for the Visayas for appropriate action on the administrative matter involving the violation of the law on marriage by Ms. Filomena C. Lopez, Local Civil Registrar of Barili, Cebu, and one Ms. Veronica S. Longakit, former Local Civil Registrar of Liloan, Cebu; b) directed the Process Serving Unit to furnish the Office of the Deputy Ombudsman for the Visayas with a copy of the Supplemental Report of the OCA; and c) required Judge Geraldine Faith A. Econg, RTC, Branch 9, Cebu City, to comment within fifteen (15) days from notice on the statement of staff member Antonio Flores saying that Branch 9's court personnel received an amount in excess of the ₱300 solemnization fee paid by couples whose marriages were solemnized by her. This amount goes to the court's "sinking fund".[36]

In their Comments and/or Answers to the Memorandum dated 5 July 2007 of the OCA and its Supplemental Report,[37] the respondent judges argued the following:

Judge Anatalio S. Necessario relies on the presumption of regularity regarding the documents presented to him by contracting parties.[38] He claims that marriages he solemnized under Article 34 of the Family Code had the required affidavit of cohabitation. He claims that *pro forma* affidavits of cohabitation have been

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[36] Resolution dated 27 November 2007.

[37] *Rollo*, pp. 106-202.

[38] *Id.* at 77.

used by other judges even before he became a judge.[39] He avers that he ascertains the ages of the parties, their relationship, and the existence of an impediment to marry.[40] He also asks the parties searching questions and clarifies whether they understood the contents of the affidavit and the legal consequences of its execution.[41] The judge also denies knowledge of the payment of solemnization fees in batches.[42] In addition, he argues that it was a process server who was in-charge of recording marriages on the logbook, keeping the marriage certificates, and reporting the total number of marriages monthly.[43]

Judge Gil R. Acosta argues that the law only requires a marriage license and that he is not required to inquire whether the license was obtained from a location where one of the parties is an actual resident.[44] The judge believes that it is not his duty to verify the signature on the marriage license to determine its authenticity because he relies on the presumption of regularity of public documents.[45] The judge also outlines his own procedure in solemnizing marriages which involves: first, the determination whether the solemnization fee was paid; second, the presentation of the affidavit of cohabitation and birth certificates to ascertain identity and age of the parties; third, if one of the parties is a foreigner, the judge asks for a certificate of legal capacity to marry, passport picture, date of arrival, and divorce papers when the party is divorced; fourth, he then asks the parties and their witnesses questions regarding cohabitation and interviews the children of the parties, if any.[46]

Judge Rosabella M. Tormis denies the charges brought by the OCA. She calls the actions of the judicial audit team during

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[39] *Id.*

[40] *Id.* at 78.

[41] *Id.*

[42] *Id.* at 79.

[43] *Id.*

[44] *Id.* at 47.

[45] *Id.* at 48.

[46] *Rollo,* pp. 46-47 and 226-231.

the investigation an "entrapment".[47] She also claims that there is nothing wrong with solemnizing marriages on the date of the issuance of the marriage license and with the fact that the issued marriage license was obtained from a place where neither of the parties resided.[48] As to the pro forma affidavits of cohabitation, she argues that she cannot be faulted for accepting it as genuine as she and the other judges are not handwriting experts.[49] The affidavits also enjoy the presumption of regularity.[50] Judge Tormis also discredits the affidavit of Baguio-Manera as hearsay.[51] The respondent said that when Baguio-Manera and her husband were confronted with the affidavit they executed, they affirmed the veracity of the statements, particularly the fact that they have been living together for five years.[52] The judge also attributes the irregularity in the number of marriages solemnized in her sala to the filing clerks.[53]

Judge Edgemelo C. Rosales denies violating the law on marriage.[54] He maintains that it is the local civil registrar who evaluates the documents submitted by the parties, and he presumes the regularity of the license issued.[55] It is only when there is no marriage license given that he ascertains the qualifications of the parties and the lack of legal impediment to marry.[56] As to the affidavits of cohabitation, the judge believes there is nothing wrong with the fact that these are *pro forma*. He states that marriage certificates are required with the marriage license attached or the affidavit of cohabitation only and the other

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[47] *Id.* at 53.

[48] *Id.* at 55.

[49] *Id.* at 56.

[50] *Id.*

[51] *Id.* at 60-61.

[51] *Id.*

[53] *Id.* at 816.

[54] *Id.* at 34.

[55] *Id.*

[56] *Id.*

documents fall under the responsibility of the local civil registrar. He surmises that if the marriage certificate did not come with the marriage license or affidavit of cohabitation, the missing document might have been inadvertently detached, and it can be checked with the proper local civil registrar. As to the payment of the docket fee, he contends that it should be paid after the solemnization of the marriage and not before because judges will be pre-empted from ascertaining the qualifications of the couple. Besides, the task of collecting the fee belongs to the Clerk of Court.[57] The judge also argues that solemnization of marriage is not a judicial duty.[58]

On 12 November 2007, Judges Tormis and Rosales filed a Memorandum of Law with Plea for Early Resolution, Lifting of Suspension and Dismissal of Case.[59] This Court in a Resolution dated 11 December 2007 lifted the suspension of the respondent judges but prohibited them from solemnizing marriages until further ordered.[60]

On 7 December 2007, Judges Tormis and Rosales filed a Motion for Early Resolution with Waiver of Formal and/or Further Investigation and Motion to Dismiss.[61] In a Resolution dated 15 January 2008, the Court noted the motion and granted the prayer of Judges Tormis and Rosales for the payment of their unpaid salaries, allowances and all other economic benefits from 9 July 2007.[62]

THE REPORT AND RECOMMENDATION OF THE OCA

In its Memorandum dated 15 June 2010,[63] the OCA recommended the dismissal of the respondent judges and some

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[57] *Rollo*, pp. 36-39.

[58] *Id.* at 625.

[59] *Id.* at 238.

[60] *Id.* at 258.

[61] *Id.* at 265.

[62] *Id.* at 273.

[63] *Supra* note 6.

court employees, and the suspension or admonition of others. The OCA summarized the liabilities of the respondents, to wit:

JUDGE ANATALIO S. NECESSARIO is guilty of gross inefficiency or neglect of duty for solemnizing marriages with questionable documents and wherein one of the contracting parties is a foreigner who submitted a mere affidavit of his capacity to marry in lieu of the required certificate from his embassy. He is also guilty of gross ignorance of the law for solemnizing marriages under Article 34 of the Family Code wherein one or both of the contracting parties were minors during the cohabitation.

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JUDGE GIL R. ACOSTA is guilty of gross inefficiency or neglect of duty for failure to make sure that the solemnization fee has been paid. He is also guilty of gross ignorance of the law for solemnizing marriages under Article 34 of the Family Code wherein one or both of the contracting parties were minors during the cohabitation.

JUDGE EDGEMELO C. ROSALES is guilty of gross inefficiency or neglect of duty for solemnizing marriages with questionable documents, for failure to make sure that the solemnization fee has been paid and for solemnizing marriages wherein one of the contracting parties is a foreigner who submitted a mere affidavit of his capacity to marry in lieu of the required certificate from his embassy. He is also guilty of gross ignorance of the law for solemnizing a marriage without the requisite marriage license.

JUDGE ROSEBELLA M. TORMIS is guilty of gross inefficiency or neglect of duty for solemnizing marriages with questionable documents, for failure to make sure that the solemnization fee has been paid, for solemnizing marriages wherein one of the contracting parties is a foreigner who submitted a mere affidavit of his capacity to marry in lieu of the required certificate from the embassy and for solemnizing a marriage with an expired license.

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HELEN MONGGAYA is guilty of grave misconduct for violating Section 2, Canon I of the Code of Conduct for Court Personnel [that] prohibits court personnel from soliciting or accepting any gift, favor or benefit based on any or explicit or implicit understanding that such gift, favor or benefit shall influence their official actions

and for giving false information for the purpose of perpetrating an irregular marriage.

RHONA RODRIGUEZ is guilty of gross misconduct for violating Section 2, Canon I of the Code of Conduct for Court Personnel and for inducing Maricel Albater to falsify the application for marriage license by instructing her to indicate her residence as Barili, Cebu.

DESIDERIO ARANAS and **REBECCA ALESNA** are guilty of conduct prejudicial to the best interest of the service for providing couples who are to be married under Article 34 of the Family Code with the required affidavit of cohabitation.

CELESTE RETUYA, EMMA VALENCIA and **REBECCA ALESNA** are guilty of violating Section 2(b), Canon III of the Code of Conduct for Court Personnel which prohibits court personnel from receiving tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary.[64]

The OCA, however, recommended the **DISMISSAL** of the complaints against **Judge Geraldine Faith A. Econg**, **Corazon P. Retuya**, and **Marilou Cabañez**, for lack of merit.

THE ISSUE

The issue now before this Court is whether the judges and personnel of the MTCC and RTC in Cebu City are guilty of gross ignorance of the law, gross neglect of duty or gross inefficiency and gross misconduct, and in turn, warrant the most severe penalty of dismissal from service.

THE COURT'S RULING

The findings in the 2010 Memorandum of the Office of the Court Administrator are supported by the evidence on record and applicable law and jurisprudence.

This Court has long held that court officials and employees are placed with a heavy burden and responsibility of keeping the faith of the public.[65] In *Obañana, Jr. v. Ricafort*, we said that:

[64] *Id.* at 33-34.

[65] *Alejandro v. Martin*, A.M. No. P-07-2349, August 10, 2007, 529 SCRA 698, 704.

Any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This Court shall not countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the faith of the people in the Judiciary.[66]

The OCA described accurately the Palace of Justice in Cebu City as a hub of swift marriages. The respondent judges and court personnel disregarded laws and procedure to the prejudice of the parties and the proper administration of justice.

The OCA found that Judges Anatalio S. Necessario, Gil R. Acosta, Rosabella M. Tormis, and Edgemelo C. Rosales are all guilty of gross inefficiency or neglect of duty when they solemnized marriages without following the proper procedure laid down by law, particularly the Family Code of the Philippines and existing jurisprudence. The OCA listed down aspects of the solemnization process which were disregarded by the judges. The Court will now discuss the individual liabilities of the respondent judges and court personnel *vis-à-vis* the evidence presented by the OCA against them.

Liability of Judge Anatalio S. Necessario

The OCA reported that Judge Necessario solemnized a total of one thousand one hundred twenty-three (1,123) marriages from 2005 to 2007.[67] However, only one hundred eighty-four (184) marriage certificates were actually examined by the judicial audit team.[68] Out of the 184 marriages, only seventy-nine (79) were solemnized with a marriage license while one hundred five (105) were solemnized under Article 34 of the Family Code. Out of the 79 marriages with license, forty-seven (47) of these licenses were issued by the Local Civil Registrar of Liloan, Cebu. This translates to 42.93% of the marriages he solemnized

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[66] A.M. No. MTJ-04-1545, May 27, 2004, 429 SCRA 223, p. 228, *citing Angeles v. Eduarte*, 457 Phil 49 (2003).

[67] OCA 2010 Memorandum *supra* note 6 at 8.

[68] *Id.*

with marriage license coming from Liloan for over a period of years.[69] There were also twenty-two (22) marriages solemnized by the judge with incomplete documents such missing as marriage license, certificate of legal capacity to marry, and the joint affidavit of cohabitation.[70]

Judge Necessario solemnized nine (9) marriages that had questionable supporting documents such as marriage licenses.[71] The OCA found that the place of residence of the contracting parties appearing in the supporting documents differ from the place where they obtained their marriage license.[72] The documents invited suspicion because of erasures and superimpositions in the entries of residence.[73] Likewise, in lieu of the required certificate of legal capacity to marry, a mere affidavit was submitted by the parties.[74] Variations in the signatures of the contracting parties were also apparent in the documents.[75]

The respondent judge solemnized forty-three (43) marriages under Article 34 of the Family Code. These marriages appeared dubious since the joint affidavit of cohabitation of the parties show minority of one or both of them during cohabitation.[76] For example, he solemnized on 14 May 2004 the marriage of 22-year-old Harol D. Amorin and 19-year-old Dinalyn S. Paraiso who are residents of Lapu-Lapu City.[77]

There are also sixteen (16) marriage licenses with attached official receipts of the solemnization fee but the corresponding

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[69] *Rollo,* p. 109.

[70] *Id.* at 114-119.

[71] *Id.* at 119-123.

[72] *Supra* note 67.

[73] *Rollo,* pp. 119-123.

[74] *Supra* note 67.

[75] *Id.* at 9.

[76] *Id.*

[77] *Rollo,* p. 124.

marriage certificates cannot be found.[78] The presence of the receipts implies that these marriages were solemnized.

Liability of Judge Gil R. Acosta

Judge Acosta solemnized a total of eighty-seven (87) marriages from 2003 to 2007.[79] However, the logbook showed that he solemnized two hundred seventy-two (272) marriages while the monthly reports of cases showed that he solemnized five hundred twelve (512) marriages over the same period. Out of the 87 marriages, he solemnized seventy-five (75) under Article 34 of the Family Code.[80] This is equivalent to 86.21% of the marriages solemnized under Article 34 in a four-year period.[81]

There were forty-one (41) marriage certificates signed by Judge Tormis or Judge Necessario as solemnizing officers found in his custody.[82] There were also ten (10) marriages under Article 34 of the Family Code where one or both of the contracting parties were minors during cohabitation.[83] To illustrate, respondent judge solemnized on 4 May 2004 the marriage of Julieto W. Baga, 22 years old, and Esterlita P. Anlangit, 18 years old.[84]

There were seventeen (17) marriages under Article 34 where neither of the contracting parties were residents of Cebu City.[85] The judge solemnized three (3) marriages without the foreign party's required certificate of legal capacity to marry.[86] Lastly, there was no proof of payment of the solemnization fee in almost all of the marriages the judge officiated.[87]

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[78] *Supra* note 6 at 9.

[79] *Id.*

[80] *Id.*

[81] *Rollo,* p. 129.

[82] *Supra* note 78.

[83] *Rollo,* pp. 130-131.

[84] *Id.* at 130.

[85] *Id.* at 131-133.

[86] *Id.* at 133-134.

[87] *Supra* note 78.

Liability of Judge Rosabella M. Tormis

Judge Tormis solemnized a total of one hundred eighty-one (181) marriages from 2003 to 2007 based on the marriage certificates actually examined.[88] However, the monthly report of cases showed that she solemnized three hundred five (305) marriages instead for the years 2004 to 2007.[89] The OCA report also noted that it was only in July 2007 that her court started to use a logbook to keep track of marriages.[90]

Respondent judge solemnized thirty-seven (37) marriages with incomplete or missing documents such as the marriage license, certificate of legal capacity to marry, and the joint affidavit of cohabitation.[91] In several instances, only affidavits were submitted by the foreign parties in lieu of the certificate of legal capacity to marry.[92]

Judge Tormis solemnized thirteen (13) marriages despite the questionable character of the validity of the required documents particularly the marriage license.[93] The judicial audit team found numerous erasures and superimpositions on entries with regard to the parties' place of residence.[94] In one instance, the judge solemnized the marriage of Rex Randy E. Cujardo and Anselma B. Laranio on 28 December 2006 despite the marriage license containing a rubberstamp mark saying, "THIS LICENSE EXPIRES ON" and a handwritten note saying "12/28/06" under it.[95]

The judge solemnized a total of forty-seven (47) marriages under Article 34 of the Family Code wherein the marriage

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[88] *Rollo,* p. 134.

[89] *Id.*

[90] *Supra* note 78.

[91] *Rollo,* pp. 135-144.

[92] *Id.*

[93] *Id.* at 144-149.

[94] *Id.*

[95] *Id.* at 148.

requirements' authenticity was doubtful due to the circumstances of the cohabitation of the parties and the given address of the parties.[96] These irregularities were evident in the case of 22-year-old John Rey R. Tibalan and Ana Liza Secuya who were married on 25 May 2007. The residential address of the couple in the marriage certificate is "Sitio Bamboo, Buhisan, Cebu City." However, there was an application for marriage license attached to the marriage certificate showing that Secuya's address is "F. Lopez Comp. Morga St., Cebu City."[97]

Liability of Judge Edgemelo C. Rosales

Judge Rosales solemnized a total of one hundred twenty-one (121) marriages from 2006 to 2007 based on the marriage certificates examined by the judicial audit team.[98] However, only three (3) marriages were reported for the same period.[99] Out of the 121 marriages the judge solemnized, fifty-two (52) or 42.98% fall under Article 34 of the Family Code.[100] Thirty-eight (38) marriage licenses out of the sixty-six (66) obtained or 57.57% were from the local civil registrar of Barili, Cebu.[101] Nineteen (19) or 28.79% were from the local civil registrar of Liloan, Cebu.[102] Nine (9) or 13.64% were from other local civil registrars.[103]

There were marriage documents found in his court such as marriage licenses, applications for marriage license, certificates of legal capacity to contract marriage, affidavits in lieu of certificate of legal capacity to contract marriage, joint affidavits of cohabitation, and other documents referring to the solemnization

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[96] *Id.* at 149-160.

[97] *Id.* at 157.

[98] *Supra* note 6 at 10.

[99] *Id.*

[100] *Rollo,* p. 161.

[101] *Id.*

[102] *Id.*

[103] *Id.*

of one hundred thirty-two (132) marriages, with no corresponding marriage certificates.[104] He solemnized two marriages of Buddy Gayland Weaver, an American citizen, to two different persons within nine (9) months.[105] No copy of the required certificate of legal capacity to contract marriage or the divorce decree was presented.[106]

The judge solemnized thirty-seven (37) marriages without or with incomplete supporting documents such as the certificate of legal capacity to marry and the joint affidavit of cohabitation.[107] He solemnized nine (9) marriages under questionable circumstances such as the submission of an affidavit or affirmation of freedom to marry in lieu of the certificate of legal capacity to marry, the discrepancies in the residence of the contracting parties as appearing in the marriage documents, and the solemnization of the marriage on the same day the marriage license was issued.[108]

Judge Rosales also solemnized forty-three (43) marriages with no proof that the solemnization fee of ₱300 was paid.[109] On the other hand, there were twenty-six (26) marriages whose solemnization fees were paid late.[110]

To summarize, the liabilities of the judges are the following:

First, Judges Necessario, Tormis and Rosales solemnized marriages even if the requirements submitted by the couples were incomplete and of questionable character. Most of these documents showed visible signs of tampering, erasures, corrections or superimpositions of entries related to the parties' place of residence.[111] These included indistinguishable features

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[104] *Id.*

[105] *Id.* at 162.

[106] *Id.*

[107] *Id.* at 163-172.

[108] *Id.* at 172-176.

[109] *Id.* at 176-177.

[110] *Id.* at 177-178.

[111] *Supra* note 6, at 24-25.

such as the font, font size, and ink of the computer-printed entries in the marriage certificate and marriage license.[112] These actions of the respondent judges constitute gross inefficiency. In *Vega v. Asdala*,[113] the Court held that inefficiency implies negligence, incompetence, ignorance, and carelessness.

Second, the judges were also found guilty of neglect of duty regarding the payment of solemnization fees. The Court, in *Rodrigo-Ebron v.* Adolfo,[114] defined neglect of duty as the failure to give one's attention to a task expected of him and it is gross when, from the gravity of the offense or the frequency of instances, the offense is so serious in its character as to endanger or threaten public welfare. The marriage documents examined by the audit team show that corresponding official receipts for the solemnization fee were missing[115] or payment by batches was made for marriages performed on different dates.[116] The OCA emphasizes that the payment of the solemnization fee starts off the whole marriage application process and even puts a "stamp of regularity" on the process.

Third, Judges Necessario, Tormis, and Rosales also solemnized marriages where a contracting party is a foreigner who did not submit a certificate of legal capacity to marry from his or her embassy. What the foreigners submitted were mere affidavits stating their capacity to marry. The irregularity in the certificates of legal capacity that are required under Article 21 of the Family Code[117] displayed the gross neglect of duty of the judges. They should have been diligent in scrutinizing the documents required

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[112] *Rollo*, p. 111.

[113] A.M. No. RTJ-06-1997, October 23, 2006, 535 SCRA 729.

[114] A.M. No. P-06-2231, April 27, 2007, 522 SCRA 286.

[115] *Supra* note 6, at 25.

[116] *Supra* note 112.

[117] Art. 21. When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials.

for the marriage license issuance. Any irregularities would have been prevented in the qualifications of parties to contract marriage.[118]

Fourth, Judges Necessario, Acosta, and Tormis are likewise guilty of gross ignorance of the law under Article 34 of the Family Code[119] with respect to the marriages they solemnized where legal impediments existed during cohabitation such as the minority status of one party.[120] The audit team cites in their Supplemental Report that there were parties whose ages ranged from eighteen (18) to twenty-two (22) years old who were married by mere submission of a *pro forma* joint affidavit of cohabitation.[121]These affidavits were notarized by the solemnizing judge himself or herself.[122]

Finally, positive testimonies were also given regarding the solemnization of marriages of some couples where no marriage license was previously issued. The contracting parties were made to fill up the application for a license on the same day the marriage was solemnized.[123]

The Court does not accept the arguments of the respondent judges that the ascertainment of the validity of the marriage license is beyond the scope of the duty of a solemnizing officer especially when there are glaring pieces of evidence that point to the contrary. As correctly observed by the OCA, the presumption of regularity accorded to a marriage license disappears the moment the marriage documents do not appear regular on its face.

In *People v. Jansen*,[124] this Court held that:

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[118] *Supra* note 6, at 26-27.

[119] *Supra* note 12.

[120] *Supra* note 6, at 27.

[121] *Rollo*, p. 111

[122] *Id.*

[123] *Supra* note 6, at 9.

[124] 54 Phil. 176, 180 (1929) as *cited* in *Alcantara v. Alcantara*, G.R. No. 167746, August 28, 2007, 531 SCRA 446.

> . . . the solemnizing officer is not duty-bound to investigate whether or not a marriage license has been duly and regularly issued by the local civil registrar. All the solemnizing officer needs to know is that the license has been issued by the competent official, and it may be presumed from the issuance of the license that said official has fulfilled the duty to ascertain whether the contracting parties had fulfilled the requirements of law.

However, this Court also said in *Sevilla v. Cardenas*,[125] that "the presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty." The visible superimpositions on the marriage licenses should have alerted the solemnizing judges to the irregularity of the issuance.

It follows also that although Article 21 of the Family Code requires the submission of the certificate from the embassy of the foreign party to the local registrar for acquiring a marriage license, the judges should have been more diligent in reviewing the parties' documents and qualifications. As noted by the OCA, the absence of the required certificates coupled with the presence of mere affidavits should have aroused suspicion as to the regularity of the marriage license issuance.

The judges' gross ignorance of the law is also evident when they solemnized marriages under Article 34 of the Family Code without the required qualifications and with the existence of legal impediments such as minority of a party. Marriages of exceptional character such as those made under Article 34 are, doubtless, the exceptions to the rule on the indispensability of the formal requisite of a marriage license.[126] Under the rules of statutory construction, exceptions as a general rule should be strictly but reasonably construed.[127] The affidavits of cohabitation should not be issued and accepted pro forma particularly in view of the settled rulings of the Court on this matter. The five-

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[125] G.R. No. 167684, July 31, 2006, 497 SCRA 428, 443.

[126] *Republic of the Philippines v. Dayot*, G.R. No. 175581, March 28, 2008, 550 SCRA 435.

[127] *Id.*

year period of cohabitation should be one of a perfect union valid under the law but rendered imperfect only by the absence of the marriage contract.[128] The parties should have been capacitated to marry each other during the entire period and not only at the time of the marriage.[129]

To elaborate further on the gravity of the acts and omissions of the respondents, the Family Code provides the requisites for a valid marriage:

> Art. 3. The formal requisites of marriage are:
> (1) Authority of the solemnizing officer;
> (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
> (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age. (53a, 55a)
>
> Art. 4. The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2). A defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable. (n)

The absence of a marriage license will clearly render a marriage void *ab initio*.[130] The actions of the judges have raised a very alarming issue regarding the validity of the marriages they solemnized since they did not follow the proper procedure or check the required documents and qualifications. In *Aranes v. Judge Salvador Occiano*,[131] the Court said that a marriage solemnized without a marriage license is void and the subsequent issuance of the license cannot render valid or add even an iota of validity to the marriage. It is the marriage license that gives the solemnizing officer the authority to solemnize a marriage

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[128] *Ninal v. Badayog*, 384 Phil. 661 (2000).

[129] *Id.*

[130] *Cariño v. Cariño*, 403 Phil. 861 (2001).

[131] 430 Phil. 197 (2002).

and the act of solemnizing the marriage without a license constitutes gross ignorance of the law.

As held by this Court in *Navarro v. Domagtoy*:

> The judiciary should be composed of persons who, if not experts are at least proficient in the law they are sworn to apply, more than the ordinary layman. They should be skilled and competent in understanding and applying the law. It is imperative that they be conversant with basic legal principles like the ones involved in the instant case. It is not too much to expect them to know and apply the law intelligently.[132]

It is important to note that the audit team found out that Judge Rosabella M. Tormis ordered Celerina Plaza, a personal employee of the judge, to wait for couples outside the Hall of Justice and offer services.[133] Crisanto Dela Cerna also stated in his affidavit that Judge Tormis instructed him to get all marriage certificates and bring them to her house when she found out about the judicial audit.[134] In the language of the OCA, Judge Tormis considered the solemnization of marriages not as a duty but as a business.[135] The respondent judge was suspended for six (6) months in A.M. No. MTJ-071-962 for repeatedly disregarding the directives of this Court to furnish the complainant a copy of her comment. She was also fined the amount of five thousand pesos (₱5,000) in A.M. Nos. 04-7-373-RTC and 04-7-374 RTC.[136] She was reprimanded twice in A.M. No. MTJ-05-1609 and in A.M. No. MTJ-001337.[137] Finally, in the very recent case of *Office of the Court Administrator v. Hon. Rosabella M. Tormis and Mr. Reynaldo S. Teves,* A.M. No. MTJ-12-1817, promulgated last 12 March 2013, Judge Tormis was found guilty

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[132] 328 Phil. 435 (1996), p. 444.

[133] *Supra* note 6, at 34-35. See also *Rollo*, pp. 887-889.

[134] *Rollo,* pp. 894-895.

[135] *Supra* note 6, at 35.

[136] *Id.*

[137] *Id.*

of gross inefficiency, violation of Supreme Court rules, directives and circulars and gross ignorance of the law by this Court. She was dismissed from service, with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The respondent judges violated Canons 2[138] and 6[139] of the Canons of Judicial Ethics which exact competence, integrity and probity in the performance of their duties. This Court previously said that "Ignorance of the law is a mark of incompetence, and where the law involved is elementary, ignorance thereof is considered as an indication of lack of integrity."[140] In connection with this, the administration of justice is considered a sacred task and upon assumption to office, a judge ceases to be an ordinary mortal. He or she becomes the visible representation of the law and more importantly of justice.[141]

The actuations of these judges are not only condemnable, it is outright shameful.

Liability of Other Court Personnel

The Court agrees with the recommendations of the OCA on the liability of the following employees:

Helen Monggaya, Court Interpreter of Judge Rosabella M. Tormis, MTCC, Branch 4, Cebu City, is guilty of grave misconduct when she informed the female lawyer of the judicial audit team that she can facilitate the marriage and the requirements on the same day of the lawyer's visit.[142] What Monggaya was

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[138] INTEGRITY. Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

[139] COMPETENCE AND DILIGENCE. Competence and diligence are pre-requisites to the due performance of judicial office.

[140] *Macalintal v. Teh*, 345 Phil. 871 (1997).

[141] *Office of the Court Administrator v. Gines*, A.M. No. RTJ-92-802, July 5, 1993, 224 SCRA 261.

[142] *Supra* note 6, at 9.

proposing was an open-dated marriage in exchange for a fee of ₱3,000. Section 2, Canon I of the Code of Conduct for Court Personnel prohibits court personnel from soliciting or accepting gifts, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions.

Mongaya's claim that she was merely relating to the lady lawyer what she knew from other offices as the usual practice[143] is inexcusable. As found by the OCA in its Memorandum, "Monggaya deliberately gave false information for the purpose of perpetrating an illegal scheme. This, in itself, constitutes grave misconduct."[144] Sec. 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service defines grave misconduct as "a grave offense that carries the extreme penalty of dismissal from the service even on a first offense.

In *Villaceran v. Rosete,* this Court held that:

> Court personnel, from the lowliest employee, are involved in the dispensation of justice; parties seeking redress from the courts for grievances look upon court personnel, irrespective of rank or position, as part of the Judiciary. In performing their duties and responsibilities, these court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's trust and confidence in this institution. Therefore, they are expected to act and behave in a manner that should uphold the honor and dignity of the Judiciary, if only to maintain the people's confidence in the Judiciary.[145]

Mongaya acted improperly and in a manner opposite of what is expected of court personnel. Her actions placed doubts on the integrity of the courts.

Rhona Rodriguez, Administrative Officer I of the Office of the Clerk of Court of the MTCC, Cebu City, is guilty of gross

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[143] *Rollo,* p. 874.

[144] *Supra* note 6, at 31.

[145] A.M. No. MTJ-08-1727, (Formerly A.M. OCA I.P.I. No. 03-1465-MTJ), March 22, 2011. See also *Angeles v. Eduarte*, *supra* note 66.

misconduct. She assisted the couple, Moreil Sebial and Maricel Albater, and demanded and accepted ₱4,000 from them.[146] The act was a violation of Section 2, Canon I of the Code of Conduct for Court Personnel. As found by the OCA and adopted by this Court, Rodriguez induced Albater to falsify the application for marriage license by instructing her to indicate her residence as Barili, Cebu.[147] The claim that she gave the amount to a certain Borces who was allegedly the real facilitator belies her participation in facilitating the marriage. According to the OCA, when the couple went back for their marriage certificate, they approached Rodriguez and not Borces.[148] When Borces told Rodriguez that the marriage certificate had been misplaced, it was Rodriguez who instructed Sebial to fill up another marriage certificate.[149]

This Court has held that improper solicitations prohibited by Section 2, Canon I of the Code of Conduct for Court Personnel, merits a grave penalty.[150] Such penalty can be dismissal from service.

Desiderio Aranas, Branch 3 Process Server, MTCC, Cebu City and Rebecca Alesna are guilty of conduct prejudicial to the best of interest of the service. Aranas provided couples who were to be married under Article 34 of the Family Code with the required affidavit of cohabitation.[151] On the other hand, Alesna refers such couples to Aranas to acquire the said affidavit which according to Alesna costs ₱10. As aptly put by the OCA, even if the amount involved in the transaction is minimal, the act of

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[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *In Re: Improper Solicitation of Court Employees – Rolando Hernandez*, A.M. No. 2008-12-SC, and *Office of the Court Administrator v. Sheela Nobleza*, A.M. No. P-08-2510, April 24, 2009, 586 SCRA 325, 332-334.

[151] *Supra* note 6 at 32.

soliciting money still gives the public the wrong impression that court personnel are making money out of judicial transactions.[152]

The Court said in *Roque v. Grimaldo*[153] that acts of court personnel outside their official functions constitute conduct prejudicial to the best interest of the service because these acts violate what is prescribed for court personnel. The purpose of this is to maintain the integrity of the Court and free court personnel from suspicion of any misconduct.

Celeste P. Retuya, Clerk III of Branch 6 of the MTCC, Cebu City, Emma Valencia, Stenographer III of Branch 18, RTC, Cebu City, and Rebecca Alesna, Court Interpreter of Branch 1, MTCC, Cebu City, admitted to the audit team that they received food from couples they assisted.[154] This is in violation of Section 2(b), Canon III of the Code of Conduct for Court Personnel which prohibits court personnel from receiving tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary. As recommended by the OCA, they are admonished considering that this is their first offense and the tips were of minimal value. In *Reyes-Domingo v. Morales*, this Court held that commission of an administrative offense for the first time is an extenuating circumstance.[155]

The Court finds that there is insufficient evidence against Corazon P. Retuya. The OCA reports that Corazon Retuya admitted initially that she received ₱5,000 from spouses Ichiro Kamiaya and Mary Grace Gabiana to secure necessary documents.[156] The information was volunteered by Corazon Retuya with no supporting sworn statement from the couple. However, she denies this fact later on in her Comment.[157] Finding

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[152] *Id.*

[153] A.M. No. P-95-1148, July 30, 1996, 260 SCRA 1.

[154] *Supra* note 6 at 32.

[155] A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6, 18.

[156] *Id.*

[157] *Rollo*, pp. 577-578.

the earlier statement of Corazon Retuya as unclear and lacking support from evidence, the Court adopts the findings of the OCA and decides to give her the benefit of the doubt.

The Court also finds insufficient evidence to support the claims against Marilou Cabañez. Cabañez was only implicated in this case through the sworn statement of Jacqui Lou Baguio-Manera who attested that they paid a certain "Meloy" ₱1,200 for the wedding under Article 34 of the Family through the assistance of Cabañez.[158] Cabañez denies that she was the one who assisted the couple and explained that it may have been Celerina Plaza, the personal assistant of Judge Rosabella M. Tormis. Baguio-Manera got the nickname "Meloy" not from Cabañez herself but from Baguio-Manera's younger sister.[159] When Baguio-Manera met the said "Meloy" at the Hall of Justice, she did not obtain confirmation that the said "Meloy" is Cabañez. The Court adopts the findings of the OCA that there is lack of positive identification of Cabañez and finds merit in her denial.[160]

The Court accepts the recommendation of the OCA as to the dismissal of the case against Judge Geraldine Faith A. Econg. The judge was only implicated through the statement of Process Server Antonio Flores about an "alleged sinking fund". No evidence was presented as to the collection of an excess of the solemnization fee. Neither was it proven that Judge Econg or her staff had knowledge of such fund.

WHEREFORE, the Court finds respondents:

1. **Judge Anatalio S. Necessario**, Presiding Judge, Municipal Trial Court in Cities, Branch 2, Cebu City, **GUILTY** of gross inefficiency or neglect of duty and of gross ignorance of the law and that he be **DISMISSED FROM THE SERVICE** with forfeiture of his retirement benefits, except leave credits, if any, and that he be disqualified

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[158] *Supra* note 6 at 33.

[159] *Rollo*, pp. 876-879.

[160] *Supra* note 158.

from reinstatement or appointment to any public office, including government-owned or -controlled corporation;

2. **Judge Gil R. Acosta**, Presiding Judge, Municipal Trial Court in Cities, Branch 3, Cebu City, **GUILTY** of gross inefficiency or neglect of duty and of gross ignorance of the law and that he be **DISMISSED FROM THE SERVICE** with forfeiture of his retirement benefits, except leave credits, if any, and that he be disqualified from reinstatement or appointment to any public office, including government-owned or -controlled corporation;

3. **Judge Rosabella M. Tormis**, Presiding Judge, Municipal Trial Court in Cities, Branch 4, Cebu City, **GUILTY** of gross inefficiency or neglect of duty and of gross ignorance of the law and that she would have been **DISMISSED FROM THE SERVICE** with forfeiture of her retirement benefits, except leave credits, if any, and disqualified from reinstatement or appointment to any public office, including government-owned or -controlled corporation, **had she not been previously dismissed from service in A.M. No. MTJ-12-1817 (Formerly A.M. No. 09-2-30-MTCC)**;

4. **Judge Edgemelo C. Rosales**, Presiding Judge, Municipal Trial Court in Cities, Branch 8, Cebu City, **GUILTY** of gross inefficiency or neglect of duty and of gross ignorance of the law and that he be **DISMISSED FROM THE SERVICE** with forfeiture of his retirement benefits, except leave credits, if any, and that he be disqualified from reinstatement or appointment to any public office, including government-owned or -controlled corporation;

5. **Helen Mongaya**, Court Interpreter, Municipal Trial Court in Cities, Branch 4, Cebu City, **GUILTY** of violating Section 2, Canon I of the Code of Conduct for Court Personnel and that she be **DISMISSED FROM THE SERVICE** with forfeiture of her retirement benefits, except leave credits, if any, and that she be disqualified from reinstatement or appointment to any

public office, including government-owned or -controlled corporation;

6. **Rhona F. Rodriguez**, Administrative Officer I, Office of the Clerk of Court, Regional Trial Court, Cebu City, **GUILTY** of gross misconduct for Section 2, Canon I of the Code of Conduct for Court Personnel and for inducing Maricel Albater to falsify the application for marriage and that she be **DISMISSED FROM THE SERVICE** with forfeiture of her retirement benefits, except leave credits, if any, and that she be disqualified from reinstatement or appointment to any public office, including government-owned or -controlled corporation;

7. **Desiderio S. Aranas**, Process Server, Municipal Trial Court in Cities, Branch 3, Cebu City, **GUILTY** of conduct prejudicial to the best interest of the service and that he be **SUSPENDED** without pay for a period of six (6) months with a warning that a similar offense shall be dealt with more severely;

8. **Rebecca Alesna**, Court Interpreter, Municipal Trial Court in Cities, Branch 1, Cebu City, **GUILTY** of conduct prejudicial to the best interest of the service and of violating Section 2(b), Canon III of the Code of Conduct for Court Personnel and that she be **SUSPENDED** without pay for a period of six (6) months with a warning that a similar offense shall be dealt with more severely;

9. **Celeste Retuya**, Clerk III, Municipal Trial Court in Cities, Branch 6, Cebu City, and **Emma Valencia**, Stenographer III, Regional Trial Court, Branch 18, Cebu City, **GUILTY** of conduct prejudicial to the best interest of the service and of violating Section 2(b), Canon III of the Code of Conduct for Court Personnel and that they be **ADMONISHED** with a warning that a similar offense shall be dealt with more severely;

The complaints against **Judge Geraldine Faith A. Econg**, Presiding Judge, Regional Trial Court, Branch 9, Cebu City;

Corazon P. Retuya, Court Stenographer, Municipal Trial Court in Cities, Branch 6, Cebu City; and **Marilou Cabañez**, Court Stenographer, Municipal Trial Court in Cities, are **DISMISSED** for lack of merit.

The case against Judge Rosabella M. Tormis, including the sworn statements of Celerina Plaza and Crisanto dela Cerna, should be **REFERRED** to the Office of the Bar Confidant for the purpose of initiating disbarment proceedings against the judge.

The Honorable Mayors of Barili, Cebu and Liloan, Cebu, are to be furnished copies of the Supplemental Report dated 14 August 2007 and are **ADVISED** to conduct an investigation with respect to the statements of Filomena C. Lopez, Civil Registrar of Barili, Cebu, and Bonita I. Pilones, Civil Registrar of Liloan, Cebu, regarding the processing of marriage licenses and to take the necessary action as the findings of the investigation may warrant.

Let a copy of this Decision be included in the respondents' files that are with the Office of the Bar Confidant and distributed to all courts and to the Integrated Bar of the Philippines.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Perlas-Bernabe, J., on official leave.

disregarding any amount less than ₱10,000.00. We now have 224 years that should be added to the basic penalty. However, the imposable penalty for simple theft should not exceed a total of 20 years. Therefore, had petitioner committed simple theft, the penalty would be 20 years of *reclusion temporal.* As the penalty for qualified theft is two degrees higher, the correct imposable penalty is *reclusion perpetua.*

The petitioner should thus be convicted of qualified theft with the corresponding penalty of *reclusion perpetua*.

WHEREFORE, we hereby **DENY** the appeal. The June 27, 2005 decision and the November 24, 2005 resolution of the Court of Appeals in CA-G.R. CR No. 28369 are **AFFIRMED** with **MODIFICATION**. Petitioner Engr. Anthony V. Zapanta is sentenced to suffer the penalty of *reclusion perpetua*. Costs against the petitioner.

SO ORDERED.

Carpio, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 174240. March 20, 2013]

SPOUSES LEHNER and LUDY MARTIRES, *petitioners, vs.* **MENELIA CHUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FILING PERIOD OF 15 DAYS FROM DENIAL OF MOTION FOR RECONSIDERATION; NOT TOLLED WITH THE FILING OF SECOND MOTION FOR RECONSIDERATION WHICH IS NOT ALLOWED. — Section 2, Rule 45 of the

Rules of Court provides that a petition for review on *certiorari* under the said Rule "shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from **or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment."** Relative thereto, Section 2, Rule 52 of the same Rules provides that **"[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."** Based on the abovementioned dates, the start of the 15-day period for the filing of this petition should have been reckoned from July 18, 2006, the time of petitioners' receipt of the CA Resolution denying their Motion for Reconsideration, and not on September 5, 2006, the date when they received the CA Resolution denying their Second Motion for Reconsideration. Thus, petitioners should have filed the instant petition not later than August 2, 2006. It is wrong for petitioners to reckon the 15-day period for the filing of the instant petition from the date when they received the copy of the CA Resolution denying their Second Motion for Reconsideration. Since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by *certiorari*. Petitioners made a critical mistake in waiting for the CA to resolve their second motion for reconsideration before pursuing an appeal. Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. For this reason, petitioners' failure to file this petition within the 15-day period rendered the assailed Amended CA Decision and Resolutions final and executory, thus, depriving this Court of jurisdiction to entertain an appeal therefrom. On this ground alone, the instant petition should be dismissed.

2. ID.; EVIDENCE; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; NOTARIZED DOCUMENTS' EVIDENTIARY WEIGHT DISPENSED WITH IF NOTARIZATION IS DEFECTIVE. — [P]etitioners are correct in pointing out that notarized documents carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective

notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

3. ID.; ID.; ID.; ID.; NOTARIZED DOCUMENT DOES NOT GUARANTEE THE VALIDITY OF ITS CONTENTS. — While indeed a notarized document enjoys the presumption of regularity, the fact that a deed is notarized is not a guarantee of the validity of its contents. The presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary. In the present case, the presumption cannot be made to apply, because aside from the regularity of its notarization, the validity of the contents and execution of the subject Deed of Transfer was challenged in the proceedings below where its *prima facie* validity was subsequently overthrown by the questionable circumstances attendant in its supposed execution.

4. CIVIL LAW; SPECIAL CONTRACTS; EQUITABLE MORTGAGE; PRESUMED WHERE IT CAN BE INFERRED THAT THE REAL INTENTION OF THE TRANSACTION IS TO SECURE THE PAYMENT OF DEBT; CASE AT BAR. — [R]espondent borrowed from petitioner spouses the amount of ₱150,000.00. The loan was secured by a real estate mortgage over [twenty-four memorial lots]. Respondent committed to pay a monthly interest of 8% and an additional 10% monthly interest in case of default. Respondent failed to fully settle her obligation. Subsequently, without foreclosure of the mortgage, ownership of the subject lots were transferred in the name of petitioners via a Deed of Transfer. x x x [T]he agreement between petitioners and respondent is, in fact, an equitable mortgage. An equitable mortgage has been defined as one which, although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent. One of the circumstances provided for under Article 1602 of the Civil Code, where a contract shall be presumed to be an equitable mortgage, is "where it may be fairly inferred that the real intention of the parties is that the transaction

shall secure the payment of a debt or the performance of any other obligation." In the instant case, it has been established that the intent of both petitioners and respondent is that the subject property shall serve as security for the latter's obligation to the former. As correctly pointed out by the CA, the circumstances surrounding the execution of the disputed Deed of Transfer would show that the said document was executed to circumvent the terms of the original agreement and deprive respondent of her mortgaged property without the requisite foreclosure.

5. ID.; *PACTUM COMMISSORIUM*; PRESENT IN CASE AT BAR AS THE ORIGINAL TRANSACTION WAS A MORTGAGE AND SUBSEQUENTLY OWNERSHIP WAS ASSIGNED WITHOUT THE BENEFIT OF FORECLOSURE PROCEEDINGS. — Since the original transaction between the parties was a mortgage, the subsequent assignment of ownership of the subject lots to petitioners without the benefit of foreclosure proceedings, partakes of the nature of a *pactum commissorium*, as provided for under Article 2088 of the Civil Code. *Pactum commissorium* is a stipulation empowering the creditor to appropriate the thing given as guaranty for the fulfillment of the obligation in the event the obligor fails to live up to his undertakings, without further formality, such as foreclosure proceedings, and a public sale. In the instant case, evidence points to the fact that the sale of the subject property, as proven by the disputed Deed of Transfer, was simulated to cover up the automatic transfer of ownership in petitioners' favor. While there was no stipulation in the mortgage contract which provides for petitioners' automatic appropriation of the subject mortgaged property in the event that respondent fails to pay her obligation, the subsequent acts of the parties and the circumstances surrounding such acts point to no other conclusion than that petitioners were empowered to acquire ownership of the disputed property without need of any foreclosure.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL; EXCEPTIONS; ISSUES CLOSELY RELATED TO ERRORS ASSIGNED; CASE AT BAR. — It is true that, as a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings

below, but ventilated for the first time only in a motion for reconsideration or on appeal. However, as with most procedural rules, this maxim is subject to exceptions. In this regard, the Court's ruling in *Mendoza v. Bautista* is instructive, to wit: x x x Indeed, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Section 8 of Rule 51 of the Rules of Court provides [for] *Questions that may be decided*. x x x Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: x x x (c) **matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice**; x x x (e) **matters not assigned as errors on appeal but closely related to an error assigned**; x x x In the present case, petitioners must be reminded that one of the main issues raised by respondent in her appeal with the CA is the validity and due execution of the Deed of Transfer which she supposedly executed in petitioners' favor. The Court agrees with respondent that, under the factual circumstances obtaining in the instant case, the determination of the validity of the subject Deed of Transfer would necessarily entail or involve an examination of the true nature of the said agreement. In other words, the matter of validity of the disputed Deed of Transfer and the question of whether the agreement evidenced by such Deed was, in fact, an equitable mortgage are issues which are closely related, which can, thus, be resolved jointly by the CA.

APPEARANCES OF COUNSEL

Gepty & Jose Law Offices for petitioners.
Dennis M. Taningco for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside

the Amended Decision,[1] as well as the Resolutions[2] of the Court of Appeals (CA), dated September 30, 2005, July 5, 2006 and August 28, 2006, respectively, in CA-G.R. CV No. 76388. The assailed Decision of the CA reversed and set aside its earlier Decision, dated April 30, 2004, in favor of petitioners. The July 5, 2006 Resolution denied petitioners' Motion for Reconsideration, while the August 28, 2006 Resolution denied petitioners' Second Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Subject of the instant controversy are twenty-four memorial lots located at the Holy Cross Memorial Park in Barangay Bagbag, Novaliches, Quezon City. The property, more particularly described as "Lot: 24 lots, Block 213, Section: Plaza of Heritage-Reg.," is covered by Transfer Certificate of Title (TCT) No. 342914. Respondent, together with her mother, Florencia R. Calagos, own the disputed property. Their co-ownership is evidenced by a Deed of Sale and Certificate of Perpetual Care, denominated as Contract No. 31760, which was executed on June 4, 1992.[3]

On December 18, 1995, respondent borrowed from petitioner spouses the amount of ₱150,000.00. The loan was secured by a real estate mortgage over the abovementioned property. Respondent committed to pay a monthly interest of 8% and an additional 10% monthly interest in case of default.[4] Respondent failed to fully settle her obligation.

Subsequently, without foreclosure of the mortgage, ownership of the subject lots were transferred in the name of petitioners via a Deed of Transfer.[5]

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[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Ruben T. Reyes (now a retired member of this Court) and Jose C. Mendoza (now a member of this Court), concurring; *rollo,* pp. 32-52.

[2] Annexes "B" and "C" to Petition, *rollo,* pp. 54-59.

[3] Exhibit "A", records, p. 237.

[4] Exhibit "D"/"7", *id*. at 241.

[5] Exhibit "B"/"8", *id*. at 239.

On June 23, 1997, respondent filed with the Regional Trial Court (RTC) of Quezon City a Complaint against petitioners, Manila Memorial Park, Inc., the company which owns the Holy Cross Memorial Park, and the Register of Deeds of Quezon City, praying for the annulment of the contract of mortgage between her and petitioners on the ground that the interest rates imposed are unjust and exorbitant. Respondent also sought accounting to determine her liability under the law. She likewise prayed that the Register of Deeds of Quezon City and Manila Memorial Park, Inc. be directed to reconvey the disputed property to her.[6]

On November 20, 1998, respondent moved for the amendment of her complaint to include the allegation that she later discovered that ownership of the subject lots was transferred in the name of petitioners by virtue of a forged Deed of Transfer and Affidavit of Warranty. Respondent prayed that the Deed of Transfer and Affidavit of Warranty be annulled.[7] In their Manifestation dated January 25, 1999, petitioners did not oppose respondent's motion.[8] Trial ensued.

After trial, the RTC of Quezon City rendered a Decision in favor of petitioners, the dispositive portion of which reads, thus:

> Wherefore, premises considered, judgment is hereby rendered against Menelia R. Chua and in favor of the Sps. Lehner Martires and Ludy Martires; and Manila Memorial Park Cemetery, Inc. as follows:
>
> 1. The Complaint is denied and dismissed for lack of merit;
>
> 2. The counterclaims are granted as follows:
>
> a. Menelia R. Chua is ordered to pay the Sps. Martires the amount of ₱100,000.00 as moral damages; the amount of ₱50,000.00 as exemplary damages; and the amount of ₱30,000.00 as reasonable attorney's fees plus costs of suit.

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[6] Records, pp. 1-6.

[7] *Id.* at 170-177.

[8] *Id.* at 195.

b. Menelia R. Chua is ordered to pay Manila Memorial Park Cemetery, Inc. the amount of ₱30,000.00 as reasonable attorney's fees plus costs of suit.

SO ORDERED.[9]

On appeal, the CA affirmed, with modification, the judgment of the RTC, disposing as follows:

WHEREFORE, premises considered, the instant appeal is hereby ***DENIED*** for lack of merit, and the decision of the trial court dated 03 August 2002 is hereby ***AFFIRMED*** with ***MODIFICATION*** as to the amount of moral and exemplary damages, and attorney's fees. Plaintiff-appellant Menelia R. Chua is hereby ordered to pay the defendant-appellees Spouses Martires the amount of ₱30,000.00 as moral damages; ₱20,000.00 as exemplary damages; and attorney's fees of ₱10,000.00 plus costs of suit.

Insofar as defendant-appellee Manila Memorial Park Cemetery, Inc. is concerned, the attorney's fees awarded is reduced to ₱10,000.00 plus costs of suit.

SO ORDERED.[10]

The CA ruled that respondent voluntarily entered into a contract of loan and that the execution of the Deed of Transfer is sufficient evidence of petitioners' acquisition of ownership of the subject property.

Respondent filed a Motion for Reconsideration.[11] Petitioners opposed it.[12]

On September 30, 2005, the CA promulgated its assailed Amended Decision with the following dispositive portion:

WHEREFORE, the Court grants the movant's Motion for Reconsideration.

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[9] *Id.* at 365-366.

[10] CA *rollo*, p. 109. (Emphasis in the original)

[11] *Id.* at 113-125.

[12] *Id.* at 135-152.

Accordingly, the decision of this Court dated April 30, 2004 in CA-G.R. CV No. 76388, which had affirmed the judgment of the Regional Trial Court of Quezon City, Branch 221, in Civil Case No. Q-97-31408, is ***REVERSED*** and ***SET ASIDE***, and it is hereby declared that:

> (1) The assailed decision dated August 3, 2002 of the Regional Trial Court of Quezon City Branch 221 in Civil Case No. Q-97-31408 is hereby ***Reversed*** with the following ***MODIFICATIONS***, to wit:
>
> > (1) The Deed of Transfer dated July 3, 1996, as well as the Affidavit of Warranty, are hereby declared void *ab initio;*
> >
> > (2) The loan of ₱150,000.00 is hereby subject to an interest of 12% per annum.
> >
> > (3) The Manila Memorial Park Cemetery, Inc. and the Register of Deeds of Quezon City [are] hereby directed to cancel the registration or annotation of ownership of the spouses Martires on Lot: 24 lots, Block 213, Section: Plaza Heritage — Regular, Holy Cross Memorial Park, being a portion of Transfer Certificate of Title No. 342914 issued by the Register of Deeds of Quezon City, and revert registration of ownership over the same in the name of appellant Menelia R. Chua, and Florencia R. Calagos.
> >
> > (4) The movant, Menelia R. Chua, is hereby ordered to pay the spouses Martires the amount of ₱150,000.00 plus interest of 12% per annum computed from December 18, 1995 up to the time of full payment thereof and, after deducting payments made in the total amount of ₱80,000.00, the same shall be paid within ninety (90) days from the finality of this decision. In case of failure to pay the aforesaid amount and the accrued interests from the period hereinstated, the property shall be sold at public auction to satisfy the mortgage debt and costs, and if there is an excess, the same is to be given to the owner.
>
> No costs.
>
> SO ORDERED.[13]

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[13] *Id.* at 183-184.

The CA reconsidered its findings and concluded that the Deed of Transfer which, on its face, transfers ownership of the subject property to petitioners, is, in fact, an equitable mortgage. The CA held that the true intention of respondent was merely to provide security for her loan and not to transfer ownership of the property to petitioners. The CA so ruled on the basis of its findings that: (1) the consideration, amounting to ₱150,000.00, for the alleged Deed of Transfer is unusually inadequate, considering that the subject property consists of 24 memorial lots; (2) the Deed of Transfer was executed by reason of the same loan extended by petitioners to respondent; (3) the Deed of Transfer is incomplete and defective; and (4) the lots subject of the Deed of Transfer are one and the same property used to secure respondent's ₱150,000.00 loan from petitioners.

Petitioners filed a Motion for Reconsideration,[14] but the CA denied it in its Resolution dated July 5, 2006.

On July 26, 2006, petitioners filed a Second Motion for Reconsideration,[15] but again, the CA denied it via its Resolution dated August 28, 2006.

Hence, the present petition based on the following grounds:

A. THE COURT OF APPEALS PATENTLY ERRED IN NOT UPHOLDING THE DEED OF TRANSFER EXECUTED BY THE RESPONDENT IN FAVOR OF THE PETITIONERS BY RULING THAT:

1. The Deed of Transfer executed by respondent in favor of petitioners over the subject property was not entered in the Notarial Book of Atty. Francisco Talampas and reported in the Notarial Section of the Regional Trial Court of Makati City.

2. The Deed of Transfer was not duly notarized by Atty. Francisco Talampas inasmuch as there was no convincing proof that respondent appeared before Notary Public Atty. Talampas.

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[14] *Id.* at 185-195.

[15] *Id.* at 260-270.

B. THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT THE DEED OF TRANSFER EXECUTED BETWEEN THE RESPONDENT AND THE PETITIONERS CONSTITUTED AN EQUITABLE MORTGAGE CONSIDERING THAT:

1. Said issue was not raised in any pleading in the appellate and trial courts.

2. Respondent herself admitted that a separate mortgage was executed to secure the loan.[16]

The petition lacks merit.

At the outset, the instant petition should be denied for being filed out of time. Petitioners admit in the instant petition that: (1) on July 18, 2006, they received a copy of the July 5, 2006 Resolution of the CA which denied their Motion for Reconsideration of the assailed Amended Decision; (2) on July 26, 2006, they filed a Motion to Admit Second Motion for Reconsideration attaching thereto the said Second Motion for Reconsideration; (3) on September 5, 2006, they received a copy of the August 28, 2006 Resolution of the CA which denied their Motion to Admit as well as their Second Motion for Reconsideration; and (4) they filed the instant petition on October 20, 2006.

Section 2, Rule 45 of the Rules of Court provides that a petition for review on *certiorari* under the said Rule "shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from **or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment**." Relative thereto, Section 2, Rule 52 of the same Rules provides that "**[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.**" Based on the abovementioned dates, the start of the 15-day period for the filing of this petition should have been reckoned from July 18, 2006, the time of petitioners' receipt of the CA Resolution denying their Motion for Reconsideration, and not on September 5, 2006, the date

[16] *Rollo,* pp. 16-17.

when they received the CA Resolution denying their Second Motion for Reconsideration. Thus, petitioners should have filed the instant petition not later than August 2, 2006. It is wrong for petitioners to reckon the 15-day period for the filing of the instant petition from the date when they received the copy of the CA Resolution denying their Second Motion for Reconsideration. Since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by *certiorari*.[17] Petitioners made a critical mistake in waiting for the CA to resolve their second motion for reconsideration before pursuing an appeal.

Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional.[18] For this reason, petitioners' failure to file this petition within the 15-day period rendered the assailed Amended CA Decision and Resolutions final and executory, thus, depriving this Court of jurisdiction to entertain an appeal therefrom.[19] On this ground alone, the instant petition should be dismissed.

In any case, even granting, *arguendo*, that the present petition is timely filed, the Court finds no cogent reason to depart from the findings and conclusions of the CA in its disputed Amended Decision.

Anent the first assigned error, petitioners are correct in pointing out that notarized documents carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.[20] However, the presumptions that attach to notarized

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[17] *Tagle v. Equitable PCI Bank,* G.R. No. 172299, April 22, 2008, 552 SCRA 424, 445.

[18] *Ong v. Philippine Deposit Insurance Corp.*, G.R. No. 175116, August 18, 2010, 628 SCRA 415, 426.

[19] *Id.*

[20] *Meneses v. Venturozo,* G.R. No. 172196, October 19, 2011, 659 SCRA 577, 586.

documents can be affirmed only so long as it is beyond dispute that the notarization was regular.[21] A defective notarization will strip the document of its public character and reduce it to a private instrument.[22] Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[23]

In the present case, the CA has clearly pointed out the dubious circumstances and irregularities attendant in the alleged notarization of the subject Deed of Transfer, to wit: (1) the Certification[24] issued by the Clerk of Court of the Notarial Section of the RTC of Makati City which supposedly attested that a copy of the subject Deed of Transfer is on file with the said court, was contradicted by the Certification[25] issued by the Administrative Officer of the Notarial Section of the same office as well as by the testimony of the court employee who prepared the Certification issued by the Clerk of Court, to the effect that the subject Deed of Transfer cannot, in fact, be found in their files; (2) respondent's categorical denial that she executed the subject Deed of Transfer; and (3) the subject document did not state the date of execution and lacks the marital consent of respondent's husband.

Indeed, petitioners' heavy reliance on the Certification issued by the notary public who supposedly notarized the said deed, as well as the Certification issued by the Clerk of Court of the Notarial Section of the RTC of Makati City, is misplaced for the following reasons: *first*, the persons who issued these Certifications were not presented as witnesses and, as such, they could not be cross-examined with respect to the truthfulness

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Exhibit "20", records, p. 325.

[25] Exhibit "H", *id.* at 291.

of the contents of their Certifications; *second*, as mentioned above, these Certifications were contradicted by the Certification issued by the Administrative Officer of the Notarial Section of the RTC of Makati City as well as by the admission, on cross-examination, of the clerk who prepared the Certification of the Clerk of Court, that their office cannot, in fact, find a copy of the subject Deed of Transfer in their files;[26] and *third*, the further admission of the said clerk that the Certification, which was issued by the clerk of court and relied upon by petitioners, was not based on documents existing in their files, but was simply based on the Certification issued by the notary public who allegedly notarized the said Deed of Transfer.[27]

Assuming further that the notarization of the disputed Deed of Transfer was regular, the Court, nonetheless, is not persuaded by petitioners' argument that such Deed is a sufficient evidence of the validity of the agreement between petitioners and respondent.

While indeed a notarized document enjoys the presumption of regularity, the fact that a deed is notarized is not a guarantee of the validity of its contents.[28] The presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary.[29] In the present case, the presumption cannot be made to apply, because aside from the regularity of its notarization, the validity of the contents and execution of the subject Deed of Transfer was challenged in the proceedings below where its *prima facie* validity was subsequently overthrown by the questionable circumstances attendant in its supposed execution. These circumstances include: (1) the alleged agreement between the parties that the ownership of the subject property be simply assigned to petitioners instead of foreclosure of the contract of

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[26] TSN, November 20, 2001, pp. 12-17.

[27] *Id.* at 7-17.

[28] *Lazaro v. Agustin*, G.R. No. 152364, April 15, 2010, 618 SCRA 298, 311; *San Juan v. Offril*, G.R. No. 154609, April 24, 2009, 586 SCRA 439, 445-446.

[29] *Id.; id.* at 446.

mortgage which was earlier entered into by them; (2) the Deed of Transfer was executed by reason of the loan extended by petitioners to respondent, the amount of the latter's outstanding obligation being the same as the amount of the consideration for the assignment of ownership over the subject property; (3) the inadequacy of the consideration; and (4) the claim of respondent that she had no intention of transferring ownership of the subject property to petitioners.

Based on the foregoing, the Court finds no cogent reason to depart from the findings of the CA that the agreement between petitioners and respondent is, in fact, an equitable mortgage.

An equitable mortgage has been defined as one which, although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent.[30]

One of the circumstances provided for under Article 1602 of the Civil Code, where a contract shall be presumed to be an equitable mortgage, is "where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation." In the instant case, it has been established that the intent of both petitioners and respondent is that the subject property shall serve as security for the latter's obligation to the former. As correctly pointed out by the CA, the circumstances surrounding the execution of the disputed Deed of Transfer would show that the said document was executed to circumvent the terms of the original agreement and deprive respondent of her mortgaged property without the requisite foreclosure.

With respect to the foregoing discussions, it bears to point out that in *Misena v. Rongavilla*,[31] a case which involves a factual

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[30] *Muñoz, Jr. v. Ramirez*, G.R. No. 156125, August 25, 2010, 629 SCRA 38, 51; *Rockville Excel International Exim Corporation v. Culla*, G.R. No. 155716, October 2, 2009, 602 SCRA 128, 136.

[31] 363 Phil. 361 (1999).

background similar to the present case, this Court arrived at the same ruling. In the said case, the respondent mortgaged a parcel of land to the petitioner as security for the loan which the former obtained from the latter. Subsequently, ownership of the property was conveyed to the petitioner via a Deed of Absolute Sale. Applying Article 1602 of the Civil Code, this Court ruled in favor of the respondent holding that the supposed sale of the property was, in fact, an equitable mortgage as the real intention of the respondent was to provide security for the loan and not to transfer ownership over the property.

Since the original transaction between the parties was a mortgage, the subsequent assignment of ownership of the subject lots to petitioners without the benefit of foreclosure proceedings, partakes of the nature of a *pactum commissorium*, as provided for under Article 2088 of the Civil Code.

Pactum commissorium is a stipulation empowering the creditor to appropriate the thing given as guaranty for the fulfillment of the obligation in the event the obligor fails to live up to his undertakings, without further formality, such as foreclosure proceedings, and a public sale.[32]

In the instant case, evidence points to the fact that the sale of the subject property, as proven by the disputed Deed of Transfer, was simulated to cover up the automatic transfer of ownership in petitioners' favor. While there was no stipulation in the mortgage contract which provides for petitioners' automatic appropriation of the subject mortgaged property in the event that respondent fails to pay her obligation, the subsequent acts of the parties and the circumstances surrounding such acts point to no other conclusion than that petitioners were empowered to acquire ownership of the disputed property without need of any foreclosure.

Indeed, the Court agrees with the CA in not giving credence to petitioners' contention in their Answer filed with the RTC that respondent offered to transfer ownership of the subject property in their name as payment for her outstanding obligation.

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[32] *Edralin v. Philippine Veterans Bank*, G.R. No. 168523, March 9, 2011, 645 SCRA 75, 89.

As this Court has held, all persons in need of money are liable to enter into contractual relationships whatever the condition if only to alleviate their financial burden albeit temporarily.[33] Hence, courts are duty-bound to exercise caution in the interpretation and resolution of contracts lest the lenders devour the borrowers like vultures do with their prey.[34] Aside from this aforementioned reason, the Court cannot fathom why respondent would agree to transfer ownership of the subject property, whose value is much higher than her outstanding obligation to petitioners. Considering that the disputed property was mortgaged to secure the payment of her obligation, the most logical and practical thing that she could have done, if she is unable to pay her debt, is to wait for it to be foreclosed. She stands to lose less of the value of the subject property if the same is foreclosed, rather than if the title thereto is directly transferred to petitioners. This is so because in foreclosure, unlike in the present case where ownership of the property was assigned to petitioners, respondent can still claim the balance from the proceeds of the foreclosure sale, if there be any. In such a case, she could still recover a portion of the value of the subject property rather than losing it completely by assigning its ownership to petitioners.

As to the second assigned error, the Court is not persuaded by petitioners' contention that the issue of whether or not the subject Deed of Transfer is, in fact, an equitable mortgage was not raised by the latter either in the RTC or the CA.

It is true that, as a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration.[35] Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[36] However, as with most procedural rules, this

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[33] *Bustamante v. Rosel*, 377 Phil. 436, 445 (1999).

[34] *Id.*

[35] *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244, 267.

[36] *Id.*

maxim is subject to exceptions.[37] In this regard, the Court's ruling in *Mendoza v. Bautista*[38] is instructive, to wit:

> x x x Indeed, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Section 8 of Rule 51 of the Rules of Court provides:
>
> > SEC. 8 *Questions that may be decided*. — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.
>
> Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) **matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;** (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) **matters not assigned as errors on appeal but closely related to an error assigned;** and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[39]

In the present case, petitioners must be reminded that one of the main issues raised by respondent in her appeal with the CA is the validity and due execution of the Deed of Transfer which she supposedly executed in petitioners' favor. The Court agrees with respondent that, under the factual circumstances obtaining in the instant case, the determination of the validity of the subject

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[37] *Id.*

[38] 493 Phil. 804 (2005).

[39] *Id.* at 813-814. (Emphasis supplied)

EN BANC

[G.R. No. 186279. April 2, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ARTEMIO S. SAN JUAN, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GROSS NEGLECT OF DUTY; CHARACTERIZED BY WANT OF EVEN THE SLIGHTEST CARE, OR BY CONSCIOUS INDIFFERENCE TO THE CONSEQUENCES, AND IN CASES INVOLVING PUBLIC OFFICIALS, BY FLAGRANT AND PALPABLE BREACH OF DUTY. — Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, and in cases involving public officials, by flagrant and palpable breach of duty. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property.

2. ID.; ID.; ID.; ID.; RESPONDENT'S ACTUATIONS CONSTITUTE GROSS, AND NOT SIMPLE NEGLECT OF DUTY; RESPONDENT MISERABLY FAILED TO DISCHARGE HIS FUNCTIONS AS ACTING BANK MANAGER WHEN HE ALLOWED, EVEN PRODDED, HIS EMPLOYEES TO BYPASS BANK PROCEDURES THAT WERE IN PLACE TO SECURE THE BANK'S FUNDS. — Our review of the records convinces us that the respondent's actuations constitute gross, and not simple, neglect of duty. A bank manager has the duty to ensure that bank rules are strictly complied with, not only to ensure efficient bank operation, but also to serve the bank's best interest. His responsibility over the functions of the employees of the branch cannot simply be overlooked as their acts normally pass through his supervision and approval. He should serve as the last safeguard against any pretense employed to carry out an illicit claim over the bank's money. In the present case, the respondent

miserably failed to discharge his functions as Acting LBP Manager. The respondent allowed, even prodded, his employees to bypass bank procedures that were in place to secure the bank's funds. Through the respondent's assurances as to Bonsalagan's identity, Ramirez blindly opened a current account despite the client's submission of incomplete identification requirements. The respondent even approved and authenticated Bonsalagan's specimen signature cards to facilitate the opening of Bonsalagan's current account. The respondent contends that since Bonsalagan was already a signatory of the Humanitarian Foundation Order of Service, Inc., which had an existing account with the LBP-Binangonan Branch, Bonsalagan did not need to present the additional identification requirements to open an account with the branch. We find the respondent's leniency in this regard to be misplaced. Bonsalagan, in his personal capacity, and the Humanitarian Foundation Order of Service, Inc., as a corporate entity, are different personalities and their accounts with the branch should have been treated individually and separately. The respondent further argues that the duties of opening and processing the bank's accounts fell on the shoulders of Ramirez and Amparo and were not part of his specific duties and responsibilities as Acting LBP Manager; thus, he should not be made accountable. We cannot, however, accept this excuse. As Acting LBP Manager, the respondent had the primary duty to see to it that his employees faithfully observe bank procedures. Whether or not the opening and processing of accounts were part of his job description or not was of no moment because the respondent held a position that exercised control and supervision over his employees.

3. ID.; ID.; ID.; ID.; RESPONDENT PERMITTED THE ISSUANCE OF A CHECK BOOKLET TO THE CLIENT WITHOUT WAITING FOR THE LATTER'S CHECK TO PASS THROUGH THE THREE-DAY CLEARING REQUIREMENT; THE TAGGING OF THE CLIENT'S ACCOUNT IS AN INSUFFICIENT SAFEGUARD TO PREVENT UNAUTHORIZED WITHDRAWALS OF THE CHECK'S FUNDS AS IT WOULD NOT REALLY HAVE PREVENTED THE CLIENT, WHO WAS ALREADY IN POSSESSION OF THE BOOKLET, FROM ISSUING AND CIRCULATING IN THE MARKET CHECKS THAT WOULD SUBSEQUENTLY BE DISHONORED FOR

BEING SPURIOUS AND UNFUNDED. — The respondent permitted the issuance of a check booklet to Bonsalagan without waiting for the latter's check to pass through the three-day clearing requirement. We take judicial notice of the required bank procedure of forwarding a check for clearance before funds are allowed to be withdrawn from it. In this case, Bonsalagan was issued a check booklet within the same day that he presented his check to the respondent and without his check being forwarded to and cleared by the Philippine Clearing House Corporation. Bonsalagan did not even pay for the issuance of his check booklet, as the respondent generously paid the ₱150.00 fee out of his own pocket. We consider the respondent's act of tagging Bonsalagan's account as insufficient safeguard to prevent unauthorized withdrawals of the check's funds as it would not really have prevented Bonsalagan, who was already in possession of the check booklet, from issuing and circulating in the market checks that would subsequently be dishonored for being spurious and unfunded. Knowledge that Bonsalagan's account was tagged by the respondent was only internal with the branch or, possibly within the LBP bank system, but not with respect to third persons who would get hold of the checks issued by Bonsalagan.

4. ID.; ID.; ID.; ID.; RESPONDENT FAILED TO EXERT PROMPT EFFORTS IN CONFIRMING THE GENUINENESS AND SOURCE OF THE CLIENT'S ₱26-BILLION CHECK; SUCH RELAXED RESPONSE CANNOT BUT BE A CONFIRMATION OF HIS DISREGARD OF AND LACK OF CONCERN FOR THE BANK'S INTERESTS, WHICH HE WAS DUTY-BOUND TO PROTECT. — The respondent failed to exert prompt efforts in confirming the genuineness and source of Bonsalagan's ₱26-Billion check. Due to the nature of his Bank Manager position, it was inevitable for the respondent to encounter and process, on a daily basis, checks of enormous amounts, ranging from thousands to millions of pesos. However, we find the enormity of the amount of Bonsalagan's check, *i.e.*, ₱26 Billion, to be exceptional and far from the usual bank transactions. This kind of unusual, even suspicious, transaction warranted a more guarded and prompt response from the respondent. We recall that it was through Ramirez's initiative, and not the respondent's, that the unusually enormous check was immediately reported to the LBP Area Head Office. Strangely, the respondent, with

apparent insensitivity to the circumstances of the situation, wanted to wait until the next working day to report the check. Such relaxed response cannot but be a confirmation of his disregard of and lack of concern for the bank's interests, which he was duty-bound to protect.

5. ID.; ID.; ID.; ID.; RESPONDENT WAS NOT ONLY GROSSLY NEGLIGENT IN THE PERFORMANCE OF HIS DUTIES, BUT WAS ALSO INSTRUMENTAL IN PERPETUATING A FRAUD AGAINST THE BANK. — We likewise discern from the respondent's actuations that he was not only grossly negligent in the performance of his duties, but was also instrumental in perpetuating a fraud against the bank. The respondent cannot deny that he solicited Bonsalagan's account, allegedly to improve the bank's deposit portfolio. The day before Bonsalagan arrived at the LBP-Binangonan Branch, the respondent already advised Ramirez of Bonsalagan's arrival and the presentation of the ₱26-Billion check. And on the day the client arrived at the bank, the respondent vouched for Bonsalagan's identity and for the supposed confirmation by China Bank of the ₱26-Billion check. Clearly, the respondent's willingness to accommodate Bonsalagan placed in serious doubt his intentions and loyalty to the bank. These suspicions were later confirmed with the respondent's involvement and arrest in a tax diversion scam that had siphoned off millions of tax money in fictitious bank accounts with the LBP-Binangonan Branch.

6. ID.; ID.; ID.; ID.; DISMISSAL FROM SERVICE; PROPER PENALTY IN CASE AT BAR. — We find the respondent guilty of gross neglect of duty and order his dismissal from the service. The banking business is one impressed with public trust and a higher degree of diligence is imposed on banks compared to an ordinary business enterprise in the handling of deposited funds; the degree of responsibility, care and trustworthiness expected of their officials and employees is far greater than those imposed on ordinary officers and employees in other enterprises. All these considerations were apparently lost on the CA when it misappreciated the import and significance of the facts of this case. Even a layman with no in-depth training in law would have wondered why a bank manager, presented a ₱26-Billion check by a private individual, did not bother to take special care. Under the Revised Uniform

Rules on Administrative Cases in the Civil Service, gross neglect of duty is a grave offense punishable with the penalty of dismissal, even for first-time offenders.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Maximino V. Patag for respondent.

D E C I S I O N

BRION, *J.*:

For our consideration is the petition for review on *certiorari*,[1] filed by petitioner Land Bank of the Philippines (*LBP*), assailing the decision[2] dated October 17, 2007 and the resolution[3] dated February 5, 2009 of the Court of Appeals (*CA*) in CA-G.R. SP No. 94757. The CA modified on appeal Resolution No. 060286,[4] issued by the Civil Service Commission (*CSC*), finding Artemio S. San Juan, Jr. (*respondent*), then Acting LBP Manager - Binangonan Branch, guilty of gross neglect of duty. The CA, instead, found the respondent liable for simple neglect of duty.

Factual Antecedents

The facts, as gathered from the records, are as follows: in the morning of June 14, 2002, a certain Esmayatin Bonsalagan approached the respondent in his office at LBP-Binangonan Branch to encash a **check for Twenty-Six Billion pesos**.[5] The check, numbered GHO A0012480, was issued by the China

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[1] *Rollo,* pp. 31-45.

[2] Penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justices Marina L. Buzon and Mariflor P. Punzalan-Castillo; *id.* at 13-26.

[3] *Id.* at 8-11.

[4] *Id.* at 144-150.

[5] *Id.* at 15.

Banking Corporation (*China Bank*), Greenhills-Ortigas Avenue Branch, and drawn against the account of CQ Ventures Corporation, with Bonsalagan as the payee.[6]

The respondent then summoned to his office Acsa Ramirez, the Cashier/Operations Supervisor, and Leila Amparo, the Teller/Designated New Accounts Clerk, and informed them of Bonsalagan's desire to partially withdraw funds on the check. He also told them that the ₱26-Billion check had already been confirmed by China Bank.[7] Ramirez expressed her reservation to the client's request because, as a matter of bank procedure and policy, the check must first be cleared before funds could be withdrawn.[8]

To accommodate the client, the respondent suggested that Bonsalagan open a current/checking account with the branch where the China Bank check would first be deposited.[9] Ramirez, who assisted in opening the checking account, required Bonsalagan to present at least two (2) valid identification cards (*IDs*), but the latter could only present one ID.[10] The respondent assured Ramirez that it was alright to proceed with the opening of the checking account because Bonsalagan had previously presented the proper IDs, being a signatory to an existing account with the branch.[11] The respondent also approved and authenticated Bonsalagan's specimen signature cards.[12] Bonsalagan was consequently issued a check booklet.[13]

The China Bank check was forwarded to the LBP-Cainta Branch, for clearing, in the afternoon of June 14, 2002 because

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[6] *Id.* at 106.

[7] *Id.* at 15.

[8] *Ibid.*

[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*

[12] *Id.* at 16.

[13] *Ibid.*

it was already past the clearing cut-off time at the Binangonan Branch.[14] Ramirez called the Cainta Branch to inform it of the incoming check and the certification issued by a certain Gonzalo T. Lambo II of China Bank that the funds from which the check was drawn against were of clean origin.[15] Alarmed by the check's enormous amount, Florencio Quicoy, Jr., the Branch Manager of LBP-Cainta Branch, inquired whether the China Bank check had been reported to Carmencita Bayot of the Area Head Office.[16] Ramirez then advised the respondent that he needed to immediately report the China Bank check to Bayot.[17] The respondent directed Ramirez to just report the check on the next working day, which fell on a Monday.[18]

Against the respondent's advice, Ramirez immediately called the Area Head Office to report the China Bank check.[19] Liza Castrence, who received the call from the Area Head Office, instructed Ramirez to call China Bank to confirm the check.[20] After a while, Castrence called back to inform Ramirez that Bayot had already communicated with China Bank to withhold the clearing of the ₱26-Billion check.[21] Bayot then spoke with Ramirez and directed her to close Bonsalagan's checking account with the LBP-Binangonan Branch.[22]

After an investigation, the LBP discovered that the ₱26-Billion check was spurious and unfunded,[23] and that the check's account number did not belong to CQ Ventures Corporation, but to a

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[14] *Id.* at 16-17.

[15] *Id.* at 147.

[16] *Id.* at 148.

[17] *Ibid.*

[18] *Ibid.*

[19] *Ibid.*

[20] *Ibid.*

[21] *Ibid.*

[22] *Ibid.*

[23] *Id.* at 103-104.

certain Jing Limbo and/or Arien Romero.[24] This discovery prompted the LBP to issue a Formal Charge[25] against the respondent with the Office of the Government Corporate Counsel (*OGCC*) where it accused the respondent of gross neglect of duty[26] for the following acts or omissions detrimental to the bank's interest: (a) in ordering that a current account be opened without properly verifying the depositor's identity in accordance with the bank's policy; (b) in not confirming the genuineness of the China Bank check and the legitimacy and sufficiency of its funds; and (c) in issuing a check booklet to Bonsalagan without waiting for the China Bank check to be cleared. The respondent was preventively suspended.[27]

In its Report of Investigation dated October 21, 2004,[28] the OGCC found the respondent guilty of gross neglect of duty and recommended that he be dismissed from the service.[29]

In Resolution No. 04-394 dated October 26, 2004,[30] the LBP Board of Directors adopted the OGCC's findings and approved the respondent's dismissal. The respondent moved for reconsideration, but his motion was denied for lack of merit;[31] hence, his appeal to the CSC.

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[24] *Id.* at 104.

[25] Dated July 29, 2002 and docketed as Administrative Case No. 02-03, entitled "*Land Bank of the Philippines v. Mr. Artemio S. San Juan, Jr.*"; *id.* at 100-105.

[26] Pursuant to Section 46, Chapter 7, Subtitle (A), Title I, Book V of Executive Order No. 292, in relation to Section 16, Rule II of CSC Resolution No. 991936; *id.* at 100.

[27] Pursuant to Section 19, Rule II of CSC Resolution No. 991936; *id.* at 105.

[28] *Id.* at 108-121.

[29] In accordance with "Rule IV, Section 52 A (2), in connection with Section 54.c of x x x CSC Resolution No. 99-[1936]"; *id.* at 121.

[30] *Id.* at 122.

[31] Dated December 7, 2004; *id.* at 143.

Resolution of the CSC

In Resolution No. 060286 dated February 15, 2006,[32] the CSC affirmed the LBP Board's Resolution No. 04-394 and similarly found the respondent guilty of gross neglect of duty. The CSC ruled that:

> As the Acting Head of the Land Bank of the Philippines-Binangonan Branch, San Juan has control and supervision over all the employees in his branch, especially so that the transaction involved in this case was his very own client whom he has admitted to have convinced to deposit in his Branch the ₱26 Billion check. The transaction was done in his office and in his presence. As the Acting Head of the Branch, with full knowledge of the transaction done right before his eyes, it becomes his inherent duty to see to it that the bank's policies, rules and regulations involving the opening of a checking account is faithfully observed. His failure to do so makes him liable for Gross Neglect of Duty.[33]

The CSC imposed on the respondent the penalty of dismissal, together with the accessory penalties of cancellation of eligibility, perpetual disqualification from re-employment in the government service and forfeiture of retirement benefits. The respondent appealed the CSC's resolution to the CA under Rule 43 of the Rules of Court.

Decision of the CA

In its decision dated October 17, 2007,[34] the CA partly granted the respondent's appeal and affirmed with modification the assailed CSC resolution by finding the respondent guilty of simple, not gross, neglect of duty.

The CA found that, while the respondent was negligent in allowing Bonsalagan to open a checking account and to deposit the China Bank check with the branch without complying with the bank's procedures, his negligence could not be considered as so gross that it would merit the respondent's dismissal from

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[32] *Supra* note 4.

[33] *Id.* at 148.

[34] *Supra* note 2.

the service; that the respondent did exercise some degree of diligence in the performance of his duties as Acting LBP Manager when he: (a) instructed Ramirez to confirm Lambo's certification as to the legitimacy of the source and the sufficiency of the China Bank check's funding, (b) required Bonsalagan to submit an additional ID on the next banking day, and (c) ordered the "tagging" of Bonsalagan's account with the branch, which means that, despite the premature issuance of a check booklet to Bonsalagan, funds of the China Bank check could be withdrawn only when the said check is cleared and after the completion of the client's identification requirements.

Despite the respondent's efforts, however, the CA considered them short of the diligence expected of the respondent as the branch's Acting Manager. The CA stated that:

> While it is true that the duty to process the opening of an account, to validate the identity of the would-be depositor, to verify and determine the genuineness of the check deposit, and to issue the check booklet are the specific duties of the Operations Supervisor, such would not absolve petitioner from any administrative liability. As Head/Manager of the Branch, he has direct control and supervision over all the employees and of all the transactions of the Branch, hence, **he has the inherent duty and responsibility to effect faithful compliance of bank policies, rules and regulations with respect to the opening and processing of accounts**.[35] (emphasis ours)

Under the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable with the penalty of suspension from work for one (1) month and one (1) day to six (6) months for the first offense.[36] **The CA imposed on the respondent the penalty of six (6) months suspension.**[37]

The LBP moved to reconsider the CA's decision but the latter denied the motion in a resolution dated February 5, 2009;[38]

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[35] *Id.* at 22.

[36] Section 52 B(1), Rule IV.

[37] *Supra* note 2, at 25.

[38] *Supra* note 3.

hence, the present petition for review on *certiorari* filed with this Court.

The Petition

The LBP contends that the respondent's infractions constitute gross, and not simply simple neglect of duty considering that the respondent held a position of trust and integrity, dealt with public money, and was engaged in the banking business.[39] It argues that due to the fiduciary nature of banking, the law imposes upon banks, its officers and employees, high standards of integrity and performance, and requires them to assume a degree of diligence higher than that of a good father of a family;[40] that the respondent's negligent acts and performance as Acting LBP Manager fell short of the exacting and high standards expected from bank officials and employees;[41] and that the respondent's extraordinary accommodation of Bonsalagan could lead to only one conclusion, *i.e.*, the respondent and Bonsalagan were in collusion to defraud the bank, the bank's depositors, and the government.[42] The LBP further contends that the respondent's failure to report the China Bank check to the Anti-Money Laundering Council clearly constituted gross neglect of duty.[43]

The Respondent's Comment

In his comment dated June 29, 2009,[44] the respondent counter-argued that the LBP's petition should be denied on the ground that the sole issue raised by the LBP, as to whether the acts committed by the respondent constitute gross neglect of duty, is a question of fact that cannot be raised in a petition under Rule 45 of the Rules of Court. Even if assuming that the issue raised by the LBP is a valid question of law, the respondent

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[39] *Supra* note 1, at 36-37.

[40] *Id.* at 39-40.

[41] *Id.* at 41.

[42] *Id.* at 42.

[43] *Id.* at 38.

[44] *Rollo,* pp. 160-169.

contends that the CA correctly ruled that he is only guilty of simple neglect of duty considering that he specifically instructed that Bonsalagan's account with the branch be tagged.

The Court's Ruling

We find LBP's petition meritorious.

The LBP's petition hinges on the question of whether the acts imputed on the respondent constitute gross neglect of duty so as to justify the respondent's dismissal from the government service.

We stress that the issue presented is a question of fact whose determination entails an evaluation of the evidence on record. Generally, purely factual questions are not passed upon in petitions for review on *certiorari* under Rule 45 because "this Court is not a trier of facts[.]"[45] In view, however, of the contrary findings made by the CSC and the CA in this case, we shall resolve the presented factual question.[46]

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[45] *Diokno v. Cacdac*, G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460.

[46] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.[47] On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, and in cases involving public officials, by flagrant and palpable breach of duty.[48] It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property.[49]

Our review of the records convinces us that the respondent's actuations constitute gross, and not simple, neglect of duty.

A bank manager has the duty to ensure that bank rules are strictly complied with, not only to ensure efficient bank operation, but also to serve the bank's best interest.[50] His responsibility over the functions of the employees of the branch cannot simply be overlooked as their acts normally pass through his supervision and approval. He should serve as the last safeguard against any pretense employed to carry out an illicit claim over the bank's money.

In the present case, the respondent miserably failed to discharge his functions as Acting LBP Manager.

First, the respondent allowed, even prodded, his employees to bypass bank procedures that were in place to secure the bank's funds. Through the respondent's assurances as to Bonsalagan's identity, Ramirez blindly opened a current account despite the client's submission of incomplete identification requirements. The respondent even approved and authenticated Bonsalagan's

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(*Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660; underscore supplied)

[47] *Office of the Court Administrator v. Garcia-Rañoco*, A.M. No. P-03-1717, March 6, 2008, 547 SCRA 670, 673-674.

[48] *Brucal v. Hon. Desierto*, 501 Phil. 453, 465-466 (2005).

[49] *Id.* at 466.

[50] *Equitable PCI Bank v. Dompor*, G.R. Nos. 163293 and 163297, December 8, 2010, 637 SCRA 698, 714.

specimen signature cards to facilitate the opening of Bonsalagan's current account.

The respondent contends that since Bonsalagan was already a signatory of the Humanitarian Foundation Order of Service, Inc., which had an existing account with the LBP-Binangonan Branch, Bonsalagan did not need to present the additional identification requirements to open an account with the branch. We find the respondent's leniency in this regard to be misplaced. Bonsalagan, in his personal capacity, and the Humanitarian Foundation Order of Service, Inc., as a corporate entity, are different personalities and their accounts with the branch should have been treated individually and separately.

The respondent further argues that the duties of opening and processing the bank's accounts fell on the shoulders of Ramirez and Amparo and were not part of his specific duties and responsibilities as Acting LBP Manager; thus, he should not be made accountable. We cannot, however, accept this excuse. As Acting LBP Manager, the respondent had the primary duty to see to it that his employees faithfully observe bank procedures. Whether or not the opening and processing of accounts were part of his job description or not was of no moment because the respondent held a position that exercised control and supervision over his employees.

Second, the respondent permitted the issuance of a check booklet to Bonsalagan without waiting for the latter's check to pass through the three-day clearing requirement.[51] We take judicial notice of the required bank procedure of forwarding a check for clearance before funds are allowed to be withdrawn from it. In this case, Bonsalagan was issued a check booklet within the same day that he presented his check to the respondent and without his check being forwarded to and cleared by the Philippine

[51] Currently, under Bangko Sentral ng Pilipinas (BSP) Circular No. 681 or "The Revised Check Clearing and Settlement Processes," all banks are mandated to return checks drawn against Uncollected Deposits (DAUD) and Insufficient Funds (DAIF) and checks with stop payment orders to the Philippine Clearing House Corporation by 7:30 a.m. the next day after their presentation for clearing.

Clearing House Corporation. Bonsalagan did not even pay for the issuance of his check booklet, as the respondent generously paid the ₱150.00 fee out of his own pocket.[52]

We consider the respondent's act of tagging Bonsalagan's account as insufficient safeguard to prevent unauthorized withdrawals of the check's funds as it would not really have prevented Bonsalagan, who was already in possession of the check booklet, from issuing and circulating in the market checks that would subsequently be dishonored for being spurious and unfunded. Knowledge that Bonsalagan's account was tagged by the respondent was only internal with the branch or, possibly within the LBP bank system, but not with respect to third persons who would get hold of the checks issued by Bonsalagan.

Third, the respondent failed to exert prompt efforts in confirming the genuineness and source of Bonsalagan's ₱26-Billion check.

Due to the nature of his Bank Manager position, it was inevitable for the respondent to encounter and process, on a daily basis, checks of enormous amounts, ranging from thousands to millions of pesos. However, we find the enormity of the amount of Bonsalagan's check, *i.e.*, ₱26 Billion, to be exceptional and far from the usual bank transactions. This kind of unusual, even suspicious, transaction warranted a more guarded and prompt response from the respondent.

We recall that it was through Ramirez's initiative, and not the respondent's, that the unusually enormous check was immediately reported to the LBP Area Head Office. Strangely, the respondent, with apparent insensitivity to the circumstances of the situation, wanted to wait until the next working day to report the check. Such relaxed response cannot but be a confirmation of his disregard of and lack of concern for the bank's interests, which he was duty-bound to protect.

We likewise discern from the respondent's actuations that he was not only grossly negligent in the performance of his

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[52] *Rollo,* p. 16.

duties, but was also instrumental in perpetuating a fraud against the bank. The respondent cannot deny that he solicited Bonsalagan's account, allegedly to improve the bank's deposit portfolio.[53] The day before Bonsalagan arrived at the LBP-Binangonan Branch, the respondent already advised Ramirez of Bonsalagan's arrival and the presentation of the ₱26-Billion check.[54] And on the day the client arrived at the bank, the respondent vouched for Bonsalagan's identity and for the supposed confirmation by China Bank of the ₱26-Billion check.

Clearly, the respondent's willingness to accommodate Bonsalagan placed in serious doubt his intentions and loyalty to the bank. These suspicions were later confirmed with the respondent's involvement and arrest in a tax diversion scam that had siphoned off millions of tax money in fictitious bank accounts with the LBP-Binangonan Branch.[55]

For the reasons cited above, we find the respondent guilty of gross neglect of duty and order his dismissal from the service. The banking business is one impressed with public trust[56] and a higher degree of diligence is imposed on banks compared to an ordinary business enterprise in the handling of deposited funds; the degree of responsibility, care and trustworthiness expected of their officials and employees is far greater than those imposed on ordinary officers and employees in other enterprises.[57] All these considerations were apparently lost on the CA when it misappreciated the import and significance of the facts of this case. Even a layman with no in-depth training

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[53] *Id.* at 134.

[54] As reported by the OGCC in its Report of Investigation dated October 21, 2004; *id.* at 110.

[55] http://www.philstar.com/headlines/171515/nbi-question-land-bank-employees, last accessed on January 22, 2013; http://www.philstar.com/metro/184150/3-tax-scam-suspects-charged, last accessed on January 22, 2013; http://archive.malaya.com.ph/2009/August/aug18/news2.htm, last accessed on January 22, 2013.

[56] *United Coconut Planters Bank v. Basco*, 480 Phil. 803, 819 (2004).

[57] *Ibid.*

in law would have wondered why a bank manager, presented a ₱26-Billion check by a private individual, did not bother to take special care.

Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[58] gross neglect of duty is a grave offense punishable with the penalty of dismissal, even for first-time offenders.

WHEREFORE, premises considered, the Court **GRANTS** the petition and **SETS ASIDE** the decision and the resolution of the Court of Appeals in CA-G.R. SP No. 94757. Accordingly, Resolution No. 060286 of the Civil Service Commission dated February 15, 2006, dismissing Artemio S. San Juan, Jr. from the service with all the accessory penalties of cancellation of eligibility, perpetual disqualification from re-employment in the government service and forfeiture of retirement benefits, is hereby **REINSTATED** and **UPHELD**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Perlas-Bernabe, J., on leave.

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[58] Memorandum Circular No. 19, s. 1999, Rule IV, Section 52 A (2).

EN BANC

[G.R. No. 192249. April 2, 2013]

SALIC DUMARPA, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION AND *MANDAMUS*; THE SPECIAL ELECTIONS HELD ON 3 JUNE 2010 MOOTED THE ISSUES POSED BY PETITIONER. — Indeed, the special elections held on 3 June 2010 mooted the issues posed by Dumarpa. The opponent of Dumarpa, Hussin Pangandaman, was proclaimed winner in the 1st Congressional District of Lanao del Sur. We see this as a supervening event which, additionally, mooted the present petition as the issues raised herein are resolvable in the election protest. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.

2. POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS (COMELEC); IT BROOKS NO ARGUMENT THAT THE COMELEC'S BROAD POWER TO "ENFORCE AND ADMINISTER ALL LAWS AND REGULATIONS RELATIVE TO THE CONDUCT OF AN ELECTION, PLEBISCITE, INITIATIVE, REFERENDUM AND RECALL", CARRIES WITH IT ALL NECESSARY AND INCIDENTAL POWERS FOR IT TO ACHIEVE THE OBJECTIVE OF HOLDING FREE, ORDERLY, HONEST, PEACEFUL, AND CREDIBLE ELECTIONS. — COMELEC issued Resolution No. 8965, in the exercise of its plenary powers in the conduct of elections enshrined in the Constitution and statute. Thus, it brooks no argument that the COMELEC's broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall," carries with it all *necessary* and *incidental* powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections. x x x

Cauton v. COMELEC emphasized the COMELEC's latitude of authority: [The purpose of the governing statutes on the conduct of elections] is to protect the integrity of elections to suppress all evils that may violate its purity and defeat the will of the voters. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, *the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created* — to promote free, orderly, and honest elections. ***The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with.*** Viewed against the foregoing spectrum of the COMELEC's plenary powers and the *raison d' etre* for the statutes on the conduct of elections, we dismiss Dumarpa's objections about Sections 4 and 12 of COMELEC Resolution No. 8965.

3. ID.; ID.; ID.; THE ASSAILED RESOLUTION NO. 8965 WAS ISSUED PRECISELY TO PREVENT ANOTHER OCCURRENCE OF A FAILURE OF ELECTIONS IN THE FIFTEEN (15) MUNICIPALITIES IN THE PROVINCE OF LANAO DEL SUR; THE ACTIONS OF THE COMELEC MAY NOT BE IMPECCABLE, INDEED, MAY EVEN BE DEBATABLE, BUT THE COURT CANNOT, HOWEVER, ENGAGE IN AN ACADEMIC CRITICISM OF THEIR ACTIONS OFTEN TAKEN UNDER VERY DIFFICULT CIRCUMSTANCES. — Dumarpa objects to the re-clustering of precincts, only for the Municipality of Masiu, because it was undertaken: (1) without notice and hearing to the candidates affected; (2) in less than thirty days before the conduct of the special elections; and (3) the polling place was reduced from 21 to only 3 voting centers which Dumarpa's opponent, Representative Hussin Pangandaman, controls. As regards the designation of SBEIs, Dumarpa points out that "public school teachers who are members of the board of election inspectors shall not be relieved nor disqualified from acting as such members, except for cause and after due hearing." Dumarpa's objections conveniently fail to take into account that COMELEC Resolution No. 8965, containing the assailed

provisions on re-clustering of the precincts and the designation of special board of election inspectors, was issued precisely because of the total failure of elections in seven (7) Municipalities in the Province of Lanao del Sur, a total of fifteen (15) Municipalities where there was a failure of elections. Notably, the COMELEC's declaration of a failure of elections is not being questioned by Dumarpa. In fact, he confines his objections on the re-clustering of precincts, and only as regards the Municipality of Masiu. Plainly, it is precisely to prevent another occurrence of a failure of elections in the fifteen (15) municipalities in the province of Lanao del Sur that the COMELEC issued the assailed Resolution No. 8965. The COMELEC, through its deputized officials in the field, is in the best position to assess the actual condition prevailing in that area and to make judgment calls based thereon. Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable. We cannot, however, engage in an academic criticism of these actions often taken under very difficult circumstances. The COMELEC actually closely followed Section 6 of the Omnibus Election Code by scheduling the special election not later than thirty (30) days after the cessation of the cause of the failure to elect. Moreover, the COMELEC sought to foreclose the possibility that the Board of Election Inspectors may not report to the polling place, as what occurred in the Municipality of Masiu, resulting in another failure of election. Of course the case cannot preempt the decision in the election protest filed by Dumarpa before the House of Representative Electoral Tribunal, or our action should the matter reach us on petition for *certiorari*. Our ruling herein is confined to the issues raised by Dumarpa relative to COMELEC Resolution No. 8965.

APPEARANCES OF COUNSEL

Pacuribot & De Los Cientos Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

Challenged in this petition for prohibition and *mandamus* with prayer for issuance of temporary restraining order and/or writ of preliminary injunction under Rule 64, in relation to Rule 65, of the Rules of Court is Resolution No. 8965[1] issued by respondent Commission on Elections (COMELEC) *en banc* and entitled Guidelines and Procedures in the Conduct of Special Elections in Some Areas Where There are Failure of Elections during the Conduct of the [10 May 2010] National Elections. Petitioner Salic Dumarpa (Dumarpa) seeks to annul or declare illegal Sections 4[2] and 12[3] of COMELEC Resolution No. 8965 for having been issued with grave abuse of discretion.

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[1] Dated 28 May 2010. *Rollo,* pp. 29-39.

[2] **Sec. 4. Special Board of Election Inspectors. —** For purposes of the conduct of special elections, there is a need to constitute a Special Board of Election Inspector (SBEIs) for all the clustered precincts affected.

In areas where the constituted BEIs are not willing to serve or are disqualified due to relationship, the SAO shall constitute and appoint the SBEIs.

Public school teachers from other municipalities not otherwise disqualified shall be given preference in the appointment as members of the SBEIs.

The Division School Superintendent of the Department of Education in Lanao del Sur, Basilan, Western Samar and Sarangani shall submit to the Provincial Election Supervisor not later than 30 May 2010 a list of public school teachers, preferably DOST certified to operate the PCOS, who will be assigned as members of the BEIs.

For this purpose, the requirement that members of the BEIs must be residents of the municipality where they are assigned is hereby suspended.

[3] **Sec. 12. Clustering of Precincts.** — For purposes of orderly conduct of special elections and security, the revised clustering of precincts for Lanao del Sur, are hereto provided:

MUNICIPALITIES	BARANGAYS	VOTING CENTER
	MARIBO	
	BUAD LUMBAC	
	SALOLODUN BERWAR	
	POSUDARAGAT	

LUMBA BAYABAO	SONGGOD	MARIBO ELEM. SCHOOL
	TAMLANG	
	BAUGAN	GALAWAN ELEMENTARY SCHOOL
	DALIDIGAN MINARING	
	DIALONGANA	
	GADONGAN	
	GALAWAN	
	LINDONGAN	
	DIALONGANA BARIT	
	CARANDANGAN	
	MAPOLING	
	TONGCOPAN	
	TOROGAN	DAGALANGIT ELEM. SCHOOL
	RUMAYAS	
	LUMBACA BACAWAYAN	
	BACOLOD I	BACOLOD ELEM. SCHOOL
	BACOLOD II	
	DILINDONGAN	
	CADAYONAN	
	PAGAYAWAN	
	SARIGIDAN MADIAR	
	TALUAN	TALUAN ELEM.SCHOOL
	LAMA	
	CALILANGAN	
	CORMATAN LANGBAN	
	SALAMAN	SALAMAN ELEM.SCHOOL
	CABASARAN	
	KASOLA	
	LALANGITUN	
	MACAGUILING	
	MAPANTAO	MAPANTAO ELEM. SCHOOL
	GAMBAI	
	LOBO BASARA	
	SABALA BANTAYAO	
	BANTAYAO POB.	
	ALIP LALABUAN	
	MORIATAO BAE LABAY	
	ABDULAH BUISAN	
	MOCAMAD TANGUL	
	DALUG BALUT	

	GONDARANGIN ASA ADIGAO	
	PUTAD MARANDANG	
	BUISAN	
	MAI SINDAOLAN DANSALAN	
	MAGAYO BAGOAINGUD	
	LUMIGIS SUCOD	
	SAMBUWANG ATAWA	
	TAMBORO CORMATAN	
	TOMAMBILING LUMBACA INGUD	MUNICIPAL GRAND STAND POB. APA MIMBALAY
	MAI DITIMBANG BALINDONG	
	CARAMIAN ALIM RAYA	
	POB. MACOMPARA APA MIMBALAI	
	LUMBACA INGUD	
	BUADI AMLOY	
	KALILANGAN	
	MACALUPANG LUMBAC CARAMIAN	
	ALUMPANG PAINO MIMBALAY	
	MACADAAG TALAGUIAN	
	LAILA LUMBAC BACON	
	PANTAO	NEW MUNICIPAL HALL, POB. APA MIMBALAY
	LAKADUN	
	MATAO ARAZA	
	UNDA DAYAWAN	
	MANALOCON TALUB	
	LANGCO DIMAPATOY	
	TOWANAO ARANGGA	
	GUINDOLONGAN ALABAT	
	MACABANGAN IMBALA	
	LANGI TALUB	
	SAWIR	
	BONTALIS MARANAT	
	CONDARAAN POB.	
	SILID	
	TOCA	

BAYANG	BAIRAN	DIWAN ELEMENTARY SCHOOL
	BAYANG POBLACION	
	TOMAROMPONG	
	SAMPORNA	
	MALIWANAG	
	LUMBAK	
	POROTAN	
	BAGOAINGUD	
	RANTIAN	
	LALAPUNG CENTRAL	
	LALAPUNG PROPER	
	LALAPUNG UPPER	
	TOMANGCAL LIGI	
	BIALAAN	
	BIABI	
	SAPA	
	RINABOR	
	PARAO	
	GANDAMATO	
	PAMACOTAN	
	PANTAR	
	SUMBAG	
	SULTAN PANDAPATAN	SULTAN PANDAPATAN ELEMENTARY SCHOOL
	TOROGAN	
	LIONG	
	CORMATAN	
	BANDINGUN	
	MINBALAWAG	
	CADINGILAN ORIENTAL	
	LINAO	LINAO ELEM. SCHOOL
	CADINGILAN OCCIDENTAL	
	TAGORANAO	TAGORANAO ELEM. SCHOOL
	TANGCAL	
	TANGCAL PROPER	
	BUBONG LILOD	
	BUBONG RAYA	BUBONG ELEMENTARY SCHOOL
	PALAO	
	SUGOD	
	PATONG	
	ILIAN	
	MAPANTAO	

	CADAYONAN RAYA	
	CADAYONAN LUMBAC	
	CADAYONAN	
	PAMAAN	
	LINUK	
LUMBACA – UNAYAN	CALIPAPA	ORIENTAL BETA ELEM. SCHOOL
	ORIENTAL BETA	
	POBLACION	DILAUSAN ELEMENTARY SCHOOL
	BANGON	
	DIMAPAOK	
	LUMBAC DILAUSAN	
	BETA PROPERT	
	CALALON	
	TRINGON	
MAROGONG	MAROGONG PROPER	SULTAN ABDULMADID NATIONAL HIGH SCHOOL (MAROGONG PROPER, POBLACION)
	BALT	
	BULAWAN	
	CAIRANTRANA	
	CANIBONGAN	
	PIANGOLOGAN	
	PABRICA	
	PAIGOAY CODA	
	BAGUMBAYAN	MAROGONG CENTRAL ELEMENTARY SCHOOL (BARANGAY PROPER, POBLACION)
	BITAYAN	
	BONGA	
	CABASARAN	
	CADAYUNAN	
	CAHERA	
	CALUMBOG	
	DIRAGUN	
	MANTAILOCO	
	MAPANTAO	
	MAROGONG EAST	
	MAYAMAN	
	PASAYANAN	MADRASATOL REAYATOL ATFAL (MAIDANA, MAROGONG, PROPER)
	PURACAN	
	ROMAGONDONG	
	SARANG	
	DINGANUN	DINGANUN ELEM. SCHOOL
	MALALIS	

Dumarpa was a congressional candidate for the 1st District of Lanao del Sur at the 10 May 2010 elections. The COMELEC declared a total failure of elections in seven (7) municipalities, including the three (3) Municipalities of Masiu, Lumba Bayabao and Kapai, which are situated in the 1st Congressional District of Province of Lanao del Sur. The conduct of special elections in the seven (7) Lanao del Sur municipalities was originally scheduled for 29 May 2010.

On 25 May 2010, COMELEC issued Resolution No. 8946,[4] resetting the special elections to 3 June 2010 for the following reasons:

SULTAN DOMALONDONG	SOMALINDAO	
	BACAYAWAN	PUNUNG ELEM. SCHOOL
	PAGALONGAN	
	LUMBAC	LUMBAC ELEM. SCHOOL
	TAGORANAO	
TUBARAN	TANGCAL	TANGCAL ELEM.SCHOOL
	GUIARONG	
	DATU MANONG	
	BAGAUIANGUN	
	WAGO	
	MINDAMDAG	
	TUBARAN	TUBARAN ELEM. SCHOOL
	GAPUT	
	ALOG	
	DINAIGAN	
	MALAGANDING	
	MATITICOP	
	PAIGOAY	
	MADAYA	
	BURIBED	BURIBID ELEM. SCHOOL
	GADONGAN	
	BETA	
	PAGALAMATAN	
	RIANTARAN	
	CAMPO	
	POLO	

[4] Entitled, In the Matter of Resetting the [29 May 2010] Special Elections in Lanao del Sur to [3 June 2010] and Other Related Matters.

x x x x x x x x x

1. Aside from the reported seven (7) municipalities where there are total failure of elections, there are precincts in eight (8) other municipalities where there were failure of elections, namely:

x x x x x x x x x

2. The results of elections in the said municipalities will affect the elections not only in the provincial level (Congressman, Vice-Governor and *Sangguniang Panlalawigan*) but also in the municipal level.

3. There are missing ballots in the following precincts more particularly in:

a. *Brgy*. Picotaan, Lumbatan with 682 registered voters[.]
b. *Brgy*. Pagalamatan, Tugaya with 397 registered voters.

4. Based on reports some of the BEIs are not willing to serve or are disqualified due to relationship;

5. The Precinct Count Optical Scan (PCOS) assigned in the said municipalities were already pulled out by *Smartmatic*;

6. There is a need for the newly constituted BEIs to undergo training and certification as required under R.A. 9369.

7. There is a need to review the manning of Comelec personnel in the municipal level and assess their capabilities to discharge their duties and functions not only as an Election Officer but also as Chairman of the Board of Canvassers.

x x x x x x x x x

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES as follows:

1. to reset the special elections scheduled on 29 May 2010 pursuant to the Commission *En Banc* Resolution promulgated May 21, 2010 in the following areas:

x x x x x x x x x

and to reschedule the same on June 3, 2010;

2. to prepare the logistical, manpower and security requirements in connection with the conduct of said special elections;

3. to direct the Regional Election Director and the Provincial Election Supervisor to notify the candidates/interested parties thereat; and

4. to hear the petitions/report/s on the failure of elections on the eight (8) other municipalities in Lanao del Sur, to wit:

x x x x x x x x x

Let the Executive Director implement this resolution and the Education and Information Department publish this resolution in two (2) newspapers of general circulation.[5]

Subsequently, COMELEC issued the herein assailed resolution which provided, among others, the constitution of Special Board of Election Inspectors (SBEI) in Section 4 and Clustering of Precincts in Section 12.

On the same date COMELEC Resolution No. 8965 was issued, on 28 May 2010, Dumarpa filed a Motion for Reconsideration concerning only Sections 4 and 12 thereof as it may apply to the Municipality of Masiu, Lanao del Sur. The COMELEC did not act on Dumarpa's motion.

A day before the scheduled special elections, on 2 June 2010, Dumarpa filed the instant petition alleging that "both provisions on Re-clustering of Precincts (Section 12) and constitution of SBEIs [Special Board of Election Inspectors] (Section 4) affect the Muncipality of Masiu, Lanao del Sur, and will definitely doom petitioner to certain defeat, if its implementation is not restrained or prohibited by the Honorable Supreme Court."

Parenthetically, at the time of the filing of this petition, Dumarpa was leading by a slim margin over his opponent Hussin Pangandaman in the canvassed votes for the areas which are part of the 1st Congressional District of Lanao del Sur where there was no failure of elections.[6]

We did not issue a temporary restraining order or a writ of preliminary injunction. Thus, the special elections on 3 June 2010 proceeded as scheduled.

[5] *Rollo*, pp. 24-28.

[6] Asserted by the OSG in its Comment. *Id.* at 241.

Petitioner is adamant that:

1. x x x SECTION 12 OF COMELEC RESOLUTION NO. 8965 x x x IS ILLEGAL OR VOID, BEING CONTRARY TO LAW, AND ARE ISSUED OR EMBODIED IN SAID RESOLUTION WITHOUT NOTICE TO CANDIDATES AND STAKEHOLDERS AND WITHOUT HEARING;

2. x x x SECTION 4 OF COMELEC RESOLUTION NO. 8965 x x x IS ILLEGAL OR VOID, BEING CONTRARY TO LAW, AND ARE ISSUED OR EMBODIED IN SAID RESOLUTION WITHOUT NOTICE TO CANDIDATES AND STAKEHOLDERS AND WITHOUT HEARING;

3. PUBLIC RESPONDENT, THE HONORABLE COMMISSION ON ELECTIONS, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN INCORPORATING, PROVIDING, OR ISSUING SECTION 12 AND SECTION 4 IN SAID RESOLUTION NO. 8965[.][7]

The Office of the Solicitor General (OSG), however, in its sparse Comment counters that the issues have been mooted by the holding of the special elections as scheduled on 3 June 2010. As a catch-all refutation, the OSG maintains that COMELEC Resolution No. 8965 is not tainted with grave abuse of discretion.

We dismiss the petition.

Indeed, the special elections held on 3 June 2010 mooted the issues posed by Dumarpa. The opponent of Dumarpa, Hussin Pangandaman, was proclaimed winner in the 1st Congressional District of Lanao del Sur. We see this as a supervening event which, additionally, mooted the present petition as the issues raised herein are resolvable in the election protest.[8]

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that

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[7] *Id.* at 7-8.

[8] See http://www.tribune.net.ph/index.php/nation/item/6236-hret-urged-to-resolve-poll-protest-in-lanao visited last 17 March 2013. See also *Pangandaman v. COMELEC*, 377 Phil. 297, 316 (1999).

a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[9]

In any event, the petition is unmeritorious.

COMELEC issued Resolution No. 8965, in the exercise of its plenary powers in the conduct of elections enshrined in the Constitution[10] and statute.[11]

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[9] *Mendoza v. Familara*, G.R. No. 191017, 15 November 2011, 660 SCRA 70, 80.

[10] **ARTICLE IX CONSTITUTIONAL COMMISSION**

A. COMMON PROVISIONS

x x x x x x x x x

Sec. 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules however shall not diminish, increase, or modify substantive rights.

x x x x x x x x x

C. THE COMMISSION ON ELECTIONS

x x x x x x x x x

Sec. 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and *barangay* offices shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

(9) Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

[11] **Sec. 52. Powers and functions of the Commission on Elections.** — In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x x x x x x x

a. Exercise direct and immediate supervision and control over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government required by law to perform duties relative to the conduct of elections. In addition, it may authorize CMT cadets eighteen years of age and above to act as its deputies for the purpose of enforcing its orders.

The Commission may relieve any officer or employee referred to in the preceding paragraph from the performance of his duties

relating to electoral processes who violates the election law or fails to comply with its instructions, orders, decisions or rulings, and appoint his substitute. Upon recommendation of the Commission, the corresponding proper authority shall suspend or remove from office any or all of such officers or employees who may, after due process, be found guilty of such violation or failure.

b. During the period of the campaign and ending thirty days thereafter, when in any area of the country there are persons committing acts of terrorism to influence people to vote for or against any candidate or political party, the Commission shall have the power to authorize any member or members of the Armed Forces of the Philippines, the National Bureau of Investigation, the Integrated National Police or any similar agency or instrumentality of the government, except civilian home defense forces, to act as deputies for the purpose of ensuring the holding of free, orderly, and honest elections.

c. Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer, and require the payment of legal fees and collect the same in payment of any business done in the Commission, at rates that it may provide and fix in its rules and regulations.

Rules and regulations promulgated by the Commission to implement the provisions of this Code shall take effect on the sixteenth day after publication in the Official Gazette or in at least two daily newspapers of general circulation. Orders and directives issued by the Commission pursuant to said rules and regulations shall be furnished by personal delivery to accredited political parties within forty-eight hours of issuance and shall take effect immediately upon receipt.

In case of conflict between rules, regulations, orders or directives of the Commission in the exercise of its constitutional powers and those issued by any other administrative office or agency of the government concerning the same matter relative to elections, the former shall prevail.

d. Summon the parties to a controversy pending before it, issue subpoena and subpoena *duces tecum*, and take testimony in any investigation or hearing before it, and delegate such power to any officer of the Commission who shall be a member of the Philippine Bar. In case of failure of a witness to attend, the Commission, upon proof of service of the subpoena to said witnesses, may issue a warrant to arrest witness and bring him before the Commission or the officer before whom his attendance is required.

Any controversy submitted to the Commission shall, after compliance with the requirements of due process, be immediately heard and decided by it within sixty days from submission thereof.

No decision or resolution shall be rendered by the Commission either *en banc* or by division unless taken up in a formal session properly convened for the purpose.

The Commission may, when necessary, avail of the assistance of any national or local law enforcement agency and/or instrumentality of the government to execute under its direct and immediate supervision any of its final decisions, orders, instructions or rulings.

e. Punish contempts provided for in the Rules of Court in the same procedure and with the same penalties provided therein. Any violation of any final and executory decision, order or ruling of the Commission shall constitute contempt thereof.

f. Enforce and execute its decisions, directives, orders and instructions which shall have precedence over those emanating from any other authority, except the Supreme Court and those issued in *habeas corpus* proceedings.

g. Prescribe the forms to be used in the election, plebiscite or referendum.

h. Procure any supplies, equipment, materials or services needed for the holding of the election by public bidding: Provided, That, if it finds the requirements of public bidding impractical to observe, then by negotiations or sealed bids, and in both cases, the accredited parties shall be duly notified.

i. Prescribe the use or adoption of the latest technological and electronic devices, taking into account the situation prevailing in the area and the funds available for the purpose: Provided, That the Commission shall notify the authorized representatives of accredited political parties and candidates in areas affected by the use or adoption of technological and electronic devices not less than thirty days prior to the effectivity of the use of such devices.

j. Carry out a continuing and systematic campaign through newspapers of general circulation, radios and other media forms to educate the public and fully inform the electorate about election laws, procedures, decisions, and other matters relative to the work and duties of the Commission and the necessity of clean, free, orderly and honest electoral processes.

k. Enlist non-partisan group or organizations of citizens from the civic, youth, professional, educational, business or labor sectors known for their probity, impartiality and integrity with the membership and capability to undertake a coordinated operation and activity to assist it in the implementation of the provisions of this Code and the resolutions, orders and instructions of the Commission for the purpose of ensuring free, orderly and honest elections in any constituency. Such groups or organizations shall function under the direct and immediate control and supervision of the Commission and shall perform the following specific functions and duties:

A. Before Election Day:

1. Undertake an information campaign on salient features of this Code and help in the dissemination of the orders, decisions and resolutions of the Commission relative to the forthcoming election.
2. Wage a registration drive in their respective areas so that all citizens of voting age, not otherwise disqualified by law may be registered.
3. Help cleanse the list of voters of illegal registrants, conduct house-to-house canvass if necessary, and take the appropriate legal steps towards this end.
4. Report to the Commission violations of the provisions of this Code on the conduct of the political campaign, election propaganda and electoral expenditures.

B. On Election Day:

1. Exhort all registered voters in their respective areas to go to their polling places and cast their votes.
2. Nominate one watcher for accreditation in each polling place and each place of canvass who shall have the same duties, functions and rights as the other watchers of political parties and candidates. Members or units of any citizen group or organization so designated by the Commission except its lone duly accredited watcher, shall not be allowed to enter any polling place except to vote, and shall, if they so desire, stay in an area at least fifty meters away from the polling place.
3. Report to the peace authorities and other appropriate agencies all instances of terrorism, intimidation of voters, and other similar attempts to frustrate the free and orderly casting of votes.
4. Perform such other functions as may be entrusted to such group or organization by the Commission.

The designation of any group or organization made in accordance herewith may be revoked by the Commission upon notice and hearing whenever by its actuations such group or organization has shown partiality to any political party or candidate, or has performed acts in excess or in contravention of the functions and duties herein provided and such others which may be granted by the Commission.

l. Conduct hearings on controversies pending before it in the cities or provinces upon proper motion of any party, taking into consideration the materiality and number of witnesses to be presented, the situation prevailing in the area and the fund available for the purpose.

m. Fix other reasonable periods for certain pre-election requirements in order that voters shall not be deprived of their right of suffrage and certain groups of rights granted them in this Code.

Thus, it brooks no argument that the COMELEC's broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall,"[12] carries with it all *necessary* and *incidental* powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.[13]

As stated in *Sumulong v. COMELEC*:

Politics is a practical matter, and political questions must be dealt with realistically — not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions.

x x x x x x x x x

There are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws relative to the conduct of elections x x x, we must not by any excessive zeal take away from the Commission on Elections that initiative which by constitutional and legal mandates properly belongs to it.[14]

Cauton v. COMELEC[15] emphasized the COMELEC's latitude of authority:

[The purpose of the governing statutes on the conduct of elections] is to protect the integrity of elections to suppress all evils that may violate its purity and defeat the will of the voters [citation omitted]. The purity of the elections is one of the most fundamental requisites of popular government [citation omitted]. The Commission on Elections, by constitutional mandate, must do everything in its power

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Unless indicated in this Code, the Commission is hereby authorized to fix the appropriate period for the various prohibited acts enumerated herein, consistent with the requirements of free, orderly, and honest elections.

[12] See Article IX(C), Section 2(1) of the Constitution.

[13] *Sumulong v. COMELEC,* 73 Phil. 288, 294-295 (1941).

[14] *Id.* at 295-296.

[15] G.R. No. L-25467, 27 April 1967, 19 SCRA 911.

to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, *the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created* — to promote free, orderly, and honest elections. ***The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with***[16] [citation omitted]. (Emphasis supplied).

Viewed against the foregoing spectrum of the COMELEC's plenary powers and the *raison d' etre* for the statutes on the conduct of elections, we dismiss Dumarpa's objections about Sections 4 and 12 of COMELEC Resolution No. 8965.

Dumarpa objects to the re-clustering of precincts, only for the Municipality of Masiu, because it was undertaken: (1) without notice and hearing to the candidates affected; (2) in less than thirty days before the conduct of the special elections; and (3) the polling place was reduced from 21 to only 3 voting centers which Dumarpa's opponent, Representative Hussin Pangandaman, controls. As regards the designation of SBEIs, Dumarpa points out that "public school teachers who are members of the board of election inspectors shall not be relieved nor disqualified from acting as such members, except for cause and after due hearing."[17]

Dumarpa's objections conveniently fail to take into account that COMELEC Resolution No. 8965, containing the assailed provisions on re-clustering of the precincts and the designation of special board of election inspectors, was issued precisely because of the total failure of elections in seven (7) Municipalities[18] in the Province of Lanao del Sur, a total of fifteen (15) Municipalities where there was a failure of elections. Notably, the COMELEC's declaration of a failure of elections is not being questioned by Dumarpa. In fact, he confines his objections on the re-clustering of precincts, and only as regards the Municipality of Masiu.

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[16] *Id.* at 921-922.

[17] Section 170 of the Omnibus Election Code.

[18] For the Municipality of Masiu, the Board of Election Inspectors did not report to the polling place.

Plainly, it is precisely to prevent another occurrence of a failure of elections in the fifteen (15) municipalities in the province of Lanao del Sur that the COMELEC issued the assailed Resolution No. 8965. The COMELEC, through its deputized officials in the field, is in the best position to assess the actual condition prevailing in that area and to make judgment calls based thereon. Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable. We cannot, however, engage in an academic criticism of these actions often taken under very difficult circumstances.[19]

The COMELEC actually closely followed Section 6 of the Omnibus Election Code by scheduling the special election not later than thirty (30) days after the cessation of the cause of the failure to elect. Moreover, the COMELEC sought to foreclose the possibility that the Board of Election Inspectors may not report to the polling place, as what occurred in the Municipality of Masiu, resulting in another failure of election.

Of course the case cannot preempt the decision in the election protest filed by Dumarpa before the House of Representative Electoral Tribunal, or our action should the matter reach us on petition for *certiorari*.[20] Our ruling herein is confined to the issues raised by Dumarpa relative to COMELEC Resolution No. 8965.

WHEREFORE, the petition is **DISMISSED.** Costs against petitioner Salic Dumarpa.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, and *Leonen, JJ.,* concur.

Velasco, Jr., J., no part due to HRET participation.

Perlas-Bernabe, J., on leave.

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[19] *Loong v. COMELEC*, 365 Phil. 386, 421 (1999).

[20] See http://www.tribune.net.ph/index.php/nation/item/6236-hret-urged-to-resolve-poll-protest-in-lanao last visited 17 March 2013.

EN BANC

[G.R. No. 193773. April 2, 2013]

TERESITA L. SALVA, *petitioner, vs.* **FLAVIANA M. VALLE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN CIVIL SERVICE (URACCS); A FORMAL CHARGE IN CONFORMITY WITH SECTION 16, RULE II OF THE URACCS MUST BE ISSUED PRIOR TO THE IMPOSITION OF ADMINISTRATIVE SANCTIONS. — A formal charge issued prior to the imposition of administrative sanctions must conform to the requirements set forth in Section 16, Rule II of the Uniform Rules on Administrative Cases in the Civil Service (URA CCS), which reads: SEC. 16. *Formal Charge*. — After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice. x x x We have held that if the purported "formal charge" does not contain the foregoing, it cannot be said that the employee concerned has been formally charged.

2. ID.; ID.; ID.; THE MEMORANDUM DATED AUGUST 24, 2004 ISSUED BY PETITIONER TO RESPONDENT PRIOR TO ADMINISTRATIVE ORDER NO.003 DATED SEPTEMBER 13, 2004 IMPOSING ON RESPONDENT THE PENALTY OF DISMISSAL IS DEFECTIVE AS IT DID NOT CONTAIN THE STATEMENTS REQUIRED BY SECTION 16 OF THE URACCS; NO FORMAL INVESTIGATION WAS ALSO CONDUCTED IN CASE

AT BAR. — The Memorandum dated August 24, 2004 issued by petitioner to respondent prior to Administrative Order No. 003 dated September 13, 2004 imposing on her the penalty of dismissal, is therefore defective as it did not contain the statements required by Section 16 of the URACCS. x x x As to the "administrative proceedings" mentioned by petitioner, wherein respondent supposedly participated, we find that it consists merely of the written explanation submitted by respondent in compliance with the memorandum of petitioner. Such explanation considered as answer/comment is different from the answer that may be later filed by respondent during the formal investigation. Evidently, the petitioner failed to substantially comply not only with the requisite formal charge, but also with the other requirements under CSC Resolution No. 991936 concerning the procedure for the conduct of an administrative investigation. In fact, there was no formal investigation conducted at all prior to the issuance of Administrative Order No. 003 dismissing respondent from the service. In *Garcia v. Molina*, we declared the formal charges issued by petitioner Government Service Insurance System President without prior conduct of a preliminary investigation as null and void. In this case, while respondent was given the opportunity to submit a written explanation (not a preliminary investigation proper), she was not formally charged, and no formal investigation had been conducted before the petitioner rendered her decision to dismiss the respondent (Administrative Order No. 003), as required by the civil service rules.

3. ID.; ID.; ID.; FOR A VALID DISMISSAL FROM THE GOVERNMENT SERVICE, THE REQUIREMENTS OF DUE PROCESS MUST BE COMPLIED WITH; THE FILING BY RESPONDENT OF A MOTION FOR RECONSIDERATION OF THE DECISION TO DISMISS HER COULD NOT HAVE CURED THE SERIOUS VIOLATION AND WANTON DISREGARD OF HER RIGHT TO DUE PROCESS. — For a valid dismissal from the government service, the requirements of due process must be complied with. Indeed, even the filing by respondent of a motion for reconsideration of the decision to dismiss her could not have cured the violation of her right to due process. Without a formal charge and proper investigation on the charges imputed on the respondent, the respondent did not get the chance to

sufficiently defend herself; and more importantly, the petitioner, the CSC and the courts could not have had the chance to reasonably ascertain the truth which the CSC rules aim to accomplish. It is to be noted that respondent had repeatedly requested the petitioner to reconsider the reassignment order because of the financial hardship it would cause her family, explaining that her meager take-home pay was due to the loans she previously availed to finance her post-graduate (master's degree) studies. Respondent should have been given the opportunity to prove her defenses against the charge of insubordination and present evidence to refute petitioner's claim that her reassignment was reasonable, necessary and not impelled by improper considerations. x x x Given the serious violation of respondent's right to due process, no reversible error was committed by the CA in upholding the CSC ruling granting respondent's appeal and remanding the case to the PSU for the conduct of proper administrative investigation.

4. ID.; ID.; ID.; THE DENIAL OF THE FUNDAMENTAL RIGHT TO DUE PROCESS IN CASE AT BAR BEING APPARENT, THE DISMISSAL ORDER ISSUED BY PETITIONER IN DISREGARD OF THAT RIGHT IS VOID FOR LACK OF JURISDICTION. — More importantly, the denial of the fundamental right to due process in this case being apparent, the dismissal order issued by petitioner in disregard of that right is void for lack of jurisdiction. The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. It is well-settled that a decision rendered without due process is void *ab initio* and may be attacked at anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked.

5. ID.; ID.; ID.; RESPONDENT'S DELAY IN FILING HER APPEAL IS EXCUSABLE. — We hold that the CA correctly upheld the CSC in giving due course to respondent's belated appeal. This Court has allowed the liberal application of rules of procedure for perfecting appeals in exceptional circumstances to better serve the interest of justice. In this case, the CSC found respondent's appeal as meritorious and that delay in filing her appeal was excusable in view of her pending query

with the Commission on Higher Education (CHED) and the time she waited in vain for the BOR to act on CHED'S subsequent recommendation to defer the implementation of the dismissal order against respondent. x x x In *Commission on Appointments v. Paler*, this Court likewise sustained the CSC when it entertained a belated appeal in the interest of substantial justice. We thus held: x x x "Assuming for the sake of argument that the petitioner's appeal was filed out of time, **it is within the power of this Court to temper rigid rules in favor of substantial justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties.**

APPEARANCES OF COUNSEL

Josol-Trampe Law Office for petitioner.
Jean Lou N. Aguilar for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 is the Decision[1] dated August 25, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 103622.

The facts leading to the present controversy, as summarized by the CA:

On June 11, 2004, petitioner Teresita L. Salva (petitioner hereafter), President of Palawan State University (PSU), issued Office Order No. 061 reassigning four (4) PSU faculty members of the College of Arts and Humanities to various Extramural Studies Centers. She

[1] *Rollo*, pp. 53-66. Penned by Associate Justice Mario V. Lopez with Associate Justices Magdangal M. De Leon and Manuel M. Barrios concurring.

assigned respondent Flaviana M. Valle (respondent hereafter) at Brooke's Point, Palawan.

In a letter dated June 17, 2004, respondent informed petitioner that her net take home pay is only ₱378.66 per month and that she needed financial assistance in the total amount of ₱5,100.00 to support her stay at Brooke's Point. Pending the approval of her request, respondent asked that she be allowed to report to the main campus. But, it appears that as early as respondent's receipt of the reassignment order, her teaching load or subjects in the main campus were already distributed to other faculty members.

When respondent did not report to her new assignment, petitioner issued a memorandum directing respondent to explain in writing within seventy two (72) hours why no disciplinary action should be taken against her. Respondent stated that upon approval of her request for financial assistance, she will immediately report to her new place of assignment. On June 25, 2004, respondent received an endorsement approving her travel expenses.

On June 30, 2004, William M. Herrera, Director of PSU-Brooke's Point, informed petitioner that respondent merely reported for two to three hours on June 15, 2004 and did not return since then. Thus, petitioner issued another memorandum directing respondent to explain within 72 hours why she should not be administratively charged with insubordination for failure to comply with the order of reassignment (Office Order No. 061). Again, respondent declared that her failure to report to her new station was due to her poor financial status.

Finding respondent's explanation unsatisfactory, petitioner issued Administrative Order No. 001 dated July 5, 2004 imposing upon respondent the penalty of one (1) month suspension from office without pay. Respondent's motion for reconsideration was denied.

When respondent's suspension expired, on August 5, 2004, petitioner issued another memorandum directing respondent to immediately report at Brooke's Point. Petitioner informed respondent that she, her husband and minor children are entitled to traveling and freight expenses. Respondent filed another motion for reconsideration stressing that her relocation would result in financial distress to her family. Again, she requested that she remain at the main campus.

Petitioner issued another memorandum directing respondent to explain within 72 hours why she should not be administratively charged with insubordination. Instead of tendering an explanation, respondent sent petitioner a letter dated August 30, 2004 stating that she has appealed petitioner's order of reassignment and suspension to the PSU Board of Regents. She requested for the deferment of any action against her. However, petitioner claimed that respondent failed to furnish her a copy of the notice of appeal. Thus, on September 13, 2004, petitioner issued Administrative Order No. 003 finding respondent guilty of insubordination for the second time and imposing upon her the supreme penalty of dismissal from service. When reconsideration was denied, respondent appealed to the PSU Board seeking nullification of petitioner's orders. She argued that she was unceremoniously dismissed without cause and due process and that her dismissal was flawed due to procedural infirmities such as lack of formal complaint and hearing.

Finding petitioner's actions in order, the PSU Board, in a Resolution dated November 17, 2004, confirmed petitioner's orders, to wit: (1) Office Order No. 061 reassigning respondent to Brooke's Point; (2) Administrative Order No. 001 suspending her for a month; and (3) Administrative Order No. 003 terminating her from service with cancellation of eligibility, forfeiture of leave credits and retirement benefits and disqualification from government service.

On December 13, 2004, respondent received her copy of the PSU Board's decision confirming the orders issued by petitioner. As the PSU Board Resolution dated November 17, 2004 was allegedly unsigned, respondent wrote a letter dated January 7, 2005 to Rev. Fr. Rolando V. Dela Rosa, O.P., the Chairman of the PSU Board and Commission on Higher Education (CHED). She sought to clarify whether the resolution was already approved in a referendum and whether the PSU Board intended to release the said resolution.

On February 18, 2005, respondent was furnished a copy of the PSU Board referendum [dated December 6, 2004] which approved and formalized the November 17, 2004 Resolution. Subsequently, on May 6, 2005, respondent received the CHED memoranda dated November 16, 2004 and February 11, 2005 stating that due process was not observed. The CHED, then, recommended the deferment of the dismissal order to give way to the proper observance of the rules of procedure. When the PSU Board did not act on the said recommendation, on July 14, 2005 or almost five (5) months from

her receipt of the referendum, respondent filed her Memorandum of Appeal to the CSC.[2]

On July 3, 2007, the Civil Service Commission (CSC) issued Resolution No. 071255[3] granting respondent's appeal, as follows:

> **WHEREFORE**, the appeal of Flaviana M. Valle, Palawan State University, is hereby **GRANTED**. Accordingly, the instant case is hereby **REMANDED** to the Palawan State University, Puerto Princesa City, Palawan, for the issuance of the required formal charge, if the evidence so warrants, and thereafter to proceed with the formal investigation of the case. The formal investigation should be completed within three (3) calendar months from the date of receipt of the records from the Commission. Within fifteen (15) days from the termination of the investigation, the disciplining authority shall render its decision, otherwise, the Commission shall vacate and set aside the appealed decision and declare respondent exonerated from the charge.
>
> The Director IV of the Civil Service Commission Regional Office No. IV, Panay Avenue, Quezon City, is hereby directed to monitor the implementation of this Resolution and submit a report to the Commission.[4]

The CSC found that respondent was not afforded due process as there was no formal charge issued against her before she was adjudged guilty of insubordination and meted the penalty of dismissal. Petitioner filed a motion for reconsideration[5] but the CSC denied it under Resolution No. 080582[6] dated April 10, 2008.

Dissatisfied, petitioner filed a petition for review under Rule 43 in the CA. By Decision dated August 25, 2010, the CA sustained the ruling of the CSC.

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[2] *Id.* at 53-57.

[3] *Id.* at 174-188.

[4] *Id.* at 188.

[5] *Id.* at 190-207.

[6] *Id.* at 67-72.

Hence, this petition alleging that —

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE RESPONDENT WAS DISMISSED FROM THE SERVICE WITHOUT THE REQUISITE FORMAL CHARGE

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE CIRCUMSTANCES SURROUNDING RESPONDENT'S DISMISSAL FROM THE SERVICE WERE SHORT OF SUBSTANTIAL COMPLIANCE WITH THE DUE PROCESS REQUIREMENTS[7]

Petitioner argues that the requisite formal charge had been duly complied through her issuance of memorandum orders which were in the nature of a formal charge contemplated under the civil service rules. With these memoranda, respondent was apprised of the offense she had committed and afforded her the opportunity to ventilate within a period of 72 hours from receipt of the same the reasons why she should not be held liable for such offense. Petitioner asserts that subsequent issuance of another directive captioned "formal charge" would have been an exercise in redundancy that would serve no purpose other than to unduly prolong the administrative proceeding, which could not be the intendment of the rules. Moreover, respondent's "[participation] in the administrative proceedings initiated against her by the Petitioner x x x likewise x x x supports the stance that proper administrative charges were initiated against her and militates [against respondent's] contention that due process was not accorded her."[8]

We disagree.

A formal charge issued prior to the imposition of administrative sanctions must conform to the requirements set forth in Section 16, Rule II of the Uniform Rules on Administrative Cases in the Civil Service[9] (URACCS), which reads:

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[7] *Id.* at 32.

[8] *Id.* at 35.

[9] CSC Resolution No. 991936 dated August 31, 1999.

SEC. 16. *Formal Charge*. — After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.

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 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.

We have held that if the purported "formal charge" does not contain the foregoing, it cannot be said that the employee concerned has been formally charged.[10] Thus:

Citing CSC Resolution No. 99-1936 entitled "Uniform Rules on Administrative Cases in the Civil Service," particularly Section 16 thereof on the requirement of a formal charge in investigations, the appellate court correctly ruled that:

> As contemplated under the foregoing provision, a formal charge is a written specification of the charge(s) against an employee. While its form may vary, it generally embodies a brief statement of the material and relevant facts constituting the basis of the charge(s); a directive for the employee to answer the charge(s) in writing and under oath, accompanied by his/her evidence; and advice for the employee to indicate in his/her answer whether he/she elects a formal investigation; and a notice that he/she may secure the assistance of a counsel of

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[10] *Philippine Amusement and Gaming Corporation v. Court of Appeals*, G.R. No. 185668, December 13, 2011, 662 SCRA 294, 306.

his/her own choice. A cursory reading of the purported formal charge issued to Manahan shows that the same is defective as it does not contain the abovementioned statements, and it was not issued by the proper disciplining authority. Hence, under the foregoing factual and legal milieu, Manahan is not deemed to have been formally charged.

Reference to CSC Resolution No. 99-1936 is proper, being the law applicable to formal charges in the civil service prior to the imposition of administrative sanctions. The requirements under Section 16 thereof are clear x x x.[11]

The Memorandum dated August 24, 2004 issued by petitioner to respondent prior to Administrative Order No. 003[12] dated September 13, 2004 imposing on her the penalty of dismissal, is therefore defective as it did not contain the statements required by Section 16 of the URACCS:

August 24, 2004

MEMORANDUM

TO: Asst. Prof. Flaviana M. Valle
This University

Subject: Administrative Case For Insubordination

You are hereby directed to explain within 72 hours from receipt hereof why no disciplinary action be taken against you for the administrative offense of Insubordination for your failure and/or refusal to comply with Memorandum Order dated August 5, 2004 requiring you to report to the PSU Extramural Studies Center at Brooke's Point, Palawan where you were reassigned as a faculty member. As per written report dated August 19, 2004 of Director William M. Herrera, you have not yet reported for work to the said center.

(SGD.)
TERESITA L. SALVA
President[13]

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[11] *Id.*

[12] *Rollo,* pp. 130-131.

[13] *Id.* at 127.

As to the "administrative proceedings" mentioned by petitioner, wherein respondent supposedly participated, we find that it consists merely of the written explanation submitted by respondent in compliance with the memorandum of petitioner. Such explanation considered as answer/comment is different from the answer that may be later filed by respondent during the formal investigation. Evidently, the petitioner failed to substantially comply not only with the requisite formal charge, but also with the other requirements under CSC Resolution No. 991936 concerning the procedure for the conduct of an administrative investigation. In fact, there was no formal investigation conducted at all prior to the issuance of Administrative Order No. 003 dismissing respondent from the service.

In *Garcia v. Molina*,[14] we declared the formal charges issued by petitioner Government Service Insurance System President without prior conduct of a preliminary investigation as null and void. In this case, while respondent was given the opportunity to submit a written explanation (not a preliminary investigation proper[15]), she was not formally charged, and no formal investigation had been conducted before the petitioner rendered her decision

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[14] G.R. Nos. 157383 & 174137, August 10, 2010, 627 SCRA 540.

[15] SEC. 12. *Preliminary Investigation.* — A Preliminary Investigation involves the *ex parte* examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices. During said investigation, the parties are given the opportunity to submit affidavits and counter-affidavits. Failure of the person complained of to submit his counter affidavit shall be considered as a waiver thereof.

Thereafter, if necessary, the parties may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

Upon receipt of the counter-affidavit or comment under oath, the disciplining authority may now determine whether a *prima facie* case exist to warrant the issuance of a formal charge.

A fact-finding investigation may be conducted further or prior to the preliminary investigation for the purpose of ascertaining the truth. A preliminary investigation necessarily includes a fact-finding investigation.

x x x x x x x x x

to dismiss the respondent (Administrative Order No. 003), as required by the civil service rules.

Section 22 of the URACCS provides:

> SEC. 22. *Conduct of Formal Investigation.* — Although the respondent does not request a formal investigation, one **shall** nevertheless be conducted by the disciplining authority where from the allegations of the complaint and the answer of the respondent, including the supporting documents of both parties, the merits of the case cannot be decided judiciously without conducting such investigation.
>
> The investigation shall be held not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge or the receipt of the answer unless the period is extended by the disciplining authority in meritorious cases.
>
> For this purpose, the Commission may entrust the formal investigation to lawyers of other agencies pursuant to Section 79.

Respondent had raised the issue of non-observance of due process in her appeal to the Board of Regents (BOR), in particular, that petitioner did not give her "the benefit of hearing required by law for her to refute or present witnesses and to adduce evidence for her defense to fully air her side" and "every assistance" including legal representation which she considered indispensable for the full protection of her rights in view of the possible loss of her only source of livelihood.[16] The BOR, however maintained that a formal hearing was dispensed with for being unnecessary since the records of the case sufficiently provided the bases for respondent's liability for insubordination.

SEC. 15. *Decision or Resolution After Preliminary Investigation.* — If a *prima facie* case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow.

In the absence of a *prima facie* case, the complaint shall be dismissed.

[16] *Rollo,* pp. 136-137.

Such wanton disregard of the proper procedure in administrative investigations under the civil service rules cannot be countenanced. For a valid dismissal from the government service, the requirements of due process must be complied with. Indeed, even the filing by respondent of a motion for reconsideration of the decision to dismiss her could not have cured the violation of her right to due process.[17]

Without a formal charge and proper investigation on the charges imputed on the respondent, the respondent did not get the chance to sufficiently defend herself; and more importantly, the petitioner, the CSC and the courts could not have had the chance to reasonably ascertain the truth which the CSC rules aim to accomplish.[18] It is to be noted that respondent had repeatedly requested the petitioner to reconsider the reassignment order because of the financial hardship it would cause her family, explaining that her meager take-home pay was due to the loans she previously availed to finance her post-graduate (master's degree) studies. Respondent should have been given the opportunity to prove her defenses against the charge of insubordination and present evidence to refute petitioner's claim that her reassignment was reasonable, necessary and not impelled by improper considerations.

We quote with approval the following findings and observations of the appellate court:

> To begin with, petitioner's memorandum dated August 24, 2004 contained no indication that her failure to explain or abide by her reassignment could result to her dismissal; hence, respondent was not properly apprised of the severity of the charge to intelligently prepare for her defenses. And, even if We were to construe petitioner's memorandum as a complaint or a formal charge, still, the circumstances surrounding respondent's dismissal were short of substantial compliance with due process requirements. A perusal of the minutes during the PSU Board meetings reveal that the issues

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[17] See *Philippine Amusement Gaming Corporation v. Court of Appeals, supra* note 10, at 310.

[18] *Id.* at 311.

of lack of a formal charge, notice and answer after a formal charge, and a hearing committee to allow respondent to be heard were timely raised. But, the PSU Board agreed to decide respondent's appeal because the records were allegedly sufficient to show her liability for insubordination.

On the contrary, further examination of the minutes of the PSU Board meetings shows that respondent's repeated failure to report to her new assignment was not the sole factor which was considered for her alleged acts of insubordination. It was more of respondent's attacks on petitioner and the administration through the radio or media and her attempts to organize rallies that prompted the PSU Board to hasten their confirmation of the order of her dismissal without appropriate proceedings. In fact, the PSU Board issued Resolution No. 45 strictly enjoining respondent "to desist from inciting other members of the community to any protest action against the University or the University President." Moreover, petitioner brought up in the board meeting that there have been some cases of insubordination on the part of respondent regarding the giving of departmental examinations and complaints from some students regarding collections of money.

Indeed, respondent had a right to present evidence which, to say the least, could have blunted the effects of the PSU Board's decision. She could have shown that her failure to comply with her reassignment order was in good faith and not willful or intentional.[19]

Given the serious violation of respondent's right to due process, no reversible error was committed by the CA in upholding the CSC ruling granting respondent's appeal and remanding the case to the PSU for the conduct of proper administrative investigation.

Petitioner nonetheless faults the CA in not holding that respondent's appeal was filed with the CSC beyond the reglementary period provided in Section 43,[20] Rule III of the

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[19] *Rollo*, pp. 63-65.

[20] SEC. 43. *Filing of Appeals.* — Decisions of heads of departments, agencies, provinces, cities municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.

x x x x x x x x x

URACCS. She points out that whether the reglementary period for appeal be reckoned from December 13, 2004 — the date when respondent received the BOR Resolution Nos. 44 and 51, series of 2004 and the Resolution dismissing her appeal — or on February 18, 2005 — the date when respondent received a copy of the Referendum of the BOR dated December 6, 2004 approving BOR Resolution dated November 17, 2004 confirming respondent's reassignment, suspension and dismissal, and dismissing the appeals she filed, it is clear that respondent's appeal with the CSC filed in July 2005 is patently beyond the reglementary period of appeal.

We hold that the CA correctly upheld the CSC in giving due course to respondent's belated appeal. This Court has allowed the liberal application of rules of procedure for perfecting appeals in exceptional circumstances to better serve the interest of justice.[21]

In this case, the CSC found respondent's appeal as meritorious and that delay in filing her appeal was excusable in view of her pending query with the Commission on Higher Education (CHED) and the time she waited in vain for the BOR to act on CHED'S subsequent recommendation[22] to defer the implementation of the dismissal order against respondent. Thus:

> As to movant's assertion that Valle's appeal was filed beyond the reglementary fifteen-day period to appeal, records clearly show that upon receipt of the unsigned Resolution of the PSU Board of Regents confirming the reassignment and dismissal orders, Valle immediately wrote a letter to the Chairman of the PSU Board of Regents and the Chairman of the Commission on Higher Education (CHED), inquiring whether the said Resolution was already approved and intended by the PSU to be released. On February 18, 2005, Valle was furnished a copy of the Referendum dated December 6, 2004 of the PSU Board of Regents, officially confirming her dismissal from the service. Subsequently, on May 6, 2005, Valle received the Memoranda dated November 16, 2004 and February 11, 2005 of the CHED stating that the PSU should defer the implementation of

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[21] See *Ruiz v. Delos Santos*, G.R. No. 166386, January 27, 2009, 577 SCRA 29, 45.

[22] *Rollo,* pp. 265-268. Memorandum dated November 16, 2004.

the dismissal order and instead, issue a formal charge against Valle and that without the Referendum of the Board of Regents approving the unsigned Resolution, the same has no legal effect. On July 14, 2005, after waiting for the PSU Board of Regents to calendar her case following the opinion rendered by the CHED, Valle filed her appeal with the Commission. From the above factual antecedents, it cannot be said that Valle's delay in filing her appeal with the Commission was intentional or deliberate. On the contrary, it was excusable as she was waiting for the PSU Board of Regents to act on her case pursuant to the CHED Memoranda. However, no action was forthcoming from the PSU, thus she elevated the case to the Commission. x x x[23]

In *Commission on Appointments v. Paler*,[24] this Court likewise sustained the CSC when it entertained a belated appeal in the interest of substantial justice. We thus held:

> We agree with the CSC. We uphold its decision to relax the procedural rules because Paler's appeal was meritorious. This is not the first time that the Court has upheld such exercise of discretion. In *Rosales, Jr. v. Mijares* involving Section 49(a) of the CSC Revised Rules of Procedure, the Court ruled:
>
> > On the contention of the petitioner that the appeal of the respondent to the CSC was made beyond the period therefor under Section 49(a) of the CSC Revised Rules of Procedure, the CSC correctly ruled that:
> >
> > Movant claims that Mijares' appeal was filed way beyond the reglementary period for filing appeals. He, thus, contends that the Commission should not have given due course to said appeal.
> >
> > The Commission need not delve much on the dates when Mijares was separated from the service and when he assailed his separation. **Suffice it to state that the Commission found his appeal meritorious. This being the case, procedural rules need not be strictly observed.** This principle was explained by in the case of *Mauna vs. CSC*, 232 SCRA 388, where the Supreme Court ruled, to wit:

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[23] *Id.* at 71.

[24] G.R. No. 172623, March 3, 2010, 614 SCRA 127, 134.

> "Assuming for the sake of argument that the petitioner's appeal was filed out of time, **it is within the power of this Court to temper rigid rules in favor of substantial justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties.** As held by the Court in a number of cases:
>
> x x x x x x x x x
>
> It bears stressing that the case before the CSC involves the security of tenure of a public officer sacrosanctly protected by the Constitution. Public interest requires a resolution of the merits of the appeal instead of dismissing the same based on a strained and inordinate application of Section 49(a) of the CSC Revised Rules of Procedure." (Emphasis supplied)

Constantino-David v. Pangandaman-Gania likewise sustained the CSC when it modified an otherwise final and executory resolution and awarded backwages to the respondent, in the interest of justice and fair play. The Court stated —

> "No doubt, the Civil Service Commission was in the legitimate exercise of its mandate under Sec. 3, Rule I, of the *Revised Uniform Rules on Administrative Cases in the Civil Service* that "[a]dministrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings." This authority is consistent with its powers and functions to "[p]rescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws" being the central personnel agency of the Government.
>
> Furthermore, there are special circumstances in accordance with the tenets of justice and fair play that warrant such liberal attitude on the part of the CSC and a compassionate like-minded discernment by this Court. x x x"[25] (Citations omitted.)

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[25] *Id.* at 134-136.

More importantly, the denial of the fundamental right to due process in this case being apparent, the dismissal order issued by petitioner in disregard of that right is void for lack of jurisdiction.[26] The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will.[27] It is well-settled that a decision rendered without due process is void *ab initio* and may be attacked at anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked.[28]

WHEREFORE, the petition for review on *certiorari* is **DENIED**, for lack of merit. The Decision dated August 25, 2010 of the Court of Appeals in CA-G.R. SP No. 103622 is **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Perlas-Bernabe, J., on official leave.

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[26] See *Garcia v. Molina, supra* note 14, at 554.

[27] *Id.,* citing *Montoya v. Varilla,* G.R. No. 180146, December 18, 2008, 574 SCRA 831, 843.

[28] *Id.* at 555, citing *Engr. Rubio, Jr. v. Hon. Paras,* 495 Phil. 629, 643 (2005).

EN BANC

[G.R. No. 194368. April 2, 2013]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **ARLIC ALMOJUELA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; THE CIVIL SERVICE COMMISSION'S (CSC) PETITION FAILED TO COMPLY WITH SECTION 4, RULE 45 OF THE RULES OF COURT WHEN ITS CERTIFICATE AGAINST FORUM SHOPPING WAS SIGNED BY THE ASSOCIATE SOLICITOR GENERAL AND NOT BY THE CSC NOR BY THE BUREAU OF JAIL MANAGEMENT AND PENOLOGY'S (BJMP) AUTHORIZED REPRESENTATIVE. — As SJO2 Almojuela correctly pointed out, the CSC's petition failed to comply with Section 4, Rule 45 of the Rules of Court, when its certificate against forum shopping was signed by Associate Solicitor General Sharon E. Millan-Decano; it was not signed by the CSC nor by the BJMP's authorized representatives. The consequences of this mistep are prejudicial to the party filing the pleading. Section 5, Rule 45 of the Rules of Court provides that a petition for review that does not comply with the required certification against forum shopping is a ground for its dismissal. This certification must be executed by the petitioner, not by counsel. It is the petitioner, and not always the counsel whose professional services have been retained only for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification. It is equivalent to non-compliance with the requirement under Section 4, Rule 45 and constitutes a valid cause for dismissal of the petition. In *Pascual v. Beltran*, we affirmed the CA's dismissal of the petition for *certiorari* before the appellate court because it was the Solicitor General, not the petitioner, who signed the certification against forum shopping.

2. ID.; ID.; ID.; IT IS NECESSARY FOR THE PETITIONING GOVERNMENT AGENCY OR ITS AUTHORIZED REPRESENTATIVES TO CERTIFY AGAINST FORUM SHOPPING, BECAUSE THEY, AND NOT THE OSG, ARE IN THE BEST POSITION TO KNOW IF ANOTHER CASE IS PENDING BEFORE ANOTHER COURT. — In *Hon. Constantino-David, et al. v. Pangandaman-Gania*, an *En Banc* decision, we clarified the application of *City Warden of the Manila City Jail v. Estrella*, and held that this case does not give the OSG the license to sign the certification against forum shopping in behalf of government agencies at all times. We explained that the reason we authorized the Solicitor General to sign the certification against forum shopping is because it was then acting as a 'People's Tribune,' an instance when the Solicitor takes a position adverse and contrary to the Government's because it is incumbent upon him to present to the Court what he considers would legally uphold government's best interest, although the position may run counter to a client's position; in this case, the Solicitor General appealed the trial court's order despite the City Warden's apparent acquiesance to it and in the process took a position contrary to the City Warden's. The rule is different when the OSG acts as a government agency's counsel of record. It is necessary for the petitioning government agency or its authorized representatives to certify against forum shopping, because they, and not the OSG, are in the best position to know if another case is pending before another court.

3. ID.; ID.; ID.; IF THE OFFICE OF THE SOLICITOR GENERAL (OSG) IS COMPELLED BY CIRCUMSTANCES TO VERIFY AND CERTIFY THE PLEADING IN BEHALF OF A CLIENT AGENCY, THE OSG SHOULD AT LEAST ENDEAVOR TO INFORM THE COURTS OF ITS REASONS FOR DOING SO. — To be sure, there may be situations when the OSG would have difficulty in securing the signatures of government officials for the verification and certificate of non-forum shopping. But these situations cannot serve as excuse for the OSG to wantonly undertake by itself the verification and certification of non-forum shopping. If the OSG is compelled by circumstances to verify and certify the pleading in behalf of a client agency, *the OSG should at least endeavor to inform the courts of its reasons for doing so, beyond simply citing cases where the Court allowed the*

OSG to sign the certification. In Hon. Constantino-David, et al. v. Pangandaman-Gania, the Court dealt with this situation and enumerated the x x x requirements before the OSG can undertake a non-forum shopping certifications as counsel of record for a client agency: x x x. Under these principles, the CSC's petition for review on *certiorari* before this Court is defective for failure to attach a proper certification against forum shopping. In the certificate, the associate solicitor merely stated that she has prepared and filed the petition in her capacity as the petition's handling lawyer, and citing *People v. Grano*, claimed that the OSG's handling lawyers are allowed to verify and sign the certificate of non-forum shopping. No explanation was given why the signatures of the CSC's authorized representatives could not be secured.

4. ID.; ID.; ID.; THE COURT CHOSE TO OVELOOK THE PROCEDURAL DEFECT IN ORDER TO CONSIDER THE CASE ON THE MERITS. — Despite this conclusion, we cannot turn a blind eye to the meritorious grounds that the CSC raised in its petition, and to the reality that the administration of justice could be derailed by an overly stringent application of the rules. Under the present situation and in the exercise of our discretion, we resolve to overlook the procedural defect in order to consider the case on the merits. We carefully note in doing this that our action does not substantially affect the due process rights of the respondent, nor does it involve a jurisdictional infirmity that leaves the Court with no discretion except to dismiss the case before us. x x x Our liberal application of the Rules of Court in this case does not however mean that the OSG can cite this Decision as authority to verify and sign the certification for non-forum shopping in behalf of its client agencies. The OSG should take note of our decision in the cited *Hon. Constantino- David, et al. v. Pangandaman-Gania* for the requisites to be satisfied before it can verify and sign the certificate of non-forum shopping for its client agencies. Rather than an authority in its favor, this Decision should serve as a case showing that the OSG had been warned about its observed laxity in following the rules on the certification for non-forum shopping. Only the substantive merits of the CSC's case saved the day in this case for the OSG.

5. ID.; ID.; ID.; THE CSC IS THE PROPER PARTY TO RAISE AN APPEAL AGAINST THE COURT OF APPEALS'

AMENDED DECISION. — SJO2 Almojuela asserts that the CSC has no legal personality to challenge the CA 's amended decision because it must maintain its impartiality as a judge and disciplining authority in controversies involving public officers. He implores the Court to reconsider its ruling in *Civil Service Commission v. Dacoycoy,* citing the arguments from Justice Romero's dissenting opinion. More than ten years have passed since the Court first recognized in *Dacoycoy* the CSC's standing to appeal the CA 's decisions reversing or modifying its resolutions seriously prejudicial to the civil service system. Since then, the ruling in *Dacoycoy* has been subjected to clarifications and qualifications, but the doctrine has remained the same: the CSC has standing as a real party in interest and can appeal the CA 's decisions modifying or reversing the CSC's rulings, when the CA action would have an adverse impact on the integrity of the civil service. As the government's central personnel agency, the CSC is tasked to establish a career service and promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service; it has a stake in ensuring that the proper disciplinary action is imposed on an erring public employee, and this stake would be adversely affected by a ruling absolving or lightening the CSC-imposed penalty. Further, a decision that declares a public employee not guilty of the charge against him would have no other appellant than the CSC. To be sure, it would not be appealed by the public employee who has been absolved of the charge against him; neither would the complainant appeal the decision, as he acted merely as a witness for the government. We thus find no reason to disturb the settled *Dacoycoy* doctrine. In the present case, the CSC appeals the CA 's amended decision, which modified the liability the former meted against SJO2 Almojuela from grave misconduct to simple misconduct, and lowered the corresponding penalty from dismissal to three months suspension.

6. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS REQUIREMENT IN ADMINISTRATIVE CASES; RESPONDENT WAS AFFORDED DUE PROCESS IN THE BJMP INVESTIGATION. — We support the CA 's conclusion that SJO2 Almojuela was accorded the right to due process during the BJMP investigation. The essence of due process in administrative proceedings (such as the BJMP investigation) is simply the opportunity to explain one's side,

or an opportunity to seek a reconsideration of the action or ruling complained of. Where a party has been given the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured. In SJO2 Almojuela's case, he was informed of the charges against him, and was given the opportunity to refute them in the counter-affidavit and motion for reconsideration he filed before the BJMP hearing officer, in the appeal and motion for reconsideration he filed before the CSC, in his petition for review on *certiorari,* in his memorandum on appeal, and, finally, in the motion for reconsideration he filed before the CA.

7. ID.; ID.; A FORMAL OR TRIAL-TYPE OF HEARING IS NOT INDISPENSABLE IN ADMINISTRATIVE PROCEEDINGS, AND A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE SUFFICES TO MEET THE REQUIREMENTS OF DUE PROCESS. — We do not agree with SJO2 Almojuela's assertion that the statements of SJO2 Aquino, JO1 Loyola, SJO1 Lagahit and JO1 Robles in their affidavits should be disregarded for being hearsay as he failed to cross-examine them. It is well-settled that a formal or trial-type of hearing is not indespensible in administrative proceedings, and a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. Technical rules applicable to judicial proceedings need not always apply.

8. ID.; ID.; GROSS MISCONDUCT AND GROSS NEGLECT OF DUTY; CIRCUMSTANTIAL EVIDENCE; APPLIED IN CASE AT BAR. — According to the BJMP report, Lao most likely exited the jail compound through the main gate, considering that he was discovered to have disappeared at about the same time the warden left the jail on board his car (the BJMP report pegged the discovery of Lao's escape 30 minutes after the warden left, while the jail officers' affidavits estimated it to have transpired 30 minutes *before*). A search and inspection of the barracks of suspected jail personnel resulted in the recovery of ten keys from SJO2 Almojuela's barracks, one of which matched the main gate's padlock. This piece of evidence, when considered along with other pieces of evidence presented before the BJMP investigation and the CSC, is sufficient to conclude that SJO2 Almojuela knew and consented to Lao's getaway.

True, the CSC failed to present *direct evidence* proving that SJO2 Almojuela had been involved in facilitating Lao's escape. But direct evidence is not the sole means of establishing guilt beyond reasonable doubt since circumstantial evidence, if sufficient, can supplant the absence of direct evidence. Under Section 4, Rule 133 of the Rules of Court: SEC. 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. While this provision appears to refer only to criminal cases, we have applied its principles to administrative cases. To fulfill the third requisite, this Court in *RE: AC NO. 04-AM-2002 (JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES)*, an *En Banc* decision, required that the circumstantial evidence presented must constitute an unbroken chain that leads one to a fair and reasonable conclusion pointing to the person accused, to the exclusion of others, as the guilty person. The circumstantial evidence the CSC presented leads to a fair and reasonable conclusion that, at the very least, SJO2 Almojuela consented to Lao's getaway. The keys found in SJO2 Almojuela's room fit the padlock in the maingate, Lao's most possible point of egress. The fact that these keys should be in the safekeeping of JO1 Pascual and JO1 Robles does not clear SJO2 Almojuela from liability; on the contrary, it should convince us of his involvement in Lao's escape. It leads us to ask why the keys were found in SJO2 A lmojuela's room, when the last person seen to possess the keys, and the personnel who were supposed to safekeep them, was not SJO2 Almojuela. SJO2 Almojuela's bare allegations that he was set up cannot stand up against the presumption of regularity in the performance of the investigating officers' duty. This presumption, when considered with the following pieces of evidence, leads us to no other conclusion than SJO2 Almojuela's implied consent to Lao's escape.

9. ID.; ID.; ID.; IN CONSENTING TO THE INMATE'S ESCAPE, RESPONDENT IS GUILTY OF GROSS MISCONDUCT IN THE PERFORMANCE OF HIS DUTIES AS SENIOR JAIL OFFICER II. — We find SJO2 Almojuela guilty of gross misconduct in the performance of his duties as Senior Jail Officer II. Misconduct has been defined as "a transgression

of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." Misconduct becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence." In SJO2 Almojuela's case, we hold it established by substantial evidence that he consented to Lao's escape from the Makati City Jail. Thus, there was willful violation of his duty as Senior Jail Officer II to oversee the jail compound's security, rendering him liable for gross misconduct.

10. ID.; ID.; ID.; EVEN ASSUMING THAT RESPONDENT HAD NOT CONSENTED TO THE INMATE'S GETAWAY, ADEQUATE EVIDENCE SHOWS THAT HE HAD BEEN GROSSLY NEGLIGENT IN THE PERFORMANCE OF HIS DUTIES. — Even assuming that SJO2 A lmojuela had not consented to Lao's getaway, adequate evidence shows that SJO2 Almojuela had been grossly negligent in the performance of his duties. Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. SJO2 Almojuela *left the desk area from 1:30 a.m. to 3:00 a.m., with no explanation* as to where he went or why he had to leave his post. His contention that he stepped out from the desk area at 1:20 a.m. and returned at 1:30 a.m. to take a snack is belied by the testimony of SJO1 Lagahit (the desk reliever) who testified that SJO2 Almojuela returned at 3 a.m.; and by the testimony of JO1 Loyola that the desk area was unmanned between 2:00 to 3:00 a.m. *At 3 a.m., when he was established to be at the desk area, SJO2 Almojuela was even seen sleeping on a folding chair*. The situation was thus one of compounded neglect. As shift supervisor and one of the highest ranking jail officers on duty at the time of the prison break, SJO2 Almojuela had the responsibility to oversee the security of the jail compound and to ensure that all members of the shift were performing their tasks. SJO2 Almojuela's acts of *leaving his post for two hours, without any adequate reason, and sleeping afterwards* show a wanton disregard for

his responsibilities as shift supervisor. x x x SJO2 Almojuela [also] *tolerated the blatant disregard of BJMP rules and regulations* by the jail officers under his supervision. He admitted that he saw *Lao loittering in the jail compound in the wee hours of the night*, and did nothing about it. Worse, SJO2 *Almojuela was even seen talking to Lao* and JO1 Pascual at the desk area, and other inmates have been seen conversing at the desk area. x x x According to BJMP rules and regulations, *all inmates must be kept inside their cells after visitng hours. During night time, compelling reasons and/or emergency situations must exist before the inmates can be allowed to leave their cells*. x x x SJO2 Almojuela's neglect of his duties considerably contributed to the lax prison environment that allowed Lao not only to escape, but to even bring his belongings with him.

11. ID.; ID.; ID.; BOTH GROSS MISCONDUCT AND GROSS NEGLECT OF DUTY ARE GRAVE OFFENSES; PENALTY OF DISMISSAL FROM SERVICE IS JUSTIFIED. — Under Section 52 (A)(2) and (3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, both gross misconduct and gross neglect of duty are grave offenses punishable by dismissal from the service for the first offense. Our conclusions fully justify the imposition of this penalty and the reinstatement of the CA's original penalty of dismissal from the service.

APPEARANCES OF COUNSEL

The Solicitor General and *CSC Office of the Legal Affairs* for petitioner.

Real Brotarlo & Real Law Firm for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the Civil Service Commission's (*CSC*) appeal by *certiorari* seeking the reversal of the Court of Appeals' (*CA*)

amended decision[1] in CA-G.R. SP No. 106258. The assailed decision partly granted the respondent SJO2 Arlic Almojuela's (*SJO2 Almojuela*) Motion for Reconsideration from the CA's original decision,[2] affirming its finding that SJO2 Almojuela is guilty of gross misconduct.

Factual Antecedents

The present administrative case, filed against Desk Officer/ Supervisor SJO2 Almojuela, sprang from the escape of a detention prisoner in the Makati City Jail.

Tony Lao's escape

At six'o clock in the morning of December 13, 2003, Ding Cang Hui *a.k.a.* Tony Lao / Tony Ling (*Lao*), a Chinese inmate charged with violation of Republic Act No. 6425 (the Dangerous Drugs Act) was discovered to have escaped from his cell at the Makati City Jail. The following officers of the Bureau of Jail Management and Penology (*BJMP*) – National Capital Region Office (*NCRO*) were on third shift custodial duty when Lao escaped: J/C INSP Pepe Quinones (*J/C INSP Quinones*); SJO2 Arvie Aquino JMP (*SJO2 Aquino*), officer of the day; SJO2 Arlic Almojuela JMP (*SJO2 Almojuela*), desk officer / supervisor; SJO1 Jose Rodney Lagahit JMP (*SJO1 Lagahit*), desk reliever; JO1 Eric Manuel Palileo (*JO1 Palileo*), duty nurse; JO1 Rommel Robles JMP (*JO1 Robles*), gater; JO1 Manuel Loyola, Jr. (*JO1 Loyola*), gater; JO1 Reynaldo Pascual JMP (*JO1 Pascual*), cell guard and JO1 Jaime Ibarra (*JO1 Ibarra*), roving guard.[3]

Based on testimonies cited in Civil Service Resolution No. 080701[4] and the Court of Appeals' decision, the facts outlined below led to Lao's escape.

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[1] Court of Appeals Amended Decision, penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Magdangal M. De Leon and Isaias P. Dicdican; *rollo*, pp. 7-15.

[2] Court of Appeals Original Decision, penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mario V. Lopez; *id.* at 52-71.

[3] *Id.* at 53.

[4] *Id.* at 53-59.

At about 11:00 p.m., SJO2 Aquino made a headcount of the inmates in the Makati City Jail, ensured every cell was padlocked, and instructed SJO2 Almojuela (the desk officer on duty) to dispatch the personnel to their respective areas of responsibilities.[5]

Thirty minutes later, inmate Florencio Jacinto (*Jacinto*) saw Cabidoy, an inmate charged with opening and closing the cell gates, open Cell Number 8. Lao came out and Jacinto never saw him return to his cell.[6]

Soon after Jacinto saw Lao walk out of Cell Number 8, JO1 Loyola (the gater at the Main Gate) saw Lao at the front desk talking to SJO2 Almojuela and JO1 Pascual. According to JO1 Loyola, SJO2 Almojuela ordered him and JO1 Pascual to buy food outside the jail premises.[7] SJO1 Robles, another gater at the main gate, saw the two leave the compound at around 11:45PM. SJO1 Robles then saw Lao, Cabidoy and another inmate conversing at the Desk Area. SJO1 Robles were about to approach the three inmates to caution them, but upon seeing SJO1 Lagahit at the desk area, he went back to his post. JO1 Pascual and JO1 Loyola returned to the compound at around 12:30 a.m.; upon arrival, JO1 Loyola asked JO1 Robles "*nandyan na si Warden (Chief Inspector Quinones)*?", to which the latter replied "*tulog na si sir*." JO1 Robles observed that JO1 Pascual was hiding something bulky in his uniform.[8]

In his defense, SJO2 Almojuela asserted that JO1 Loyola and JO1 Pascual went out of the jail compound without his permission. He also testified seeing JO1 Pascual and Lao together at around 12 midnight, while Lao was using JO1 Pascual's celfone.[9] Lao's use of JO1 Pascual's celfone was corroborated by SJO1 Robles's testimony, who also said that JO1 Loyola's phone kept on ringing or alerting for text messages. It was not

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[5] *Id.* at 53.

[6] *Id.* at 58.

[7] *Id.* at 55.

[8] *Id.* at 56.

[9] *Id.* at 54.

clear from SJO1 Robles's testimony if JO1 Loyola was with JO1 Pascual and Lao at that time.

Roughly twenty minutes after Lao was seen using JO1 Pascual's celfone, JO1 Loyola ordered inmate Cabidoy to go to sleep, while JO1 Pascual took the keys to the jail cells from Cabidoy.[10]

At around 1:15 a.m., inmate Juan Mogado, Lao's former cellmate, saw Lao for the last time, when the latter bought ₱20.00 worth of Marlborro cigarettes from the store he was tending.[11]

Fifteen minutes later, at about 1:30 a.m., SJO1 Robles testified that JO1 Loyola took the gate keys for the vehicular and visitor entrance and told him "*Sige pahinga ka muna, mamaya ko na ibigay sa iyo mga 3:00.*"[12]

Between 1 to 1:30 a.m., Joan Panayaman, Almojuela's househelp, saw JO1 Loyola and JO1 Pascual together while she was heading for the comfort room. As she approached them, Panayaman overheard JO1 Pascual talking over the cellphone saying "*Bago namin ilabas ito, magdagdag muna kayo ng isang milyon*." JO1 Pascual then toned down his voice and entered his room, while JO1 Loyola walked towards the jail area. She went up to SJO2 Almojuela's room, but found it locked. While going downstairs, she saw JO1 Loyola walking towards the gate with a man; a few minutes later, JO1 Loyola returned without the man.[13]

According to SJO2 Almojuela, he went to his barracks at around 1:20 a.m. and returned at around 1:30 a.m.[14] This is contradicted by SJO1 Lagahit's testimony, which asserts that SJO2 Almojuela left the front desk at around 1 a.m. and returned only at 3 a.m.[15] At around the same time, inmate Jerwin Mingoy

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[10] *Id.* at 57.

[11] *Id.* at 57.

[12] *Id.* at 56.

[13] *Id.* at 58-59.

[14] *Id.* at 54.

[15] *Id.* at 55.

(*Mingoy*) testified that SJO2 Almojuela ordered him to get food at cell number 8 and set the table for the 3rd shift personnel.[16] It must be noted, however, that SJO1 Loyola saw the members of the 3rd shift personnel take their meal some time between 12 a.m. to 1 a.m.,[17] while inmate Cabidoy cooked their meal at around 11:45 a.m.[18]

Between 2:00 to 3:00 a.m., JO1 Loyola said he saw that the desk area was unmanned and the control gate of the detention cells open; he then gave the keys in his possession to JO1 Robles and went to the infirmary.[19] JO1 Loyola did not explain his whereabouts between 1:00 to 2:00 a.m.

SJO1 Lagahit testified that he conducted a roving inspection at around 2:30 a.m., and saw JO1 Loyola going to the infirmary where JO1 Palileo was assigned. He also saw SJO1 Pascual sitting in front of the gate of Cell Number 8, where Lao was billeted.[20] By 2:45 a.m., JO1 Robles said he woke up to find that the keys earlier taken by JO1 Loyola were already on his belly.[21]

At around 3 a.m., inmate Mingoy saw Lao talking to JO1 Palileo at the Desk Area.[22] By 3:30 a.m., SJO2 Aquino left the female brigade area; while on her way to the Desk Officer's lounge, she saw the following: (1) SJO2 Almojuela sleeping on a folding chair; (2) JO1 Palileo sleeping in the infirmary; (3) SJO1 Lagahit watching TV; 4) both control gates 1 and 2 were open; and (5) JO1 Pascual was standing inside control gate number 2.[23]

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[16] *Id.* at 57-58.

[17] *Id.* at 55.

[18] *Id.* at 57.

[19] *Id.* at 55.

[20] *Id.* at 54-55.

[21] *Id.* at 56.

[22] *Id.* at 58.

[23] *Id.* at 53-54.

By 5:30 a.m., several BJMP officers saw Chief Inspector Quinones leave the jail compound aboard his car. News broke out in the jail facility that Lao was missing at around the same time.[24] Lao surreptitiously left the Makati City Jail and brought along with him his possessions, including a trophy he won at a pingpong match inside the prison.[25]

Two days after Lao's escape, Supt. Edgar C. Bolcio, who replaced Chief Inspector Quinones, conducted a search and inspection of the barracks of the jail personnel suspected to be involved in Lao's escape. This resulted in the recovery of 10 keys from SJO2 Almojuela's barracks, one of which matched the padlock of the main gate.[26]

The National Bureau of Investigation (*NBI*) subsequently conducted polygraph tests on JO1 Pascual and SJO2 Almojuela. According to the NBI, JO1 Pascual and SJO2 Almojuela's responses were "indicative of deceptions occurred at relevant questions". When confronted and interrogated by the NBI, the two could not satisfactorily explain the polygraph tests' results.[27]

The BJMP's Investigation Report

A BJMP Investigation Report conducted on the incident concluded that SJO2 Almojuela and the rest of the jail officers on third shift custodial duty all colluded to facilitate Lao's getaway.[28] Based on the report's recommendation, the Intelligence and Investigation Division of the BJMP filed an administrative complaint against the abovementioned BJMP/NCRO members.[29] In Administrative Case No. 04-11, CESO IV Director Arturo Walit, the BJMP hearing officer, rendered his decision dated December 13, 2005,[30] finding the following liable:

[24] *Id.* at 27.

[25] *Id.* at 99.

[26] *Id.* at 58.

[27] *Id.* at 58.

[28] *Id.* at 59.

[29] *Id.* at 59.

[30] *Id.* at 60-61.

First, SJO2 Almojuela and JO1 Loyola were found guilty of Grave Misconduct and were meted the penalty of dismissal from the service.

Second, SJO2 Aquino, SJO1 Lagahit and JO1 Robles were found guilty of Less Serious Neglect of Duty and were meted the penalty of Suspension with forfeiture of salaries and allowances for six months.

Third, CINSP Quinones was found guilty of Neglect of Duty and was meted the penalty of Fine equivalent to four months salary; he had since retired from the service.

Fourth, JO1 Pascual, while not absolved of administrative liability, could no longer be penalized as the administrative proceedings began long after his separation from the service.

Fifth, JO1 Palileo and JO1 Ibarra were exonerated.

SJO2 Almojuela and JO1 Loyola moved for the reconsideration of Director Walit's decision, which the latter denied for lack of merit in a Joint Resolution dated June 21, 2006. SJO2 Almojuela then appealed his conviction before the Civil Service Commission (CSC), which affirmed Director Walit's decision in its Resolution No. 080701. The CSC subsequently denied SJO2 Almojuela's motion for reconsideration.[31]

The Appellate Court's ruling

SJO2 Almojuela's next recourse was a petition for review before the Court of Appeals. He assailed the CSC's decision for the following reasons: ***First***, SJO2 Almojuela claimed to have been denied due process because he was not accorded the benefit of a full-blown trial. ***Second***, SJO2 Almojuela asserted that he was denied equal protection of the laws because lesser penalties were imposed on his co-workers. ***Third***, SJO2 Almojuela argued that the evidence on record was insufficient to support his dismissal from the service.[32]

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[31] *Id.* at 61-63.

[32] *Id.* at 63-70.

The CA denied SJO2 Almojuela's petition.[33] According to the CA, SJO2 Almojuela was provided the due process required in administrative proceedings when he was given the opportunity to answer the accusations against him. He was fully informed of the charges against him, and did file a counter-affidavit, motions for reconsideration, a notice of appeal, and a memorandum of appeal, where he narrated his side of the story.

Further, SJO2 Almojuela's claim that he was denied equal protection of the laws because his co-workers were sentenced to lesser penalties has no legal basis. Citing *Abakada Guro Partylist v. Purisima*,[34] the CA pointed out that the equality guaranteed under the equal protection clause is equality under the same conditions and among persons similarly situated; when persons are under different factual circumstance, they may be treated differently.

In this case, the CA held that SJO2 Almojuela was handed the proper penalty, because next only to the warden, he was the highest-ranking officer in the Makati City Jail at the time Lao escaped. It was incumbent upon him to oversee the whole jail compound's security, and ensure that all jail personnel performed their respective tasks. His failure to do so deserved a greater penalty than those who were under his command.

Lastly, the CA gave no credit to SJO2 Almojuela's claim that the lack of a hearing and the BJMP's bias against him rendered his dismissal illegal. It held that the presumption of regularity in the performance of Director Alit's duty as disciplining authority should prevail over SJO2 Almojuela's bare and unsupported allegations. Further, Director Alit's decision was based on substantial evidence — testimonies of SJO2 Almojuela's colleagues on duty that night showed the following laxities in the implementation of jail rules:

(1) SJO2 Almojuela was seen sleeping in a folding chair;

(2) Control gates 1 and 2 were open;

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[33] *Id.* at 52-70.

[34] G.R. No. 166715, August 14, 2008, 562 SCRA 251.

(3) SJO2 Almojuela and JO1 Pascual were seen conversing with Lao at the desk area;

(4) SJO2 Almojuela ordered JO1 Loyola and JO1 Pascual to go out of the compound and to buy food;

(5) Lao and the other inmates were seen loitering around the jail premises when all of them should have been inside their respective cells;

(6) The recovered keys from SJO2 Almojuela's makeshift cubicle fit the padlock in the main gate for vehicles;

(7) Persons other than gatekeepers JO1 Robles and JO1 Loyola had access to the keys of the respective gates assigned to them.

The Appellate Court's Amended Decision

The appellate court partially granted[35] SJO2 Almojuela's motion for reconsideration, and lowered his liability from grave to simple misconduct. Applying Section 54(b), Rule IV of the Uniform Rules on Administrative Cases in Civil Service,[36] SJO2 Almojuela was meted the penalty of three months suspension as there was neither any attendant mitigating nor aggravating circumstance.

Citing *Civil Service Commission v. Lucas*,[37] the CA held on reconsideration that misconduct, to be considered grave, must involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple.

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[35] *Rollo*, pp. 72-80.

[36] Section 54. Manner of Imposition. — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

x x x x x x x x x

b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

[37] 361 Phil. 486 (1999).

The CA found no corrupt motive or willful intent on SJO2 Almojuela's part to violate the BJMP Rules and Regulations. No clear evidence was presented to show that SJO2 Almojuela was directly involved in the prison break, nor was it proven that he benefited from it. SJO2 Almojuela likewise did not willfully trifle with the BJMP Rules and Regulations. While Lao was allowed to leave his cell, he was accompanied by the roving guard, JO1 Pascual, at all times. Considering the presumption that JO1 Pascual was regularly performing his duty, SJO2 Almojuela had no reason to believe that Lao would escape because he was under the jail guard's watch. Further, SJO2 Almojuela was seen sleeping on duty only once; since SJO2 Aquino and SJO1 Lagahit (who were with him) were awake at that time, his lapse could not be considered to be sufficiently grave or serious to warrant his dismissal from the service.

The Present Petition

The CSC asserts in its present petition that the CA should not have had disturbed the CSC's findings, as conclusions of administrative bodies charged with their specific field of expertise are generally afforded great weight by the courts.[38] SJO2 Almojuela's conviction is supported by evidence on record, and sufficiently satisfied the substantial evidence standard. Taken together, the testimonies submitted during the BJMP investigation establish that SJO2 Almojuela connived with JO1 Pascual, JO1 Loyola and Lao to facilitate the latter's escape. Even assuming that SJO2 Almojuela had no knowledge of the plan, he could have easily discovered and prevented the escape had he been awake and alert.

According to the CSC, a jail guard's act of sleeping while at his post on night-shift duty constitutes grave misconduct because it is a flagrant disregard of BJMP's policy that a jail officer should stay vigilant during his shift. In SJO2 Almojuela's case, this was aggravated by his rank — next only to the warden, he was the highest-ranking jail officer on duty. As shift supervisor, it was incumbent upon him to be awake at all times to fully

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[38] *Rollo*, pp. 29-49.

oversee the jail compound's security and to ensure that all the other jail officers were performing their tasks.

Lastly, the CSC pointed out that Grave Misconduct could not be mitigated by the accused's first time offender status or by his length of service. Section 52, Rule IV the of Civil Service Commission Memorandum Circular No. 19-99[39] provides that the first offense constituting grave misconduct already warrants the penalty of dismissal.

In his Comment,[40] SJO2 Almojuela reiterated the line the Court of Appeals took in its amended decision, and additionally raised the following arguments: ***first***, the certificate of non-forum shopping, instead of having been signed by the CSC, was signed by the assistant solicitor general, in violation of the rule on certification against forum shopping; ***second***, the CSC is not the proper party to appeal the CA's decision; and ***third***, SJO2 Almojuela had been deprived of due process during the BJMP investigation, as he was not given the opportunity to submit his evidence and to present his witnesses while the prosecution was allowed to adduce its evidence under a trial-type arrangement.

Issues

The parties' arguments, properly joined, present to us the following issues:

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[39] Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty
   1st offense — Dismissal
2. Gross Neglect of Duty
   1st offense — Dismissal
3. **Grave Misconduct**
   1st offense — Dismissal

x x x [emphasis supplied]

[40] *Rollo*, pp. 151-170.

1) Whether the CSC's petition for review on *certiorari* should be dismissed for failure to comply with Section 4, Rule 45 of the Rules of Court;

2) Whether the CSC's petition for review on *certiorari* should be dismissed as the CSC is not the proper party to appeal the CA's amended decision;

3) Whether SJO2 Almojuela had been deprived of due process when he was not allowed to present his evidence and witnesses during the BJMP investigation;

4) Whether SJO2 Almojuela connived with JO1 Loyola and JO1 Pascual to facilitate Lao's escape from the Makati City Jail; and

5) Whether SJO2 Almojuela's actions constitute gross misconduct.

The Court's Ruling

We first rule on the procedural issues SJO2 Almojuela posed.

The CSC's petition failed to comply with Section 4, Rule 45 of the Rules of Court

As SJO2 Almojuela correctly pointed out, the CSC's petition failed to comply with Section 4, Rule 45 of the Rules of Court,[41]

[41] Section 4. Contents of Petition — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) *contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42*. [emphasis supplied]

when its certificate against forum shopping was signed by Associate Solicitor General Sharon E. Millan-Decano; it was not signed by the CSC nor by the BJMP's authorized representatives.

The consequences of this mistep are prejudicial to the party filing the pleading. Section 5, Rule 45 of the Rules of Court provides that a petition for review that does not comply with the required certification against forum shopping is a ground for its dismissal.[42] This certification must be executed by the petitioner, not by counsel. It is the petitioner, and not always the counsel whose professional services have been retained only for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification. It is equivalent to non-compliance with the requirement under Section 4, Rule 45 and constitutes a valid cause for dismissal of the petition.[43]

In *Pascual v. Beltran*,[44] we affirmed the CA's dismissal of the petition for *certiorari* before the appellate court because it was the Solicitor General, not the petitioner, who signed the certification against forum shopping.

However, there have been instances when the demands of substantial justice convinced us to apply the Rules liberally by way of compliance with the certification against forum shopping requirement;[45] the rule on certification against forum shopping,

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[42] Sec. 5. Dismissal or denial of petition. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[43] *Far Eastern Shipping Company v. Court of Appeals*, G.R. No. 130068, October 1, 1998, 297 SCRA 30, 53; *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 157.

[44] G.R. No. 129318, October 27, 2006, 505 SCRA 545.

[45] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 146923, April 30, 2003, 402 SCRA 449, 454-455.

while obligatory, is not jurisdictional. Justifiable cirsumtances may intervene and be recognized, leading the Court to relax the application of this rule.[46]

In *People of the Philippines v. de Grano, et al.*,[47] for instance, we permitted the private prosecutor to sign the certification in behalf of his client who went into hiding after being taken out of the witness protection program. This is the case that the OSG invoked in the certification against forum shopping signed by Associate Solicitor Millan-Decano who stated in her footnote that "Pursuant to *People v. de Grano* (G.R. No. 167710, June 5, 2009), the handling lawyers of the OSG may sign verification and certificate of non-forum shopping."[48]

A reading of *People of the Philippines v. de Grano, et al.*, a decision from the Third Division of the Supreme Court, shows that it cannot be used to support the OSG's conclusion.

De Grano affirms a long line of Supreme Court decisions where the Court allowed the liberal application of the rules on certification against forum shopping in the interest of substantial justice. But to merit the Court's consideration, the petitioner(s) must show reasonable basis for its/their failure to personally sign the certification. They must convince the Court that the petition's outright dismissal would defeat the administration of justice. One of the cases cited in *Grano* was *City Warden of the Manila City Jail v. Estrella*, a case decided by the Second Division of this Court, which allowed the Solicitor General to sign the verification and certification of non-forum shopping in a petition before the CA or with this Court. The decision held that certification by the OSG constitutes substantial compliance with the Rules, considering that the OSG is the legal representative of the Government of the Republic of the Philippines and its agencies and instrumentalities.

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[46] *People of the Philippines v. de Grano, et al.*, G.R. No. 167710, June 5, 2009, 588 SCRA 550, 563-564 citing *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-337.

[47] G.R. No. 167710, June 5, 2009, 588 SCRA 550.

[48] *Rollo*, p. 51.

In *Hon. Constantino-David, et al. v. Pangandaman-Gania*,[49] an *En Banc* decision, we clarified the application of *City Warden of the Manila City Jail v. Estrella*,[50] and held that this case does not give the OSG the license to sign the certification against forum shopping in behalf of government agencies at all times. We explained that the reason we authorized the Solicitor General to sign the certification against forum shopping is because it was then acting as a 'People's Tribune,' an instance when the Solicitor takes a position adverse and contrary to the Government's because it is incumbent upon him to present to the Court what he considers would legally uphold government's best interest, although the position may run counter to a client's position; in this case, the Solicitor General appealed the trial court's order despite the City Warden's apparent acquiesance to it and in the process took a position contrary to the City Warden's.

The rule is different when the OSG acts as a government agency's counsel of record. It is necessary for the petitioning government agency or its authorized representatives to certify against forum shopping, because they, and not the OSG, are in the best position to know if another case is pending before another court. The reason for this requirement was succinctly explained in *Hon. Constantino-David, et al. v. Pangandaman-Gania*:

> The fact that the OSG under the 1987 Administrative Code is the only lawyer for a government agency wanting to file a petition or complaint does not automatically vest the OSG with the authority to execute in its name the certificate of non-forum shopping for a client office. In some instances, these government agencies have legal departments which inadvertently take legal matters requiring court representation into their own hands without the OSG's intervention. Consequently, the OSG would have no personal knowledge of the history of a particular case so as to adequately execute the certificate of non-forum shopping; and even if the OSG does have the relevant information, the courts on the other hand would have no way of ascertaining the accuracy of the OSG's assertion

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[49] G.R. No. 156039, August 14, 2003, 409 SCRA 80.

[50] G.R. No. 141211, August 31, 2001, 364 SCRA 257.

without precise references in the record of the case. Thus, unless equitable circumstances which are manifest from the record of a case prevail, it becomes necessary for the concerned government agency or its authorized representatives to certify for non-forum shopping if only to be sure that no other similar case or incident is pending before any other court.[51]

To be sure, there may be situations when the OSG would have difficulty in securing the signatures of government officials for the verification and certificate of non-forum shopping. But these situations cannot serve as excuse for the OSG to wantonly undertake by itself the verification and certification of non-forum shopping. If the OSG is compelled by circumstances to verify and certify the pleading in behalf of a client agency, *the OSG should at least endeavor to inform the courts of its reasons for doing so, beyond simply citing cases where the Court allowed the OSG to sign the certification.* In *Hon. Constantino-David et al. v. Pangandaman-Gania,* the Court dealt with this situation and enumerated the following requirements before the OSG can undertake a non-forum shopping certifications as counsel of record for a client agency:

(a) allege under oath the circumstances that make signatures of the concerned officials impossible to obtain within the period for filing the initiatory pleading; (b) append to the petition or complaint such authentic document to prove that the party-petitioner or complainant authorized the filing of the petition or complaint and understood and adopted the allegations set forth therein, and an affirmation that no action or claim involving the same issues has been filed or commenced in any court, tribunal or quasi-judicial agency; and, (c) undertake to inform the court promptly and reasonably of any change in the stance of the client agency.[52]

Under these principles, the CSC's petition for review on *certiorari* before this Court is defective for failure to attach a proper certification against forum shopping. In the certificate, the associate solicitor merely stated that she has prepared and

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[51] G.R. No. 156039, August 14, 2003, 409 SCRA 80, 95.

[52] G.R. No. 156039, August 14, 2003, 409 SCRA 80, 96.

filed the petition in her capacity as the petition's handling lawyer, and citing *People v. Grano,* claimed that the OSG's handling lawyers are allowed to verify and sign the certificate of non-forum shopping. No explanation was given why the signatures of the CSC's authorized representatives could not be secured.

Despite this conclusion, we cannot turn a blind eye to the meritorious grounds that the CSC raised in its petition, and to the reality that the administration of justice could be derailed by an overly stringent application of the rules. Under the present situation and in the exercise of our discretion, we resolve to overlook the procedural defect in order to consider the case on the merits. We carefully note in doing this that our action does not substantially affect the due process rights of the respondent, nor does it involve a jurisdictional infirmity that leaves the Court with no discretion except to dismiss the case before us.[53] In other words, no mandatory duty on the part of the Court is involved; we are faced with a situation that calls for the exercise of our authority to act with discretion. In the exercise of this discretion, we have deemed it more prudent, as a matter of judicial policy in the present situation, to encourage the hearing of the appeal on the merits rather than to apply the rules of procedure in a very rigid, technical sense that impedes the cause of justice.[54]

Our approach is a reminder that the rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application tending to frustrate, rather than promote substantial justice, must always be avoided.[55] The emerging trend in the rulings of this Court is to afford every party litigant with a facially meritorious case the amplest

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[53] Rule 56B, Section 5 of the Rules of Court provide:

Section 5. Grounds for dismissal of appeal — The appeal ***may*** be dismissed *motu proprio* or on motion of the respondent on the following grounds: x x x underlining ours.

[54] *Peñoso v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 239-240 citing *Aguam v. Court of Appeals*, 388 Phil. 587, 593-594 (2000).

[55] *Peñoso v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 240 citing *Ginete v. Court of Appeals*, 357 Phil. 36, 51-53 (1998).

opportunity for the proper determination of his or her cause, free from the constraints of technicalities.[56] It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties the review of a meritorious case on appeal rather than dispose of the case on technicalities and cause a grave injustice; the latter course of action may give the impression of speedy disposal of cases, but can only result in more delay and even miscarriage of justice.[57]

Our liberal application of the Rules of Court in this case does not however mean that the OSG can cite this Decision as authority to verify and sign the certification for non-forum shopping in behalf of its client agencies. The OSG should take note of our decision in the cited *Hon. Constantino-David, et al. v. Pangandaman-Gania* for the requisites to be satisfied before it can verify and sign the certificate of non-forum shopping for its client agencies. Rather than an authority in its favor, this Decision should serve as a case showing that the OSG had been warned about its observed laxity in following the rules on the certification for non-forum shopping. Only the substantive merits of the CSC's case saved the day in this case for the OSG.

The CSC is the proper party to raise an appeal against the CA's amended petition

SJO2 Almojuela asserts that the CSC has no legal personality to challenge the CA's amended decision because it must maintain its impartiality as a judge and disciplining authority in controversies involving public officers. He implores the Court to reconsider its ruling in *Civil Service Commission v. Dacoycoy*,[58] citing the arguments from Justice Romero's dissenting opinion.

More than ten years have passed since the Court first recognized in *Dacoycoy* the CSC's standing to appeal the CA's decisions reversing or modifying its resolutions seriously prejudicial to

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[56] *Supra* note 55.

[57] *Supra* note 54, at 239.

[58] G.R. No. 135805, April 29, 1999, 306 SCRA 425.

the civil service system. Since then, the ruling in *Dacoycoy* has been subjected to clarifications and qualifications,[59] but the doctrine has remained the same:[60] the CSC has standing as a real party in interest and can appeal the CA's decisions modifying or reversing the CSC's rulings, when the CA action would have an adverse impact on the integrity of the civil service. As the government's central personnel agency, the CSC is tasked to establish a career service and promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service;[61] it has a stake in ensuring that the proper disciplinary action is imposed on an erring public employee, and this stake would be adversely affected by a ruling absolving or lightening the CSC-imposed penalty. Further, a decision that declares a public employee not guilty of the charge against him would have no other appellant than the CSC. To be sure, it would not be appealed by the public employee who has been absolved of the charge against him; neither would the complainant appeal the decision, as he acted merely as a witness for the government.[62] We thus find no reason to disurb the settled *Dacoycoy* doctrine.

In the present case, the CSC appeals the CA's amended decision, which modified the liability the former meted against

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[59] See *Mathay, Jr. v. Court of Appeals*, G.R. Nos. 124374, 126354, and 126366, December 15, 1999, 320 SCRA 703; *National Appellate Board of the National Police Commission v. Mamauag*, G.R. No. 149999, August 12, 2005, 466 SCRA 624; *Pleyto v. Philippine National Police-Criminal Investigation and Detection Group*, G.R. No. 169982, November 23, 2007, 538 SCRA 534.

[60] *National Appellate Board of the National Police Commission v. Mamauag*, G.R. No. 149999, August 12, 2005, 466 SCRA 624, 640 citing *Dagadag v. Tongnawa*, G.R. Nos. 161166-67, February 3, 2005, 450 SCRA 437; *Civil Service Commission v. Gentallan*, G.R. No. 152833, May 9, 2005, 458 SCRA 278; *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507; See also *Hon. Constantino-David, et al. v. Pangandaman-Gania*, G.R. No. 156039, August 14, 2003, 409 SCRA 80 and *Dep Ed v. Cuanan*, G.R. No. 169013, December 16, 2008, 574 SCRA 41.

[61] Section 3, Article IX – B of the 1987 Constitution, and Section 1, Book V of the Administrative Code of 1987.

[62] *Civil Service Commission v. Dacoycoy*, G.R. No. 135805, April 29, 1999, 306 SCRA 425, 437-438.

SJO2 Almojuela from grave misconduct to simple misconduct, and lowered the corresponding penalty from dismissal to three months suspension. Applying the *Dacoycoy* principles, the CSC has legal personality to appeal the CA's amended decision as the CA significantly lowered SJO2 Almojuela's disciplinary sanction and thereby prevented the CSC from imposing the penalty it deemed appropriate to impose on SJO2 Almojuela. The findings and conclusions below fully justify our liberal stance.

SJO2 Almojuela was afforded due process in the BJMP investigations

In his Comment, SJO2 Almojuela argued that he had been deprived of due process during the BJMP investigation because he was not allowed to present his evidence and his witnesses, and was not accorded the trial-type proceedings that the prosecution panel enjoyed. Since he elected a formal investigation, SJO2 Almojuela asserts that he should have been permitted to require the attendance of witnesses through compulsory processes.

We support the CA's conclusion that SJO2 Almojuela was accorded the right to due process during the BJMP investigation. The essence of due process in administrative proceedings (such as the BJMP investigation) is simply the opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[63] Where a party has been given the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured.[64]

In SJO2 Almojuela's case, he was informed of the charges against him, and was given the opportunity to refute them in the counter-affidavit and motion for reconsideration he filed before the BJMP hearing officer, in the appeal and motion for reconsideration he filed before the CSC, in his petition for review on *certiorari*, in his memorandum on appeal, and, finally, in the motion for reconsideration he filed before the CA.

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[63] *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

[64] *Autencio v. City Administrator*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55-56.

In particular, SJO2 Almojuela admitted in his comment that he narrated in his counteraffidavit the circumstances that, to his knowledge, transpired immediately before Lao's breakout.[65] The Motion for Reconsideration to the CA's original decision contained the additional piece of evidence that SJO2 Almojuela claimed would have exculpated him from liability: Captain Fermin Enriquez's testimony during his cross-examination in Criminal Case No. 3320236, filed against SJO2 Almojuela for conniving with or consenting to evasion under Article 223 of the Revised Penal Code.[66] This piece of evidence was reiterated in the comment SJO2 Almojuela filed before this Court.[67] Notably, SJO2 Almojuela repeteadly mentioned 'other witnesses and other documentary exhibits' that he would have presented to absolve him from liability,[68] but the only piece of evidence he submitted in his Motion for Reconsideration and Comment was Captain Enriquez's testimony.

These circumstances sufficiently convince us that SJO2 Almojuela had been given ample opportunity to present his side, and whatever defects might have intervened during the BJMP investigation have been cured by his subsequent filing of pleadings[69] before the CSC, the CA, and before this Court.

SJO2 Almojuela's consent to Lao's escape from the Makati City Jail has been satisfactorily proven by substantial evidence

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[65] In SJO2 Almojuela's Comment filed before the Supreme Court, he averred:

> 30. Respondent's defense is not just a mere denial. Respondent's three (3) page Counter-Affidavit dated October 15, 2004 would readily show that he made assertions of facts and narrated the circumstances, to his knowledge, which transpired in the evening of December 12 and in the early morning of December 13, 2003. *Rollo*, p. 162.

[66] *Id.* at 200-201.

[67] *Id.* at 162-163.

[68] *Id.* at 163, 200.

[69] See *Medenilla v. Civil Service Commission*, G.R. No. 93868 February 19, 1991, 194 SCRA 278 and *de Leon v. Comelec*, G.R. No. L-56968, April 30, 1984, 129 SCRA 117 where the Court held that defects in procedural due process may be cured by the filing of a motion for reconsideration.

We now proceed to the substantive issues.

We differ from the CA's conclusion in its amended decision finding no clear evidence that SJO2 Almojuela had been directly involved in Lao's escape. SJO2 Almojuela adopted this stance, and added that Criminal Case No. 3320236, which was filed against him for facilitating Lao's escape, has been dismissed. He also pointed out Captain Enriquez's (one of the investigating officers) testimony in Criminal Case No. 3320236, where Captain Enriquez admitted that JO1 Pascual was the last person seen in possession of the maingate's keys, and that the gatekeepers JO1 Loyola and JO1 Robles should have been safekeeping the keys. Lastly, SJO2 Almojuela sought to discredit the testimonies of SJO2 Aquino, JO1 Loyola, SJO1 Lagahit and JO1 Robles for being hearsay, and questioned the admissability of their affidavits as they were never offered as part of the BJMP prosecutors' documentary evidence.

According to the BJMP report, Lao most likely exited the jail compound through the main gate, considering that he was discovered to have disappeared at about the same time the warden left the jail on board his car (the BJMP report pegged the discovery of Lao's escape 30 minutes *after* the warden left, while the jail officers' affidavits estimated it to have transpired 30 minutes *before*). A search and inspection of the barracks of suspected jail personnel resulted in the recovery of ten keys from SJO2 Almojuela's barracks, one of which matched the main gate's padlock. This piece of evidence, when considered along with other pieces of evidence presented before the BJMP investigation and the CSC, is sufficient to conclude that SJO2 Almojuela knew and consented to Lao's getaway.

True, the CSC failed to present *direct evidence* proving that SJO2 Almojuela had been involved in facilitating Lao's escape. But direct evidence is not the sole means of establishing guilt beyond reasonable doubt since circumstantial evidence, if sufficient, can supplant the absence of direct evidence.[70] Under Section 4, Rule 133 of the Rules of Court:

[70] *Gan v. People of the Philippines*, G.R. No. 165884, April 23, 2007, 521 SCRA 550, 571.

SEC. 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

While this provision appears to refer only to criminal cases, we have applied its principles to administrative cases.[71] To fulfill the third requisite, this Court in *RE: AC NO. 04-AM-2002 (JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES)*,[72] an *En Banc* decision, required that the circumstantial evidence presented must constitute an unbroken chain that leads one to a fair and reasonable conclusion pointing to the person accused, to the exclusion of others, as the guilty person.[73] The circumstantial evidence the CSC presented leads to a fair and reasonable conclusion that, at the very least, SJO2 Almojuela consented to Lao's getaway. The keys found in SJO2 Almojuela's room fit the padlock in the maingate, Lao's most possible point of egress. The fact that these keys should be in the safekeeping of JO1 Pascual and JO1 Robles does not clear SJO2 Almojuela from liability; on the contrary, it should convince us of his involvement in Lao's escape. It leads us to ask why the keys were found in SJO2 Almojuela's room, when the last person seen to possess the keys, and the personnel who were supposed to safekeep them, was not SJO2 Almojuela. SJO2 Almojuela's bare allegations that he was set up cannot stand up against the presumption of regularity in the performance of the investigating

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[71] See *RE: AC NO. 04-AM-2002 (JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES)*, A.M. No. CA-02-15-P, June 03, 2004, 430 SCRA 412; and *RE: (1) LOST CHECKS ISSUED TO THE LATE RODERICK ROY P. MELLIZA, FORMER CLERK II, MCTC, ZARAGGA, ILOILO; AND (2) DROPPING FROM THE ROLLS OF MS. ESTHER T. ANDRES*, A.M. NO. 2005-26-SC, November 22, 2006.

[72] A.M. No. CA-02-15-P, June 03, 2004, 430 SCRA 412.

[73] A.C. No. 04-AM-2002 *(JOSEJINA FRIA V. GEMILIANA DE LOS ANGELES)*, A.M. No. CA-02-15-P, June 03, 2004, 430 SCRA 412, 420-421.

officers' duty. This presumption, when considered with the following pieces of evidence, leads us to no other conclusion than SJO2 Almojuela's implied consent to Lao's escape. ***First***, SJO2 Almojuela's lax attitude regarding Lao, whom he admitted seeing *loittering around the jail's premises at night* and even *using JO1 Pascual's celfone*, both in contravention of BJMP rules and regulations. ***Second***, *SJO2 Almojuela lied* when he stated in his affidavit that he only left the desk area at around 1:20 to 1:40 AM, when the testimonies of two other jail officers, SJO1 Lagahit and JO1 Loyola, show otherwise. ***Third***, when Panayaman overheard the negotiations for Lao's release between JO1 Pascual and the person he was talking to in his celfone, Panayaman went to SJO2 Almojuela's room but found that the door was locked.

Finally, we do not agree with SJO2 Almojuela's assertion that the statements of SJO2 Aquino, JO1 Loyola, SJO1 Lagahit and JO1 Robles in their affidavits should be disregarded for being hearsay as he failed to cross-examine them. It is well-settled that a formal or trial-type of hearing is not indespensible in administrative proceedings, and a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[74] Technical rules applicable to judicial proceedings need not always apply.[75] In *Erece v. Macalingay, et al.*,[76] we affirmed the CA's ruling finding the petitioner guilty of dishonesty and conduct prejudicial to the best interest of the service despite his contention that he had been denied his right to cross-examine the witnesses against him. We held that the right to cross-examine the other party's witnesses is not an indispensable aspect

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[74] *Autencio v. City Administrator*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55 citing *Rubenecia v. CSC*, G.R. No. 115942, May 31, 1995, 314 Phil. 612, 244 SCRA 640; *Padilla v. Sto. Tomas*, G.R. No. 109444, March 31, 1995, 312 Phil. 1095, 243 SCRA 155; *Esber v. Sto. Tomas*, G.R. No. 107324 August 26, 1993, 225 SCRA 664 (citing *Mutuc v. Court of Appeals*, G.R. No. L-48108, September 26, 1990, 190 SCRA 43; *Var-Orient Shipping Co., Inc. v. Achacoso*, 161 SCRA 732, May 31, 1988).

[75] *Autencio v. City Administrator*, G.R. No. 152752, January 19, 2005 449 SCRA 46, 55 citing §48, Subtitle A, Title I, Book V, 1987 Administrative Code;

[76] G.R. No. 166809, April 22, 2008, 552 SCRA 320.

of due process in administrative proceedings. Due process in these proceedings is not identical with "judicial process;" a trial in court is not always essential in administrative due process.[77] Moreover, we have consistently held that in reviewing administrative decisions, the findings of fact made must be respected as long as they are supported by substantial evidence.[78] We find no reason in this case to depart from these principles.

In consenting to Lao's escape, SJO2 Almojuela is guilty of gross misconduct in the performance of his duties as Senior Jail Officer II

We find SJO2 Almojuela guilty of gross misconduct in the performance of his duties as Senior Jail Officer II. Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[79] Misconduct becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence."[80] In SJO2 Almojuela's case, we hold it established by substantial evidence that he consented to Lao's escape from the Makati City Jail. Thus, there was willful violation of his duty as Senior Jail Officer II to oversee the jail compound's security, rendering him liable for gross misconduct.

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[77] G.R. No. 166809, April 22, 2008, 552 SCRA 320, 328.

[78] *Rosales Jr. v. Mijares*, G.R. No. 154095, November 17, 2004, 442 SCRA 532, 546 citing *Lo v. Court of Appeals*, 321 SCRA 190.

[79] *Ombudsman v. Apolonio*, G.R. No. 165132, March 07, 2012, 667 SCRA 583, 600-601 citing *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603, citing *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, and *Castelo v. Florendo*, A.M. No. P-96-1179, October 10, 2003, 413 SCRA 219.

[80] *Ombudsman v. Apolonio*, G.R. No. 165132, March 07, 2012, 667 SCRA 583, 600-601 citing *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603, citing *Civil Service Commission v. Lucas*, 361 Phil. 486 (1999); and *Landrito v. Civil Service Commission*, G.R. Nos. 104304-05, June 22, 1993, 223 SCRA 564.

SJO2 Almojuela is guilty of gross negligence in the performance of his duties as Senior Jail Officer II

Even assuming that SJO2 Almojuela had not consented to Lao's getaway, adequate evidence shows that SJO2 Almojuela had been grossly negligent in the performance of his duties. Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[81]

First, SJO2 Almojuela *left the desk area from 1:30 a.m. to 3:00 a.m., with no explanation* as to where he went or why he had to leave his post. His contention that he stepped out from the desk area at 1:20 a.m. and returned at 1:30 a.m. to take a snack is belied by the testimony of SJO1 Lagahit (the desk reliever) who testified that SJO2 Almojuela returned at 3 a.m.; and by the testimony of JO1 Loyola that the desk area was unmanned between 2:00 to 3:00 a.m. *At 3 a.m., when he was established to be at the desk area, SJO2 Almojuela was even seen sleeping on a folding chair.* The situation was thus one of compounded neglect.

As shift supervisor and one of the highest ranking jail officers on duty at the time of the prison break, SJO2 Almojuela had the responsibility to oversee the security of the jail compound and to ensure that all members of the shift were performing their tasks. SJO2 Almojuela's *acts of leaving his post for two hours, without any adequate reason*, and *sleeping afterwards* show a wanton disregard for his responsibilities as shift supervisor. SJO2 Almojuela's neglect of his duties considerably contributed to the lax prison environment that allowed Lao not only to escape, but to even bring his belongings with him. During SJO2 Almojuela's

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[81] *Civil Service Commission v. Rabang*, G.R. No. 167763, March 14, 2008, 548 SCRA 541, 547 citing *Golangco v. Fung*, G. R. No. 147640, October 16, 2006 504 SCRA 321, 331.

absence, JO1 Loyola saw that *the control gates for the detention cells were open, and the desk area was unmanned.*

Second, SJO2 Almojuela *tolerated the blatant disregard of BJMP rules and regulations* by the jail officers under his supervision. He admitted that he saw *Lao loittering in the jail compound in the wee hours of the night,* and did nothing about it. Worse, *SJO2 Almojuela was even seen talking to Lao* and JO1 Pascual at the desk area, and other inmates have been seen conversing at the desk area. The fact that JO1 Pascual accompanied Lao could not absolve SJO2 Almojuela from liability. According to BJMP rules and regulations, *all inmates must be kept inside their cells after visiting hours. During night time, compelling reasons and/or emergency situations must exist before the inmates can be allowed to leave their cells.* Thus, contrary to the conclusion in the CA's amended decision, it was highly irregular for Lao to be outside his cell, regardless of whether he is accompanied by a jail officer.

These circumstances show that SJO2 Almojuela, as the desk officer and shift supervisor, was grossly negligent in discharging his duties, which contributed in Lao's surreptitious escape from the Makati City Jail.

Under Section 52 (A)(2) and (3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[82] both gross misconduct and gross neglect of duty are grave offenses punishable by dismissal from the service for the first offense. Our conclusions fully justify the imposition of this penalty and the reinstatement of the CA's original penalty of dismissal from the service.

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[82] Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty

1st offense – Dismissal

2. Gross Neglect of Duty

1st offense – Dismissal

3. Grave Misconduct

1st offense — Dismissal [emphasis supplied]

WHEREFORE, all premises considered, we hereby **GRANT** the petition. The amended decision of the Court of Appeals is **REVERSED** and **SET ASIDE**. Respondent Arlic Almojuela is found guilty of gross misconduct and gross neglect of duty, and is hereby **DISMISSED** from the service.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Perlas-Bernabe, J., on leave.

EN BANC

[G.R. No. 203766. April 2, 2013]

ATONG PAGLAUM, INC., represented by its President, Mr. Alan Igot, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. Nos. 203818-19. April 2, 2013]

AKO BICOL POLITICAL PARTY (AKB), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 203922. April 2, 2013]

ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES (APEC), represented by its President Congressman Ponciano D. Payuyo, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 203936. April 2, 2013]

AKSYON MAGSASAKA-PARTIDO TINIG NG MASA, represented by its President Michael Abas Kida, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 203958. April 2, 2013]

KAPATIRAN NG MGA NAKULONG NA WALANG SALA, INC. (KAKUSA), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 203960. April 2, 2013]

1ST CONSUMERS ALLIANCE FOR RURAL ENERGY, INC. (1-CARE), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 203976. April 2, 2013]

ALLIANCE FOR RURAL AND AGRARIAN RECONSTRUCTION, INC. (ARARO), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 203981. April 2, 2013]

ASSOCIATION FOR RIGHTEOUSNESS ADVOCACY ON LEADERSHIP (ARAL) PARTY-LIST, represented herein by Ms. Lourdes L. Agustin, the party's Secretary General, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204002. April 2, 2013]

ALLIANCE FOR RURAL CONCERNS, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204094. April 2, 2013]

ALLIANCE FOR NATIONALISM AND DEMOCRACY (ANAD), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204100. April 2, 2013]

1-BRO PHILIPPINE GUARDIANS BROTHERHOOD, INC., (1BRO-PGBI) formerly PGBI, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204122. April 2, 2013]

1 GUARDIANS NATIONALIST PHILIPPINES, INC., (1GANAP/GUARDIANS), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC* composed of SIXTO S. BRILLANTES, JR., Chairman, RENE V. SARMIENTO, Commissioner, LUCENITO N. TAGLE, Commissioner, ARMANDO C. VELASCO, Commissioner, ELIAS R. YUSOPH, Commissioner, and CHRISTIAN ROBERT S. LIM, Commissioner,** *respondents.*

[G.R. No. 204125. April 2, 2013]

AGAPAY NG INDIGENOUS PEOPLES RIGHTS ALLIANCE, INC. (A-IPRA), represented by its Secretary General, Ronald D. Macaraig, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204126. April 2, 2013]

KAAGAPAY NG NAGKAKAISANG AGILANG PILIPINONG MAGSASAKA (KAP), formerly known as AKO AGILA NG NAGKAKAISANG MAGSASAKA (AKO AGILA), represented by its Secretary General, Leo R. San Buenaventura, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204139. April 2, 2013]

ALAB NG MAMAMAHAYAG (ALAM), represented by Atty. Berteni Cataluña Causing, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204141. April 2, 2013]

BANTAY PARTY LIST, represented by Maria Evangelina F. Palparan, President, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204153. April 2, 2013]

PASANG MASDA NATIONWIDE PARTY represented by its President Roberto "Ka Obet" Martin, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204158. April 2, 2013]

ABROAD PARTY LIST, *petitioner, vs.* **COMMISSION ON ELECTIONS, CHAIRMAN SIXTO S. BRILLANTES, JR., COMMISSIONERS RENE V. SARMIENTO, ARMANDO C. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM, MARIA GRACIA CIELO M. PADACA, LUCENITO TAGLE, AND ALL OTHER PERSONS ACTING ON THEIR BEHALF,** *respondents.*

[G.R. No. 204174. April 2, 2013]

AANGAT TAYO PARTY LIST-PARTY, represented by its President Simeon T. Silva, Jr., *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC*,** *respondent.*

[G.R. No. 204216. April 2, 2013]

COCOFED-PHILIPPINE COCONUT PRODUCERS FEDERATION, INC., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204220. April 2, 2013]

ABANG LINGKOD PARTY-LIST, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204236. April 2, 2013]

FIRM 24-K ASSOCIATION, INC., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204238. April 2, 2013]

ALLIANCE OF BICOLNON PARTY (ABP), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204239. April 2, 2013]

GREEN FORCE FOR THE ENVIRONMENT SONS AND DAUGHTERS OF MOTHER EARTH (GREENFORCE), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204240. April 2, 2013]

AGRI-AGRA NA REPORMA PARA SA MAGSASAKA NG PILIPINAS MOVEMENT (AGRI), represented by its Secretary General, Michael Ryan A. Enriquez, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204263. April 2, 2013]

A BLESSED PARTY LIST *A.K.A.* BLESSED FEDERATION OF FARMERS AND FISHERMEN INTERNATIONAL, INC., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent*.

[G.R. No. 204318. April 2, 2013]

UNITED MOVEMENT AGAINST DRUGS FOUNDATION (UNIMAD) PARTY-LIST, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204321. April 2, 2013]

ANG AGRIKULTURA NATIN ISULONG (AANI), represented by its Secretary General Jose C. Policarpio, Jr., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204323. April 2, 2013]

BAYANI PARTYLIST as represented by Homer Bueno, Fitrylin Dalhani, Israel de Castro, Dante Navarro and Guiling Mamondiong, *petitioner, vs.* **COMMISSION ON ELECTIONS, CHAIRMAN SIXTO S. BRILLANTES, JR., COMMISSIONERS RENE V. SARMIENTO, LUCENITO N. TAGLE, ARMANDO C. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM, and MARIA GRACIA CIELO M. PADACA,** *respondents.*

[G.R. No. 204341. April 2, 2013]

ACTION LEAGUE OF INDIGENOUS MASSES (ALIM) PARTY-LIST, represented herein by its President Fatani S. Abdul Malik, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204356. April 2, 2013]

BUTIL FARMERS PARTY, *petitioner*, *vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204358. April 2, 2013]

ALLIANCE OF ADVOCATES IN MINING ADVANCEMENT FOR NATIONAL PROGRESS (AAMA), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC*,** *respondent.*

[G.R. No. 204359. April 2, 2013]

SOCIAL MOVEMENT FOR ACTIVE REFORM AND TRANSPARENCY (SMART), represented by its Chairman, Carlito B. Cubelo, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC*,** *respondent.*

[G.R. No. 204364. April 2, 2013]

ADHIKAIN AT KILUSAN NG ORDINARYONG-TAO, PARA SA LUPA, PABAHAY, HANAPBUHAY AT KAUNLARAN (AKO BUHAY), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC*, SIXTO S. BRILLANTES, JR., RENE V. SARMIENTO, LUCENITO N. TAGLE, ARMANDO C. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM, and MA. GRACIA CIELO M. PADACA, in their capacities as Commissioners thereof,** *respondents.*

[G.R. No. 204367. April 2, 2013]

AKBAY KALUSUGAN INCORPORATION (AKIN), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204370. April 2, 2013]

AKO AN BISAYA (AAB), represented by its Secretary General, Rodolfo T. Tuazon, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204374. April 2, 2013]

BINHI-PARTIDO NG MGA MAGSASAKA PARA SA MGA MAGSASAKA, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC*,** *respondent.*

[G.R. No. 204379. April 2, 2013]

ALAGAD NG SINING (ASIN) represented by its President, Faye Maybelle Lorenz, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204394. April 2, 2013]

ASSOCIATION OF GUARD UTILITY HELPER, AIDER, RIDER, DRIVER/DOMESTIC HELPER, JANITOR, AGENT AND NANNY OF THE PHILIPPINES, INC. (GUARDJAN), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204402. April 2, 2013]

KALIKASAN PARTY-LIST, represented by its President, Clemente G. Bautista, Jr., and Secretary General, Frances Q. Quimpo, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC*,** *respondent.*

[G.R. No. 204408. April 2, 2013]

PILIPINO ASSOCIATION FOR COUNTRY-URBAN POOR YOUTH ADVANCEMENT AND WELFARE (PACYAW), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204410. April 2, 2013]

1-UNITED TRANSPORT KOALISYON (1-UTAK), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204421. April 2, 2013]

COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. SENIOR CITIZEN PARTY-LIST, represented herein by its 1st nominee and Chairman, Francisco G. Datol, Jr., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204425. April 2, 2013]

COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC., *petitioner, vs.* **COMMISSION ON ELECTIONS and ANY OF ITS OFFICERS AND AGENTS, ACTING FOR AND IN ITS BEHALF, INCLUDING THE CHAIR AND MEMBERS OF THE COMMISSION,** *respondents.*

[G.R. No. 204426. April 2, 2013]

ASSOCIATION OF LOCAL ATHLETICS ENTREPRENEURS AND HOBBYISTS, INC. (ALA-EH), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC*, SIXTO S. BRILLANTES, JR., RENE V. SARMIENTO, LUCENITO N. TAGLE, ARMANDO C. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM, and MA. GRACIA CIELO M. PADACA, in their respective capacities as COMELEC Chairperson and Commissioners,** *respondents.*

[G.R. No. 204428. April 2, 2013]

ANG GALING PINOY (AG), represented by its Secretary General, Bernardo R. Corella, Jr., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204435. April 2, 2013]

1 ALLIANCE ADVOCATING AUTONOMY PARTY (1AAAP), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204436. April 2, 2013]

ABYAN ILONGGO PARTY (AI), represented by its Party President, Rolex T. Suplico, *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204455. April 2, 2013]

MANILA TEACHER SAVINGS AND LOAN ASSOCIATION, INC., *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204484. April 2, 2013]

PARTIDO NG BAYAN ANG BIDA (PBB), represented by its Secretary General, Roger M. Federazo, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204485. April 2, 2013]

ALLIANCE OF ORGANIZATIONS, NETWORKS AND ASSOCIATIONS OF THE PHILIPPINES, INC. (ALONA), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

[G.R. No. 204486. April 2, 2013]

1ST KABALIKAT NG BAYAN GINHAWANG SANGKATAUHAN (1ST KABAGIS), *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 204490. April 2, 2013]

PILIPINAS PARA SA PINOY (PPP), *petitioner, vs.* **COMMISSION ON ELECTIONS *EN BANC,*** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; PARTY-LIST SYSTEM; THE CONSTITUTION INTENDED THE PARTY-LIST SYSTEM TO INCLUDE BOTH SECTORAL AND NON-SECTORAL PARTIES. — The 1987 Constitution provides the basis for the party-list system of representation. [It] is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the House of Representatives. x x x [I]n light of the discussion among its framers, x x x the 1987 Constitution intended the party-list system to include not only sectoral parties but also non-sectoral parties. The framers intended the sectoral parties to constitute a part, but not the entirety, of the party-list system. **As explained by Commissioner Wilfredo Villacorta, political parties can participate in the party-list system "[F]or as long as they field candidates who come from the different marginalized sectors that we shall designate in this Constitution."** x x x The common denominator between sectoral and non-sectoral parties is that they cannot expect to win in legislative district elections but they can garner, in nationwide elections, at least the same number of votes that winning candidates can garner in legislative district elections. The party-list system will be the entry point to membership in the House of Representatives for both these non-traditional parties that could not compete in legislative district elections. x x x Section 5(1), Article VI of the Constitution is crystal-clear that there shall be "**a party-list system of registered national, regional, and sectoral parties or organizations**." The commas after the words "national[**,**]" and "regional[**,**]" separate national and regional parties from sectoral parties. x x x Thus, the party-list system is composed of **three different groups**: (1) national parties or organizations; (2) regional parties or organizations; and (3) sectoral parties or organizations. National and regional parties or organizations are **different** from sectoral parties or

organizations. National and regional parties or organizations need not be organized along sectoral lines and need not represent any particular sector. Moreover, Section 5(2), Article VI of the 1987 Constitution mandates that, during the first three consecutive terms of Congress after the ratification of the 1987 Constitution, "one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector." This provision clearly shows that the party-list system is not exclusively for sectoral parties for two obvious reasons. *First*, the other one-half of the seats allocated to party-list representatives would naturally be open to non-sectoral party-list representatives, clearly negating the idea that the party-list system is exclusively for sectoral parties representing the "marginalized and underrepresented." *Second*, the reservation of one-half of the party-list seats to sectoral parties applies only for the first "three consecutive terms after the ratification of this Constitution," clearly making the party-list system fully open after the end of the first three congressional terms. This means that, after this period, there will be no seats reserved for any class or type of party that qualifies under the three groups constituting the party-list system.

2. ID.; ID.; ID.; ID.; PARTY-LIST SYSTEM ACT (RA 7941); POLITICAL PARTY DIFFERENT FROM SECTORAL PARTY. — Republic Act No. 7941 or the Party-List System Act is the law that implements the party-list system prescribed in the Constitution. x x x Section 3(a) of R.A. No. 7941 defines a "party" as "**either a political party or a sectoral party** or a coalition of parties." x x x Section 3(c) of R.A. No. 7941 further provides that a "**political party** refers to an organized **group of citizens *advocating an ideology or platform, principles and policies* for the general conduct of government**." On the other hand, Section 3(d) of R.A . No. 7941 provides that a "**sectoral party** refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof **whose principal advocacy pertains to the special interest and concerns of their sector**." x x x Obviously, they are separate and distinct from each other.

3. ID.; ID.; ID.; ID.; ID.; NATIONAL AND REGIONAL PARTIES NOT REQUIRED TO REPRESENT THE "MARGINALIZED AND UNDERREPRESENTED" SECTORS. — To require all national and regional parties under the party-list system to represent the "marginalized and underrepresented" is to deprive and exclude, by judicial fiat, ideology-based and cause-oriented parties from the party-list system. x x x To exclude them from the party-list system is to prevent them from joining the parliamentary struggle, leaving as their only option the armed struggle. To exclude them from the party-list system is, patently contrary to the clear intent and express wording of the 1987 Constitution and R.A. No. 7941. Under the party-list system, an ideology-based or cause-oriented political party is clearly different from a sectoral party. x x x There is no requirement in R.A. No. 7941 that a national or regional political party must represent a "marginalized and underrepresented" sector. It is sufficient that the political party consists of citizens who advocate the same ideology or platform, or the same governance principles and policies, **regardless of their economic status as citizens**. Section 5 of R.A. No. 7941 states that "the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, **elderly**, handicapped, **women**, **youth**, veterans, overseas workers, and **professionals.**" The sectors mentioned in Section 5 are not all necessarily "marginalized and underrepresented." For sure, "professionals" are not by definition "marginalized and underrepresented," not even the elderly, women, and the youth. However, professionals, the elderly, women, and the youth may "lack well-defined political constituencies," and can thus organize themselves into sectoral parties in advocacy of the special interests and concerns of their respective sectors. [Further,] Section 6 of RA No. 7941 provides x x x the grounds for the COMELEC to refuse or cancel the registration of parties or organizations after due notice and hearing. x x x None of the 8 grounds to refuse or cancel registration refers to non- representation of the "marginalized and underrepresented."

4. ID.; ID.; ID.; ID.; ID.; "MARGINALIZED AND UNDERREPRESENTED" SECTORS; ELUCIDATED. — The phrase "**marginalized and underrepresented"** should **refer only to the sectors in Section 5 that are, *by their nature*, economically "marginalized and underrepresented**." These sectors are: labor, peasant, fisherfolk, urban poor, indigenous

cultural communities, handicapped, veterans, overseas workers, and other similar sectors. **For these sectors, a majority of the members of the sectoral party must belong to the "marginalized and underrepresented**." **The nominees of the sectoral party either must belong to the sector, or must have a track record of advocacy for the sector represented**. Belonging to the "marginalized and underrepresented" sector does not mean one must "wallow in poverty, destitution or infirmity." It is sufficient that one, or his or her sector, is below the middle class. More specifically, the economically "marginalized and underrepresented" are those who fall in the low income group as classified by the National Statistical Coordination Board.

5. ID.; ID.; ID.; ID.; ID.; HARMONIZING INTERPRETATION OF THE CONSTITUTION AND RA 7941 MADE PROPER GIVING RISE TO MULTI-PARTY SYSTEM WHERE THOSE MARGINALIZED AND UNDERREPRESENTED, BOTH IN ECONOMIC AND IDEOLOGICAL STATUS, WILL HAVE OPPORTUNITY TO SEND THEIR OWN MEMBERS TO THE HOUSE OF REPRESENTATIVES. — The recognition that national and regional parties, as well as sectoral parties of professionals, the elderly, women and the youth, need not be "marginalized and underrepresented" will allow small ideology-based and cause-oriented parties who lack "well-defined political constituencies" a chance to win seats in the House of Representatives. On the other hand, limiting to the "marginalized and underrepresented" the **sectoral** parties for labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, overseas workers, and other sectors that by their nature are economically at the margins of society, will give the "marginalized and underrepresented" an opportunity to likewise win seats in the House of Representatives. This interpretation will harmonize the 1987 Constitution and R.A . No. 7941 and will give rise to a multi-party system where those "marginalized and underrepresented," ***both in economic and ideological status***, will have the opportunity to send their own members to the House of Representatives. This interpretation will also make the party-list system honest and transparent, eliminating the need for relatively well-off party-list representatives to masquerade as "wallowing in poverty, destitution and infirmity," even as they attend sessions in Congress riding in SUVs.

6. ID.; ID.; ID.; ID.; ID.; PARTICIPATION OF MAJOR POLITICAL PARTIES IN THE PARTY-LIST ELECTIONS THROUGH ITS SECTORAL WING; DISCUSSED. — The 1987 Constitution and R.A. No. 7941 allow major political parties to participate in party-list elections so as to encourage them to work assiduously in extending their constituencies to the "marginalized and underrepresented" and to those who "lack well-defined political constituencies." The participation of major political parties in party-list elections must be geared towards the entry, as members of the House of Representatives, of the "marginalized and underrepresented" and those who "lack well-defined political constituencies," giving them a voice in law-making. Thus, to participate in party-list elections, a major political party that fields candidates in the legislative district elections must organize a sectoral wing, like a labor, peasant, fisherfolk, urban poor, professional, women or youth wing, that can register under the party-list system. Such sectoral wing of a major political party must have its own constitution, by-laws, platform or program of government, officers and members, a majority of whom must belong to the sector represented. The sectoral wing is in itself an independent sectoral party, and is *linked to a major political party through a coalition.* This linkage is allowed by Section 3 of R.A . No. 7941, which provides that "component parties or organizations of a coalition may participate independently (in party-list elections) provided the coalition of which they form part does not participate in the party-list system."

7. ID.; ID.; ID.; ID.; ID.; *BONA FIDE* PARTY-LIST NOMINEE OF SECTORAL PARTIES MUST EITHER BELONG TO THE SECTOR REPRESENTED OR HAVE A TRACK RECORD OF ADVOCACY FOR SUCH SECTOR. — Section 9 of R.A . No. 7941 prescribes [that] x x x A party-list nominee must be a *bona fide* member of the party or organization which he or she seeks to represent. **In the case of sectoral parties, to be a *bona fide* party-list nominee one must either belong to the sector represented, or have a track record of advocacy for such sector**.

BRION*, J., separate concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM; PURPOSE IS

TO REFORM THE THEN PREVAILING ELECTORAL SYSTEM. — [T]he party-list system came into being, principally driven by the constitutional framers' intent to **reform the then prevailing electoral system** by giving marginal and underrepresented parties (*i.e. those who cannot win in the legislative district elections and in this sense are marginalized and may lack the constituency to elect themselves there, but who — nationally — may generate votes equivalent to what a winner in the legislative district election would garner*) the chance to participate in the electoral exercise and to elect themselves to the House of Representatives through a system other than the legislative district elections. x x x

2. ID.; ID.; ID.; ID.; OPEN TO ALL REGISTERED NATIONAL, REGIONAL AND SECTORAL PARTIES OR ORGANIZATIONS INCLUDING MAJOR POLITICAL PARTIES. — [T]he Constitution made a textual commitment ***to open the party-list system to registered national, regional and sectoral parties or organizations***. The Article on the Commission on Election also pointedly provided that there shall be a ***"free and open party system,"*** and ***votes for parties, organizations or coalitions shall only be recognized in the party-list system.*** x x x [E]ven major ***political parties*** can participate in party-list elections because *the party-list system is open to all registered political, national, regional, sectoral organizations and parties, subject only to the limitations imposed by the Constitution and by law*. Further, *both political and sectoral parties have equal roles and participation in the party-list system*; again, they are subject to the same limitations imposed by law (the Constitution and RA No. 7941) and are separately burdened only by the limitations intrinsic to their respective natures.

3. ID.; ID.; ID.; ID.; ON NOMINEES; ELABORATED. — Considering the Constitution's solicitous concern for the marginalized and under-represented sectors as understood in the social justice context, and RA 7941's requirement of mere bona fide membership of a nominee in the party-list group, ***a nominee who does not actually possess the marginalized and underrepresented status represented by the party-list group but proves to be a genuine advocate of the interest and concern of the marginalized and underrepresented sector represented*** is still qualified to be a nominee. This classification of nominees,

however, is relevant only to ***sectoral parties and organizations*** which are marginalized and underrepresented in the social justice sense or in terms of their special interests, concerns or characteristics. To be consistent with the *sectoral representation* envisioned by the framers, ***a majority of the members*** of the party must actually belong to the sector represented, while ***nominees must be a member of the sectoral party or organization***. Since ***political parties*** are identified by their ideology or platform of government, ***bona fide membership***, in accordance with the political party's constitution and by-laws, ***would suffice***. In both political or sectoral party or group, **party membership** is the most tangible link ***of the nominees*** to their respective parties and to the party-list system. Subject to the above, the ***disqualification of the nominee*** does not necessarily mean the disqualification of the party since all the grounds for cancellation or refusal of registration pertain to the party itself. I make the qualification that the law's requirement of the submission of a ***list containing at least five (qualified) nominees*** is mandatory, and a party's inexcusable failure to comply with this requirement warrants the refusal or cancellation of its registration under Section 6 of RA 7941.

4. ID.; ID.; JUDICIARY; FUNCTION; IN CASE OF AMBIGUITY, THE SUPREME COURT'S TASK IS TO INTERPRET, NOT FORMULATE, LEGAL POLICIES. — As a ***basic constitutional point***, *the business and principal function of this Court (and of the whole Judiciary) is not to create policy or to supplant what the Constitution and the law expressly provide*. The framers of the Constitution and Congress (through RA No. 7941 in this case) provided the policy expressed through the words of the Constitution and the law, and through the intents the framers; both were considered and cited to ensure that the constitutional policy is properly read and understood. The whole Judiciary, including this Court, can only apply these policies in the course of their assigned task of adjudication *without adding anything of our own*; we can interpret the words only in case of ambiguity. ***This Court and its Members cannot likewise act as advocates, even for social justice or for any ideology for that matter, as advocacy is not the task assigned to us by the Constitution***. *To play the role of advocates, or to formulate policies that fall within the role of the Legislative Branch of government, would be a violation of our sworn duty*.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL DECISION OF THE COMELEC *EN BANC*. — Whether acting in the exercise of its purely administrative power, on one hand, or quasi-judicial powers, on the other hand, the judicial remedy available to an aggrieved party is the remedy of *certiorari* under Rule 64, in relation with Rule 65. Court action under this rule is rendered necessary by the reality that, by law, the COMELEC *en banc* decision is final and executory and should stand unless nullified by this Court through a writ of *certiorari*.

6. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; COMMITTED WHERE PREVAILING RULE WAS APPLIED IN SPITE OF ERROR IN THE INTERPRETATION OF THE CONSTITUTION. — For the writ of *certiorari* to issue, the Rules of Court expressly require that the tribunal must have acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The requisite grave abuse of discretion is in keeping with the office of the writ of *certiorari*; its function is to keep the tribunal within the bounds of its jurisdiction under the Constitution and law. The term grave abuse of discretion, while it defies exact definition, generally refers to capricious or whimsical exercise of judgment that 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. Arguably under the above standards, it may be claimed that since the COMELEC merely complied with the prevailing jurisprudence (in particular. with the Court's pronouncement in *Ang Bagong Bayani v. COMELEC and Banat v. COMELEC*), then it could not have acted without or in excess of its jurisdiction, much less with grave abuse of discretion. Besides, the writ of *certiorari* only lies when the respondent is exercising judicial or quasi-judicial functions, which is not so in the present case. x x x [I]f the Court were to sustain the view that the mere application of a prevailing rule or doctrine negates a finding of grave abuse of discretion, ***in spite of a glaring error in the doctrine's interpretation of the Constitution***, then the Court would have no chance to correct the error, except by laying down a new doctrine that would operate prospectively *but* at the same time

dismissing the petition for failure to show grave abuse of discretion. x x x [I]f the act done is contrary to the Constitution, then the existence of grave abuse of discretion cannot be doubted.

7. ID.; ID.; ID.; ID.; ID.; REMAND OF THE CASE FOR CORRECT APPLICATION OF THE LAW, PROPER. — By ordering the remand of all the petitions to the COMELEC and for the latter to act in accordance with the new ruling laid down by the Court — *i.e.*, allowing political parties to participate in the party-list elections without need of proving that they are "marginalized and under-represented" (as this term is understood in *Ang Bagong Bayani*), and in recognizing that a genuine advocate of a sectoral party or organization may be validly included in the list of nominees — the Court would not be violating the principle of prospectivity. x x x ***[A] ruling overturning Ang Bagong Bayani broadens the base of participation in the party-list system of election*** based on the text and intent of the Constitution. Thus, no one can claim that the application of this ruling in the upcoming 2013 election would operate to the prejudice of parties who relied on the *Ang Bagong Bayani* ruling; the marginalized and under-represented sectors (as the term in understood in *Ang Bagong Bayani*) continue to be eligible to participate in the party-list elections, subject to the determination of parties' individual circumstances by the COMELEC.

8. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; ADMINISTRATIVE POWER; TO REGISTER AND TO CANCEL REGISTRATION OF PARTY-LIST GROUP. — The COMELEC *En Banc's* authority under COMELEC Resolution No. 9513 — *i.e.*, to conduct summary hearings for the purpose of determining the registered parties' continuing compliance with the law and the regulations and to review the COMELEC Division's ruling granting a petition for registration — is appropriately an exercise of the COMELEC's **administrative power** rather than its quasi-judicial power. In the exercise of this authority, the COMELEC may automatically review the decision of its Divisions, without need for a motion to reconsider the grant of a petition for registration; it may also conduct summary hearings when previously registered party-list groups file their manifestation of intent to participate in the coming elections. x x x In the present case, no pretense at all is claimed or made that a

petition for registration or the determination of a registered party's continuing compliance with existing laws, rules and jurisprudence entails the assertion of a right or the presence of a conflict of rights. In a registration or compliance proceeding, an applicant simply attempts to prove its possession or continued possession of the requisite qualifications for the purpose of availing the ***privilege*** of participating in an electoral exercise. Thus, no real adjudication entailing the exercise of quasi-judicial powers actually takes place. Additionally, the inapplicability of the principle of *res judicata* in these registration proceedings necessarily weakens any claim that adjudication, done in the exercise of quasi-judicial functions, is involved. Each election period is *sui generis* — a class in itself, and any registration or accreditation by a party-list group is only for the purpose of the coming election; it does not grant any registered party-list group any mantle of immunity from the COMELEC's power of review as an incident of its power to register.

9. ID.; ID.; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM AS PROVIDED IN THE CONSTITUTION. — The only constitutional provisions directly dealing with the party-list system of election are **Section 5(1) and (2) of Article VI**, and **Sections 2, 6 and 7, Article IX-C** of the **1987 Constitution**. x x x Article IX-C of the 1987 Constitution, on the other hand, is the article on the COMELEC related to the party-list system. x x x Paraphrased and summarized, the terms of the Constitution relating to the party-list system essentially provide that: 1. The House of Representatives shall be composed of members elected from ***legislative districts***, and ***those who are elected through a party-list system***. 2. The ***members of the House of Representatives under the party-list system*** are those who are ***elected, as provided by law,*** thus, plainly leaving the mechanics of the system to future legislation. 3. The members under the system shall be ***elected through registered national, regional, sectoral parties and organizations***, thus, textually identifying the recognized component groupings in the party-list system; they must all ***register with the COMELEC*** to be able to participate. 4. ***To be voted*** under the party-list system are the ***component political parties, organizations and coalitions***, in contrast with the individual candidates voted upon in legislative district elections. 5. The party-list representatives shall constitute ***twenty per centum of the total number of representatives***, including those

in the party-list. 6. For ***three consecutive terms*** after the ratification of the Constitution, one-half of the seats allocated to party-list representatives shall be filled as provided by law, by selection or election from the *labor, peasant, urban poor, indigenous cultural minorities, women, youth, and such other sectors as may be provided by law*, except the religious sector. 7. The Constitution allows a ***free and open party system*** that shall evolve according to the free choice of the people, within the limits of the Constitution.

10. ID.; ID.; ID.; PARTY-LIST SYSTEM ACT (RA 7941); JURISPRUDENTIAL DEVELOPMENTS OF THE LAW. — In March 1995, Congress enacted **RA No. 7941, the Party-List System Act,** as the law that would implement the party-list election scheduled for May 1998. x x x RA No. 7941 likewise succinctly **defined the component groupings recognized by law** in the party-list system. x x x Notably, the definitions carried no significant qualifications, preferences, exclusions or limitations by law on what the recognized party- list groupings should be, although Section 6 of RA No. 7941 specified and defined the grounds for disqualification. x x x In 2001, the first judicial test in the implementation of the party-list system came through the *Ang Bagong Bayani* case where the petitioners sought the disqualification of the private respondents, among whom were major political parties. x x x *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections* is essentially a case on the computation of the allocation of seats based on the party-list votes. Despite the *Ang Bagong Bayani* ruling, the question of ***whether the Constitution prohibits political parties from participating in the party-list elections*** remained a live issue in this case. By a vote of 8-7, the Court decided to **disallow major political parties from participating in the party-list elections, directly or indirectly***;* thus, effectively reversing the ruling in *Ang Bagong Bayani* that major political parties may participate in the party-list system, provided they represent the marginalized and underrepresented sectors. *x x x Ang Bagong Bayani's* slanted reading of the Constitution and the laws can be seen in bold relief. ***Its main mistake is its erroneous reading of the constitutional intent, based on the statements of a constitutional commissioner that were quoted out of context, to justify its reading of the constitutional intent.***

11. ID.; ID.; ID.; ID.; OBJECTIVE IS PRIMARILY ELECTORAL REFORM, NOT TO PROVIDE A SOCIAL JUSTICE MECHANISM. — The ***aim of the party-list provision***, Section 5, Article VI of the Constitution, is principally ***to reform*** the then existing electoral system by adding a new system of electing the members of the House of Representatives. The innovation is a party-list system that would expand opportunities for electoral participation to allow those who could not win in the legislative district elections a fair chance to enter the House of Representatives other than through the district election system. Otherwise stated, the aim is ***primarily electoral reform — not to provide a social justice mechanism*** that would guarantee that sectors (described in social justice context by its constitutional deliberation proponents as "marginalized") would exclusively occupy, or have reserved, seats in the House of Representatives under the party-list system. x x x The best proof of this characteristic comes from the words of the Constitution itself which do not provide for exclusive or guaranteed representation for sectoral groups in the party-list system. If at all, the constitutional text only provided a guarantee of 50% participation for specified sectoral groups, but the ***guarantee was only for the first three (3) elections after the ratification*** of the Constitution**.** [I]*f* the concept of "marginalized" would be applied to the party-list system, ***the term should apply to the national, regional, and sectoral parties or organizations that cannot win in the traditional legislative district elections*** (following the explanation of Commissioner Monsod), not necessarily to those claiming marginalization in the social justice context or because of their special interests or characteristics. The term, of course, can very well be applicable to the latter if they indeed cannot win on their own in the traditional legislative district elections.

12. ID.; ID.; ID.; ID.; WORDS "MARGINALIZED AND UNDERREPRESENTED" FOR PARTY-LIST GROUPS; USE OF THE WORDS DOES NOT RENDER SECTORAL GROUPS THE EXCLUSIVE PARTICIPANTS IN PARTY-LIST ELECTIONS, NEITHER ARE THEY AN ABSOLUTE REQUIREMENT FOR QUALIFICATION. — It should be noted that it was under RA No. 7941 that the words "marginalized and underrepresented" made their formal appearance in the party-list system. It was used in the context of defining ***one of the aims*** of the system, *i.e.*, to ***enable Filipino***

citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well- defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, ***to become members of the House of Representatives***. This entry and use of the term is admittedly an effective and formal statutory recognition that ***accommodates*** the sectoral (in the special interest or concern or social justice senses) character into the party-list system (*i.e.*, in addition to the primary electoral reform purpose contemplated in the Constitution), but nevertheless does not render sectoral groups the exclusive participants in party-list elections. x x x Nor does the use of the term "marginalized and underrepresented" (understood in the narrow sectoral context) render it an absolute requirement to qualify a party, group or organization for participation in the party-list election, except for those in the sectoral groups or parties who by the nature of their parties or organizations necessarily are subject to this requirement. For all parties, sectors, organizations or coalition, however, the absolute overriding requirement — as justified by the principal aim of the system — remains to be a party, group or organization's ***inability to participate in the legislative district elections with a fair chance of winning***. To clearly express the logical implication of this statement, a party, group or organization already participating in the legislative district elections is presumed to have assessed for itself a fair chance of winning and should no longer qualify to be a participant in the party-list elections.

13. ID.; ID.; ID.; ID.; MEMBERS OF THE HOUSE OF REPRESENTATIVES UNDER THE PARTY-LIST SYSTEM. — The ***members of the House of Representatives under the party-list system*** are those who would be ***elected, as provided by law,*** thus, plainly leaving the mechanics of the system to future legislation. They are likewise constitutionally identified as the ***registered national, regional, sectoral parties and organizations***, and are the party-list groupings ***to be voted*** under the party-list system under a ***free and open party system*** that should be allowed to evolve according to the free choice of the people within the limits of the Constitution. From the perspective of the law, this party structure and system would hopefully foster proportional representation that would lead to the election to the House of

Representatives of Filipino citizens: (1) who belong to marginalized and underrepresented sectors, organizations and parties; and (2) who lack well-defined constituencies; but (3) who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. The **key words** in this policy are ***"proportional representation," "marginalized and underrepresented,"*** and ***"lack of well-defined constituencies."***

14. ID.; ID.; ID.; ID.; PARTY; IN RELATION TO THE STATUS OF "MARGINALIZED AND UNDERREPRESENTED"; DISCUSSED. — As defined in the law, a **party** refers to any of the three: a political party, a sectoral party, or a coalition of parties (Section 3[b] of RA No. 7941). As distinguished from sectoral parties or organizations – which generally advocate "interests or concerns" – a political party is one which advocates "an **ideology or platform, principles and policies" of the government.** In short, its identification is with or through its program of governance. Under the ***verba legis*** or plain terms rule of statutory interpretation and the maxim ***ut magis valeat quam pereat***, a combined reading of Section 2 and Section 3 shows that the status of being "marginalized and underrepresented" is not limited merely to sectors, particularly to those enumerated in Section 5 of the law. The law itself recognizes that the same status can apply as well to "political parties." x x x Thus, the words "marginalized" and "underrepresented" should be understood in the ***electoral sense***, *i.e.*, those who cannot win in the traditional district elections and who, while they may have a national presence, lacked "well-defined political constituency" within a district sufficient for them to win. For emphasis, sectoral representation of those perceived in the narrow sectoral (including social justice) sense as "marginalized" in society is encapsulated within the broader multiparty (party-list system) envisioned by the framers. This broader multiparty (party-list system) seeks to address *not only* the concerns of the marginalized sector (in the narrow sectoral sense) but also the concerns of those "underrepresented" (in the legislative district) as a result of the winner-take-all system prevailing in district elections — a system that ineluctably "disenfranchises" those groups or mass of people who voted for the second, third or fourth placer in the district elections and even those who are passive holders of Filipino citizenship. RA No. 7941 itself amply supports this idea of "underrepresented"

when it used a broad qualitative requirement in defining "political parties" as ideology or policy-based groups and, "sectoral parties" as those whose principal advocacy pertains to the special interest and concerns of identified sectors.

15. ID.; ID.; ID.; ID.; "OPEN AND FREE PARTY SYSTEM"; SOCIAL JUSTICE IS NOT THE MAIN CONSIDERATION; ELUCIDATED. — [T]he ***second sentence of Section 2*** of RA No. 7941 is itself notably anchored on the "open and free party system" mandated by Article IX-C of the Constitution. x x x Reliance on the concept of social justice, to be sure, involves a motherhood statement that offers little opportunity for error, yet relying on the concept ***solely and exclusively*** can be ***misleading***. x x x As the constitutional debates and voting show, what the framers envisioned was a multiparty system that already *includes* sectoral representation. Both sectoral representation and multiparty-system under our party-list system are concepts that comfortably fall within this vision of a Filipino-style party-list system. Thus, both the text and spirit of the Constitution do not support an interpretation of exclusive sectoral representation under the party-list system; what was provided was an avenue for the marginalized and underrepresented sectors to participate in the electoral system — it is an invitation for these sectors to join and take a chance on what democracy and republicanism can offer.

16. ID.; ID.; ID.; ID.; POLITICAL PARTIES ALLOWED TO PARTICIPATE IN PARTY-LIST SYSTEM; DISCUSSED. — [P]olitical parties are allowed by law to participate [in party-list system]. This participation is not impaired by any "marginalized and underrepresented" limitation. As applied to political parties, this limitation must be understood in the ***electoral sense***, *i.e.*, they are parties espousing their unique and "marginalized" principles of governance and who must operate in the party-list system because they only have a "marginal" chance of winning in the legislative district elections. This definition assumes that the political party is ***not also a participant in the legislative district elections as the basic concept and purpose of the party-list innovation negate the possibility of playing in both legislative district and party-list arenas***. Thus, parties — whether national, regional or sectoral — with legislative district election presence anywhere in the country can no longer participate as the party-list system

is national in scope and no overlap between the two electoral systems can be allowed anywhere.

17. ID.; ID.; ID.; ID.; PARTY-NOMINEE RELATIONSHIP; IDENTITY OF THE PARTY IS SEPARATE FROM THE IDENTITY OF THE NOMINEE; DISQUALIFICATION OF NOMINEE DOES NOT RESULT TO DISQUALIFICATION OF PARTY; DISCUSSED. — That the party-list group, rather than the nominee, is voted for in the elections is not a disputed point. Our essential holding, however, is that a party-list group, in order to be entitled to participate in the elections, must satisfy the express statutory requirements. x x x The Constitution requires, too, that the members of the House of Representatives are those who are elected from legislative districts, and those who are elected through a party-list system (Section 5[1], Article VI) where the votes are in favor of a political party, organization or coalition (Section 6, Article IX-C). These requirements embody the concept behind the party-list system and demonstrate that it is a system completely different from the legislative district representation. ***From the point of view of the nominee, he or she is not the candidate, the party is the entity voted for.*** This is in far contrast from the legislative district system where the candidate is directly voted for in a personal electoral struggle among candidates in a district. Thus, ***the nominee in the party-list system is effectively merely an agent of the party***. It is the party-list group for whom the right of suffrage is exercised by the national electorate with the divined intent of casting a vote for a party-list group in order that the particular ideology, advocacy and concern represented by the group may be heard and given attention in the halls of the legislature. This concept and its purpose negate the idea that the infirmities of the nominee that do not go into the qualifications *of the party itself* should prejudice the party. In fact, the law does not expressly provide that the disqualification of the nominee results in the disqualification of a party-list group from participating in the elections. x x x [W]hat clearly serves as the **legal link** between the party and its nominee is **only the latter's *bona fide* membership in the party that wishes to participate in the party-list system of election. Because of this relationship, membership is a fact that the COMELEC must be able to confirm as it is the link between the party the electorate votes for and the representation that the**

nominee subsequently undertakes in the House of Representatives. x x x To automatically disqualify a party without affording it opportunity to meet the challenge on the eligibility of its nominee or to undertake rectifications deprives the party itself of the legal recognition of its own personality that registration actually seeks.

SERENO, *C.J., concurring and dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM; PRIMARILY A TOOL FOR SOCIAL JUSTICE. — [T]he party-list system under the 1987 Constitution and the party-list law or RA 7941 is not about mere political plurality, but plurality with a heart for the poor and disadvantaged. The creation of a party-list system under the 1987 Constitution and RA 7941 was not done in a vacuum. It comprehends the reality of a Filipino nation that has been and still is struggling to come to terms with much social injustice that has been perpetrated over centuries against a majority of its people by foreign invaders and even by its own governments. x x x The place of the party-list system in the constitutional scheme was that it provided for the realization of the ideals on social justice in the political arena. x x x RA 7941 was enacted pursuant to the party-list provisions of the 1987 Constitution. Not only is it a "social justice tool", as held in *Ang Bagong Bayani*: but it is **primarily so**. This is not mere semantics but a matter of legal and historical accuracy with material ·consequences in the realm of statutory interpretation.

2. ID.; ID.; ID.; ID.; "MARGINALIZED AND UNDERREPRESENTED" UNDER SECTION 2 OF RA 7941 QUALIFIES NATIONAL, REGIONAL AND SECTORAL PARTIES OR ORGANIZATIONS. — [T]he *ponencia* interprets "marginalized and underrepresented" in Section 2 of RA 7941 to qualify only sectoral parties or organizations, and not national and regional parties or organizations. I dissent for the following reasons. *First*, since the party-list system is primarily a tool for social justice, the standard of "marginalized and underrepresented" under Section 2 must be deemed to qualify **national , regional** and **sectoral** parties or organizations. To argue otherwise is to divorce national and regional· parties or

organizations from the primary objective of attaining social justice, which objective surrounds, permeates, imbues, and underlies the entirety of both the 1987 Constitution and RA 7941. *Second*, Section '2 of RA 7941 states that the party-list system seeks to "enable Filipino citizens belonging to the **marginalized and underrepresented sectors organizations and parties** . . . to become members of the House of Representatives." On its face, it is apparent that marginalized and underrepresented" qualifies "sectors", "organizations" and "parties". *Third*, even .assuming that it is not so apparent,. in terms of statutory construction, the import of "social justice" that has developed in various decisions is that when the law is clear and valid, it simply must be applied; but when the law can be interpreted in more ways than one, an interpretation that favors the underprivileged must be favored. *Lastly*, deliberations of the Constitutional Commission show that the party-list system is a countervailing means for the weaker segments of our society to overcome the preponderant advantages of the more entrenched and well- established political parties.

3. ID.; ID.; ID.; ID.; QUALIFICATION OF PARTY-LIST GROUP; DETERMINATION OF THE COMELEC AS TO THOSE "MARGINALIZED AND UNDERREPRESENTED," RESPECTED. — [T]here is no need for this Court to define the phrase "marginalized and underrepresented," primarily because it already constitutes sufficient legislative standard to guide the COMELEC as an administrative agency in the exercise of its discretion to determine the qualification of a party-list group. As long as such discretion is not gravely abused, the determination of the COMELEC must be upheld. This is consistent with our pronouncement in *Ang Bagong Bayani* that, "the role of the COMELEC is to see to it that only those Filipinos that are 'marginalized and underrepresented' become members of the Congress under the party-list system." For as long as the agency concerned will be able to promulgate rules and regulations to implement a given legislation and effectuate its policies, and that these regulations are germane to the objects and purposes of the law and not in contradiction to but in conformity with the standards prescribed by the law, then the standard may be deemed sufficient. We should also note that there is a time element to be considered here, for those who are marginalized and underrepresented today may no longer be one later on. Marginalization and underrepresentation

is an ever evolving concept, created to address social disparities, to be able to give life to the "social justice" policy of our Constitution. Confining its definition to the present context may unduly restrict the COMELEC of its quasi-legislative powers which enables it to issue rules and regulations to implement the election laws .and to exercise such legislative functions as may expressly be delegated to it by Congress.

4. ID.; ID.; ID.; ID.; NATIONAL, REGIONAL AND SECTORAL PARTIES OR ORGANIZATIONS MUST BOTH REPRESENT THE MARGINALIZED AND UNDERREPRESENTED AND THOSE LACKING A WELL-DEFINED POLITICAL CONSTITUENCY. — Section 2 of RA 7941 clearly makes the "lack of a well-defined political constituency "as a requirement along with "marginalization and underrepresentation." They are cumulative requirements, not alternative. Thus, sectoral parties and organizations intending to run in the party-list elections must meet both. x x x [T]he exact content of these legislative standards should be left to the C0MELEC. They are ever evolving concepts, created to address social disparities, to be able to give life to the "social justice" policy of our Constitution.

5. ID.; ID.; ID.; ID.; DISQUALIFICATION OF A NOMINEE SHOULD NOT DISQUALIFY THE PARTY-LIST GROUP AND ONE OF ITS TOP THREE NOMINEES SHOULD REMAIN QUALIFIED. — I concur with the *ponencia* that an advocate may qualify as a nominee. x x x I propose the view that the disqualification of a party-list group due to the disqualification of its nominee is only reasonable if based on material misrepresentations regarding the nominee's qualifications. **Otherwise, the disqualification of a nominee should not disqualify the party-list group provided that: (1) it meets Guideline Nos. 1-5 of *Ang Bagong Bayani* (alternately, on the basis of the new parameters set in the *ponencia*,that they validly qualify as national, regional or sectoral party-list group); and (2) one of its top three (3) nominees remains qualified.** The constitutional policy is to enable Filipinos belonging to the marginalized and underrepresented sectors to contribute legislation that would benefit them. Consistent therewith, R.A. No. 7941 provides that the State shall develop and guarantee a full, free and open party-list system that would achieve proportional representation

in the House of Representatives by enhancing party-list groups' "chances to compete for and win seats in the legislature." Because of this policy, I believe that the COMELEC cannot interpret Section 6 (5) of R.A. No. 7941 as a grant of purely administrative, quasi-legislative or quasi-judicial power to *ipso facto* disqualify party-list groups based on the disqualification of a single nominee. x x x This also finds support in Section 6 (6) of R.A. No. 7941 which considers declaring "untruthful statements in its petition" as a ground for disqualification. As regards the second qualification mentioned above. x x x This is because if all of its top three nominees are disqualified, even if its registration is not cancelled and is thus allowed to participate in the elections, and should it obtain the required number of votes to win a seat, it would still have no one to represent it, because the law does not allow the group to replace its disqualified nominee through substitution. This is a necessary consequence of applying Section 13 in relation to Section 8 of R.A. No. 7941. Section 13 provides that party-list representatives shall be proclaimed by the COMELEC based on "the list of names submitted by the respective parties x x x according to their ranking in the said list." x x x Consequently, the remand [of petitions here] should only pertain to those party-list groups whose registration was cancelled on the basis of applying the standard of "marginalized and underrepresented" and the qualification of nominees wherein the "new parameters" apply.

6. ID.; ID.; COMMISSION ON ELECTIONS; COMELEC RESOLUTION NO. 9513 DOES NOT VIOLATE SECTION 3, ARTICLE IX-C OF THE CONSTITUTION WHICH REQUIRES A PRIOR MOTION FOR RECONSIDERATION BEFORE THE COMELEC CAN DECIDE ELECTION CASES *EN BANC*. — COMELEC Resolution No. 9513 does not violate Section 3, Article IX-C of the Constitution which requires a prior motion for reconsideration before the COMELEC can decide election cases *en banc*. [T]he Resolution allows the COMELEC *en banc*, without a motion for reconsideration, to conduct (1) an automatic review of a decision of a COMELEC division granting a petition for registration of a party-list group or organization; and (2) a summary evidentiary hearing for those already accredited and which have manifested their intent to participate in the 2013 national and local elections for the purpose of determining their continuing compliance with the requirements of RA No.

7941 and the *Ang Bagong Bayan* guidelines. Section 3 only applies when the COMELEC is exercising its quasi-judicial powers which can be found in Section 2 (2) of the same article. However, since the conduct of automatic review and summary evidentiary hearing is an exercise of COMELEC's administrative powers under Section 2 (5), the prior motion for reconsideration in Section 3 is not required. x x x While the exercise of quasi-judicial and administrative power may both involve an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon, the distinction I believe is that the exercise of the former has for its purpose the adjudication of rights with finality. This makes it akin to judicial power which has for its purpose, among others, the settlement of actual controversies involving rights which are legally demandable and enforceable. Another way to dispose of the issue of the necessity of a prior motion for reconsideration is to look at it through the lens of an election case. The phrase "all such election cases" in Section 3 has been read in relation to Section 2 (2) of Article IX-C. x x x In *Panlilio v. Commission on Elections*, it was also held that the primary purpose of an election case is the ascertainment of the real candidate elected by the electorate. Thus, there must first be an election before there can be an election case. Since the national and local elections are still to be held on 13 May 2013, the conduct of automatic review and summary evidentiary hearing under the Resolution No. 9513 cannot be an election case. For this reason, a prior motion for reconsideration under Section 3 is not required.

REYES, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; NATURE OF POWER; CLASSIFICATIONS; QUASI-JUDICIAL POWER, QUASI-LEGISLATIVE POWER AND ADMINISTRATIVE FUNCTION; DISCUSSED. — As to the nature of the power exercised, the COMELEC's powers can further be classified into administrative, quasi-legislative, quasi-judicial, and, in limited instances, judicial. The *quasi-judicial power* of the Commission embraces the power to resolve controversies arising in the enforcement of election laws and to be the sole judge of all pre-proclamation controversies and of all contests relating

to the elections, returns, and qualifications. Its *quasi-legislative power* refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress. Its *administrative function* refers to the enforcement and administration of election laws. x x x The distinction on the nature of the power being exercised by the COMELEC is crucial to the procedure which has to be observed so as to stamp an official action with validity. In the exercise of its adjudicatory or quasi-judicial powers, the Constitution mandates the COMELEC to hear and decide cases first by division and upon motion for reconsideration, by the COMELEC *En Banc*. x x x On the other hand, matters within the administrative jurisdiction of the COMELEC may be acted upon directly by the COMELEC *En Banc* without having to pass through any of its divisions.

2. ID.; ID.; ID.; RESOLUTION NO. 9513 IMPLEMENTING THE POWER TO REGISTER POLITICAL PARTIES, ORGANIZATIONS AND COALITIONS; THAT COMELEC *EN BANC* AUTHORIZED TO AUTOMATICALLY REVIEW ALL PENDING REGISTRATION OF PARTY-LIST GROUPINGS AND DETERMINE CONTINUING QUALIFICATION OF THOSE PREVIOUSLY REGISTERED. — One of the specific powers granted to the COMELEC is the power to register political parties, organizations and coalitions articulated in Section 2(5) of Article IX-C of the Constitution. x x x [T]he COMELEC x x x promulgate[d] Resolution No. 9513 [which] seeks to manage the registration of party-list groups, organizations and coalitions that are aspiring to participate in the 2013 National and Local Elections, with the objective of ensuring that only those parties, groups or organizations with the requisite character consistent with the purpose of the party-list system are registered and accredited to participate in the party-list system of representation. Plainly, the resolution authorized the COMELEC *En Banc* to automatically review all pending registration of party-list groups, organizations and coalitions and to set for summary evidentiary hearings all those that were previously registered to determine continuing compliance. To effectively carry out the purpose of the Resolution, the COMELEC suspended Rule 19 of the 1993 COMELEC Rules of Procedure, specifically the requirement for a motion for reconsideration.

3. ID.; ID.; ID.; REGISTRATION OF POLITICAL GROUPINGS IS AN ADMINISTRATIVE FUNCTION; ACTION FOR PARTY-LIST GROUPS WITH PENDING PETITION FOR REGISTRATION DISTINGUISHED FROM PARTY-LIST GROUPS PREVIOUSLY REGISTERED. — [The] registration of political parties, organizations and coalitions stated in Section 2(5) of Article IX-C of the Constitution involves the exercise of administrative power. x x x [However,] I distinguish between (1) new or pending petitions for registration (referred to as the *first group*), and; (2) previously registered and/or accredited party-list groups, organizations and coalitions (referred to as the *second group*). As regards the first group, the COMELEC *En Banc* cannot directly act on new petitions for registration as there is a specific procedure governing the performance of this function. x x x Under Section 32 of the [1993 COMELEC Rules of Procedure,] the registration of political parties or organizations is classified under *Special Proceedings*, together with annulment of permanent list of voters and accreditation of citizen's arms of the Commission. x x x [The] petitions for registration of party-list groups, organizations and coalitions are first heard by the COMELEC Division before they are elevated to the *En Banc* on motion for reconsideration. It is this requirement for a motion for reconsideration of the resolutions of the COMELEC Division granting new petitions for registration that the COMELEC suspended in Resolution No. 9513. x x x Surely, the suspension of the rule will serve the greater interest of justice and public good since the objective is to purge the list of registrants of those who are not qualified to participate in the elections of party-list representatives in Congress. Ultimately, it will help secure the electoral seats to the intended beneficiaries of RA 7941 and, at the same time, guard against fly-by-night groups and organizations that are seeking for the opportune time to snatch a chance. By virtue of the suspension of the requirement for motion for reconsideration, the COMELEC *En Banc* may then automatically review pending petitions for registration and determine if the qualifications under the law are truly met. x x x With respect to the *second group*, the COMELEC *En Banc* may directly order the conduct of summary evidentiary hearings to determine continuing compliance considering that there is no specific procedure on this matter. x x x The authority of the COMELEC *En Banc* to subject previously-registered and/or accredited

party-list groups, organizations and coalitions to summary evidentiary hearing emanates from its general power to enforce and administer all laws and regulations relative to the conduct of an election and duty to ensure "free, orderly, honest, peaceful and credible elections." Part and parcel of this duty is the maintenance of a list of qualified candidates. Correlative to this duty of the COMELEC is the duty of the candidate or, in this case, the registered party-list groups, organizations or coalitions to maintain their qualifications.

4. ID.; ID.; ID.; ID.; COMELEC CANNOT BE PRECLUDED FROM REVIEWING PENDING REGISTRATION AND EXISTING REGISTRATION OF PARTY-LIST GROUPINGS ON THE GROUND OF *RES JUDICATA*. — [T]he COMELEC cannot be precluded from reviewing pending registration and existing registration and/or accreditation of party-list groups, organizations and coalitions on the ground of *res judicata*. It has been repeatedly cited in a long line of jurisprudence that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers. x x x [T]he resolutions of the COMELEC Division, allowing the registration of the applicant party-list groups and organizations do not partake of a final judgment or order. x x x The resolutions of the COMELEC Division cannot be considered an adjudication on the merits since they do not involve a determination of the rights and liabilities of the parties based on the ultimate facts disclosed in the pleadings or in the issues presented during the trial. They are simply recognition by the COMELEC that the applicant party-list or organization possesses the qualifications for registration. They do not involve the settlement of conflicting claims; it is merely an initiatory procedure for the conduct of elections. On the other hand, previous registration and/or accreditation only attests to the fact that the concerned party-list group, organization or coalition satisfactorily proved its qualifications to run as party-list representative in the immediately preceding elections. It does not, however, create a vested right in favor of the registered party-list group, organization or coalition to participate in the succeeding elections. The resolutions of the COMELEC Division cannot also become *final* as to exempt the party-list group or organization from proving his qualifications in the succeeding elections. As in individual candidate, a party-list group, organization or coalition desiring

to participate in the elections must possess the required qualifications every time it manifests its intent to participate in the elections. It must prove and attest to its possession of the required qualifications every time it bids for election. The inapplicability of the doctrine of *res judicata* is even made more apparent by the fact that the group, organization or coalition which was denied registration may still apply for registration in succeeding elections and even be allowed registration provided that the qualifications are met. The same holds true with previously registered and/or accredited party-list group, organization or coalition which was stripped of its registration and/or accreditation.

5. ID.; ID.; ID.; ID.; RESOLUTION NO. 9513 DID NOT VIOLATE PROCEDURAL DUE PROCESS. — There is no merit in the petitioners' claim that their right to procedural due process was violated by the COMELEC's automatic review and conduct of summary evidentiary hearings under Resolution No. 9513. As regards the *first group*, I deem the COMELEC's suspension of its own rules on motions for reconsideration justified, given its duty to ensure that votes cast by the electorate in the party-list elections will only count for qualified party-list groups, in the end that the system's ideals will be realized. Equally important, the settled rule in administrative proceedings is that a fair and reasonable opportunity to explain one's side satisfies the requirements of due process. Its essence is embodied in the basic requirements of notice and the real opportunity to be heard. Consistent with the foregoing, Section 6 of RA 7941 only commands the minimum requirements of due notice and hearing to satisfy procedural due process in the refusal and/or cancellation of a party, organization or coalition's registration under the party-list system. x x x The *second group's* right to procedural process was also unimpaired, notwithstanding the COMELEC's conduct of the summary evidentiary hearings for the purpose of determining the parties' continuing compliance with rules on party-list groups. The notice requirement was satisfied by the COMELEC through its issuance of the Order dated August 2, 2012, which notified the party-list groups of the Commission's resolve to conduct summary evidentiary hearings, the dates thereof, and the purpose for which the hearings shall be conducted. The specific matters that are expected from them by the Commission are also identified in the Order.

6. ID.; ID.; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM OF REPRESENTATION (RA 7941); PRIMARILY INTENDED TO BENEFIT THE MARGINALIZED AND UNDERREPRESENTED; DISCUSSED. — [I]t is my staunch position that the party-list system, being a complement of the social justice provisions in the Constitution, is primarily intended to benefit the marginalized and underrepresented; the ideals of social justice permeates every provision in the Constitution, including Section 5(2), Article VI on the party-list system. The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. **It is not simply a mechanism for electoral reform.** x x x Considering that the provisions on party-list system of representation are not self-executing, the Congress enacted RA 7941. x x x The objective to hold the party-list system for the benefit of the marginalized and underrepresented is expressed in clear language of Section 2 of RA 7941. x x x [Thus,] the participation of registered national, regional and sectoral parties, organizations and coalitions in the party-list elections are qualified by three (3) limiting characteristics: (1) they must consist of Filipino citizens belonging to the marginalized and underrepresented sectors, organizations or coalitions; (2) who lack well-defined political constituencies, (3) but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. **The term "marginalized and underrepresented" effectively limits the party-list system to sectors which directly need support and representation.** The law could not have deemed to benefit even those who are already represented in the House of Representatives lest it results to a wider gap between the powerful and the underprivileged.

7. ID.; ID.; ID.; ID.; QUALIFICATIONS OF PARTY-LIST GROUP, ORGANIZATION OR COALITION; EVIDENCE OF ADVOCACY TO ALLEVIATE THE CONDITION OF THE SECTOR; DISCUSSED. — Certainly, it takes more than a mere claim or desire to represent the marginalized and underrepresented to qualify as a party-list group. There must be proof, credible and convincing, to demonstrate the group's advocacy to alleviate the condition of the sector. x x x It is thus important to ascertain that the party-list group, organization

or coalition reflects the ideals of the sector in its constitution and by-laws. It must have an outline of concrete measures it wishes to undertake in its platform of government. Moreover, its track record must speak of its firm advocacy towards uplifting the marginalized and underrepresented by undertaking activities or projects directly addressing the concerns of the sector. It is likewise imperative for the party-list group to show that it **effectively represents** the marginalized and underrepresented. x x x Equally important is that the majority of the membership of the party-list group, organization or coalition belong to the marginalized and underrepresented sector. This means that a majority of the members of the sector must actually possess the attribute which makes the sector marginalized. This is so because the primary reason why party-list groups are even allowed to participate in the elections of the members of the House of Representatives, who are normally elected by district, is to give a collective voice to the members of the sectors who are oftentimes unheard or neglected. x x x Without a convincing proof of legitimate membership of a majority of the marginalized, the COMELEC has no reason to believe otherwise and may thus deny a petition for registration or cancel an existing registration.

8. ID.; ID.; ID.; ID.; PARTY-LIST PURPOSELY FOR THE MARGINALIZED AND UNDERREPRESENTED SECTOR EXCLUDING GROUPS ESPOUSING SHARED ADVOCACIES; DISCUSSED. — The second guideline in *Ang Bagong Bayani* underscores the policy of the state to hold the party-list system of representation exclusive to the marginalized and underrepresented, a distinguishing feature which sets our system apart from systems of party-list representation in other jurisdictions. x x x While the law did not restrict the sectors that may be subsumed under the term "marginalized and underrepresented", it must be construed in relation to the sectors enumerated in RA 7941, the enabling law of Section 5, Article VI of the Constitution, to wit: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. **Based on the foregoing, a mere association of individuals espousing shared "beliefs" and "advocacies" cannot qualify as a marginalized and underrepresented sector.** The term "marginalized and underrepresented" is descriptive of the sector that may join the party-list elections.

A sector pertains to a "sociological, economic or political subdivision of the society" which consists of individuals identified by the activity, status or condition, or attribute that specifically pertains to them. It is identified by a common characteristic pertaining to the individuals composing the same. On the other hand, an association of individuals espousing a common belief or advocacy is aptly called a *group*, not a sector. Specifically, advocacy groups consist of individuals engaged in the "act of pleading for, supporting, or recommending active espousal" of a cause. Contrary to a sector which is identified by a common characteristic of the members, advocacy groups are identified by the causes that they promote.

9. ID.; ID.; ID.; ID.; POLITICAL PARTIES MAY APPLY FOR REGISTRATION AND/OR ACCREDITATION AS A PARTY-LIST BUT THEY MUST BE ORGANIZED ALONG SECTORAL LINES AND MUST NOT FIELD IN CANDIDATES FOR DISTRICT REPRESENTATIVES. — Consistent with the purpose of the law, political parties may apply for registration and/or accreditation as a party-list provided that they are organized along sectoral lines. x x x [However,] political parties shall only be allowed to participate in the party-list system if they do not field candidates in the election of legislative district representatives. The justification therefor is reasonable. The party-list system was adopted by the state purposely to enable parties which, by their limited resources and citizens base per district, find difficulty in placing representatives in Congress. Major political parties that field candidates for district representatives can do so with ease, given that they satisfy the standards set by Republic Act No. 7166, as amended by Republic Act No. 9369, for their classification. x x x Nonetheless, a guiding principle remains the same: the party-list system must be held exclusive for the marginalized and underrepresented. Regardless of the structure or organization of the group, it is imperative that it represents a marginalized and underrepresented sector. Thus, it is my submission that political parties which seek to participate in the party-list system **must observe two rules: (1) they must be organized along sectoral lines; and (2) they must not field in candidates for district representatives.**

10. ID.; ID.; ID.; ID.; RELIGIOUS GROUP PROSCRIBED FROM REGISTERING AS PARTY-LIST GROUP. — The

third guideline in *Ang Bagong Bayani* expresses the proscription against the registration of religious groups as party-list groups. The idea is that the government acts for secular purposes and in ways that have primarily secular effects. Despite the prohibition, members of a religious group may be nominated as representative of a marginalized and underrepresented sector. The prohibition is directed only against religious sectors registering as a political party because the government cannot have a partner in legislation who may be driven by the dictates of faith which may not be capable of rational evaluation.

11. ID.; ID.; ID.; ID.; DISQUALIFYING CIRCUMSTANCES THAT CAN JUSTIFY THE DENIAL OF THE PETITION FOR REGISTRATION OF PARTY GROUP. — To be eligible for registration, the party, organization or coalition must prove that it possesses all the qualifications and none of the disqualifications stated in the law. The grounds for disqualification stated in Section 6 of RA 7941 pertain to acts, status or conditions which render the applicant group an unsuitable partner of the state in alleviating the conditions of the marginalized and underrepresented. These disqualifying circumstances are drawn to further implement the state policy of preserving the party-list system exclusively for the intended beneficiaries of RA 7941. On the other hand, the disqualification mentioned in the fifth guideline [in Ang Bagong Bayani] connotes that the party-list group must maintain its independence from the government so that it may be able to pursue its causes without undue interference or any other extraneous considerations. Verily, the group is expected to organize and operate on its own. It must derive its life from its own resources and must not owe any part of its creation to the government or any of its instrumentalities. By maintaining its independence, the group creates a shield that no influence or semblance of influence can penetrate and obstruct the group from achieving its purposes. In the end, the party-list group is able to effectively represent the causes of the marginalized and underrepresented, particularly in the formulation of legislation intended for the benefit of the sectors.

12. ID.; ID.; ID.; QUALIFICATIONS OF THE NOMINEES. — Except for a few, the basic qualifications of the nominee are practically the same as those required of individual candidates for election to the House of Representatives. x x x

Owing to the peculiarity of the party-list system of representation, it is not required that the nominee be a resident or a registered voter of a particular district since it is the party-list group that is voted for and not the appointed nominees. He must, however, be a *bona fide* member of the party-list group at least ninety (90) days before the elections.

13. ID.; ID.; ID.; ID.; ID.; THE NOMINEE MUST BE A *BONA FIDE* MEMBER OF THE MARGINALIZED AND UNDERREPRESENTED SECTOR; TWO TYPES OF NOMINEES ACCOMMODATED; DISCUSSED. — [Under] Section 9 of RA 7941, the specific provision dealing with the qualifications of the nominee, aside from the qualifications similarly required of candidates seeking to represent their respective districts, the nominee is required to be a *bona fide* member of the party, a status he acquires when he enters into the membership of the organization for at least ninety (90) days before the election. From the point in time when the person acquires the status of being a *bona fide* member, he becomes one "belonging to the marginalized and underrepresented sector." [Thus, two types of nominees were accommodated.] 1. One who actually shares the attribute or characteristic which makes the sector marginalized or underrepresented (the *first type*); 2. An advocate or one who is genuinely and actively promoting the causes of the sector he wishes to represent (the *second type*). x x x At the outset, it may seem that the foregoing ratiocination translates to a more lenient entry for those aspiring to become a nominee. However, the standard of scrutiny should not change and nominees shall still be subject to the evaluation by the COMELEC of their qualifications. They bear the burden of proof to establish by concrete and credible evidence that they are truly representative of the causes of the sector. They must present proof of the history of their advocacy and the activities they undertook for the promotion of the welfare of the sector. They must be able to demonstrate, through their track record, their vigorous involvement to the causes of the sector. The law puts a heavy burden on the nominee to prove his advocacy through his track record. To be clear, the track record is not a mere recital of his visions for the organization and the trivial activities he conducted under the guise of promoting the causes of the sector. He must actually and actively be espousing the interests of the sector by undertaking activities directly

addressing its concerns. x x x Regardless of whether the nominee falls under the first or second type, proof of his track record is required. The requirement is even more stringent for the second type of nominee as he must convincingly show, through past activities and undertakings, his sincere regard for the causes of the sector. The history of his advocacy and the reputation he earned for the same will be considered in the determination of his qualification.

14. ID.; ID.; ID.; ID.; NOMINATION OF PARTY-LIST REPRESENTATIVES; DISQUALIFICATION OF REPRESENTATIVE-NOMINEE DOES NOT MEAN DISQUALIFICATION OF THE PARTY-LIST GROUP. — Section 8 of RA 7941 reads**:** Section 8. *Nomination of Party-List Representatives*. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes. x x x In case of failure to comply, the COMELEC may refuse to act on the petition for registration. If the applicant, on the other hand, tendered an incomplete compliance, as in submitting a list of less than five (5) nominees, the COMELEC may ask it to comply or simply regard the same as a waiver. In no way can the mere submission of the list be construed as a guarantee or attestation on the part of the group that all of the nominees shall be qualified especially that the assessment of qualifications is a duty pertaining solely to the COMELEC. In the same way, the provision did not intend to hold the group liable for violation of election laws for such a shortcoming and to mete out the same with the penalty of disqualification. x x x [T]he formation of party-list groups organized by the marginalized and underrepresented and their participation in the process of legislation is the essence of the party-list system of representation. Consistent with the purpose of the law, it is still the fact that the party-list group satisfied the qualifications of the law that is material to consider. That one or some of its chosen agents failed to satisfy the qualifications for the position should not unreasonably upset the existence of an otherwise legitimate party-list group. The disqualification of the nominees must simply be regarded as failure to qualify for an office or position. It should not, in any way, blemish the qualifications of the party-list group itself with defect.

15. ID.; ID.; ID.; ID.; THREE-SEAT LIMIT RULE; THAT THE PARTY-LIST GROUP MUST AT LEAST HAVE ONE QUALIFIED NOMINEE. — [W]hile Section 8 of RA 7941 requires the submission of the names of at least five (5) nominees, Section 11 (b) states that only three (3) of them can actually occupy seats in the House of Representatives should the votes they gather suffice to meet the required percentage. The two (2) other nominees in the list are not really expecting to get a seat in Congress even when the party-list group of which they are members prevailed in the elections. If at all, they can only substitute incumbent representatives, if for any reason, they vacate the office. Therefore, if the right to office of three (3) of the nominees is based on a mere expectancy while with the other two (2) the nomination is dependent on the occurrence of at least two (2) future and uncertain events, it is with more reason that the disqualification of one or some of the nominees should not affect the qualifications of the party-list group. x x x The implication is that if the party-list group submitted only one qualified nominee and it garners a number of votes sufficient to give it two (2) seats, it forfeits the right to have a second representative in Congress. Therefore, for as long as the party-list group has one (1) qualified nominee, it must be allowed registration and participation in the election. The situation is different when the party-list group submitted a list of nominees but none qualified and, upon being asked to submit a new list of names, still failed to appoint at least one (1) qualified nominee. In this case, the party can now reasonably be denied registration as it cannot, without at least one qualified nominee, fulfill the objective of the law for genuine and effective representation for the marginalized and underrepresented, a task which the law imposes on the qualified nominee by participating in the "formulation and enactment of appropriate legislation that will benefit the nation as a whole."

LEONEN, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM; MAY BE PARTICIPATED BY THE NATIONAL POLITICAL PARTIES AND PARTICIPATING PARTIES NEED NOT BE "MARGINALIZED OR UNDERREPRESENTED". — National political parties may participate in party list elections,

provided that they have no candidate for legislative districts. The constitution disqualifies political parties, which have candidates for legislative districts, from the party list system. [Further, the parties] need not be organized sectorally and/or represent the "marginalized and underrepresented". x x x [T]he Constitutional provisions have always created space for "national, regional and sectoral parties and organizations" to join the party list system. It is textually clear that national political parties or regional organizations do not need to be organized on sectoral lines. Sectoral parties or organizations belong to a different category of participants in the party list system. Moreover, there is no constitutional requirement that all those who participate in the party list system "must represent the marginalized and underrepresented groups" as mentioned in Republic A ct No. 7941. This law is unconstitutional in so far as it makes a requirement that is not supported by the plain text of the Constitution. [Also,] "*Marginalized and underrepresented*" is ambiguous. There is also a constitutional difference between the political parties that support those who are candidates for legislative districts and those that participate in the party list system. It is inconsistent for national political parties who have candidates for legislative districts to also run for party list. This, too, is the clear implication from the text of Article V I, Section 5(1) of the Constitution. x x x Allowing the existence of strong national and regional parties or organizations in the party list system have better chances of representing the voices of the "marginalized and underrepresented. It will also allow views, standpoints and ideologies sidelined by the pragmatic politics required for political parties participating in legislative districts to be represented in the House of Representatives. It will also encourage the concept of being multi-sectoral and therefore the strengthening of political platforms. To allow this to happen only requires that we maintain full fealty to the textual content of our Constitution. It is "a party-list system of registered national, regional, and sectoral parties or organizations." Nothing more, nothing less.

2. ID.; ID.; ID.; ID.; CONSTITUTIONAL PROVISION THEREIN CANNOT BE MODIFIED BY CONGRESS. — The 1987 Constitution is a complete document. Every provision should be read in the context of all the other provisions so that contours of constitutional policy are made clear. To claim

that the framers of the Constitution left it to Congress to complete the very framework of the party list system is to question the fundamental character of our constitution. The phrases "in accordance with law" and "as may be provided by law" is not an invitation to the members of Congress to continue the work of the constituent assembly that crafted the Constitution. Constitutional policy is to be derived from the text of the constitution in the light of its context in the document and considering the contemporary impact of relevant precedents. From constitutional policy, Congress then details the workings of the policy through law. The Constitution remains the fundamental and basic law with a more dominant interpretative position *vis-a-vis* statute. It has no equal within our normative system. Article VI, Sections 5 (1) and (2) already imply a complete Constitutional framework for the party list system. Congress cannot add the concept of "proportional representation". Congress cannot pass a law so that we read in the text of the Constitution the requirement that **even national and regional parties or organizations should likewise be sectoral. Certainly Congress cannot pass a law so that even the one-half that was not reserved for sectoral representatives even during the first three consecutive terms after the ratification of the Constitution should now only be composed of sectoral representatives.**

3. ID.; ID.; ID.; ID.; DISQUALIFICATION OF EXISTING REGISTERED PARTY LIST GROUPS IS REPOSED ON THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET). — With respect to existing registered party list groups, jurisdiction to disqualify is clearly reposed on the House of Representatives Electoral Tribunal (HRET). The Constitution in Article VI, Section 17 clearly provides: "Sec. 17. The Senate and the House of Representatives shall each have a Electoral Tribunal which **shall be the sole judge** of all contests relating to the election, returns, and **qualifications of their respective Members**..." A more specific provision in the Constitution with respect to disqualifying registered political party list groups should prevail over the more general powers of the COMELEC to enforce and administer election laws. Besides, that the HRET is the "sole judge" clearly shows that the constitutional intention is to exclude all the rest.

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Wilfredo L. Bathan for petitioner Abroad Party List in G.R. No. 204158.

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David D. Erro for petitioner in G.R. No. 204153.

Maganduga Maganduga Law Office for petitioners ASIN, A-IPRA, KAP, ABP, and SMART in G.R. Nos. 204379, 204126, 204238, and 204359, 204240.

The Law Firm of Baccay Hussin Valero and Visconde for petitioner APEC in G.R. No. 203922.

Manuelito R. Luna for petitioner AKMA-PTM in G.R. No. 203936.

John R. Gonzalo for petitioner A-IPRA in G.R. No. 204125.

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Fernando Teodulo T. Ortigoza III for petitioner ATONG PAGLAUM, Inc.

R. Lambino Law Firm for petitioner ANGGALING PINOY in G.R. No. 204428.

D E C I S I O N

CARPIO, *J.*:

The Cases

These cases constitute 54 Petitions for *Certiorari* and Petitions for *Certiorari* and Prohibition[1] filed by 52 party-list groups and organizations assailing the Resolutions issued by the Commission on Elections (COMELEC) disqualifying them from participating in the 13 May 2013 party-list elections, either by denial of their petitions for registration under the party-list system, or cancellation of their registration and accreditation as party-list organizations.

This Court resolved to consolidate the 54 petitions in the Resolutions dated 13 November 2012,[2] 20 November 2012,[3] 27 November 2012,[4] 4 December 2012,[5] 11 December 2012,[6] and 19 February 2013.[7]

The Facts

Pursuant to the provisions of Republic Act No. 7941 (R.A. No. 7941) and COMELEC Resolution Nos. 9366 and 9531, approximately 280 groups and organizations registered and manifested their desire to participate in the 13 May 2013 party-list elections.

The COMELEC, however, denied the petitions for registration of the following groups and organizations:

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[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. Nos. 203818-19), pp. 1079-1080.

[3] *Rollo* (G.R. No. 204094), pp. 176-177.

[4] *Rollo* (G.R. No. 204141), pp. 145-148.

[5] *Rollo* (G.R. No. 203766), unpaginated.

[6] *Id.*

[7] *Id.*

	G.R. No.	SPP No.	Group	Grounds for Denial
A. Via the COMELEC's *En Banc's* automatic review of the COMELEC Division's resolutions approving registration of groups/organizations				
Resolution dated 23 November 2012[8]				
1	204379	12-099 (PLM)	Alagad ng Sining (ASIN)	- The "artists" sector is not considered marginalized and underrepresented; - Failure to prove track record; and - Failure of the nominees to qualify under RA 7941 and *Ang Bagong Bayani*.
Omnibus Resolution dated 27 November 2012[9]				
2	204455	12-041 (PLM)	Manila Teachers Savings and Loan Association, Inc. (Manila Teachers)	- A non-stock savings and loan association cannot be considered marginalized and underrepresented; and - The first and second nominees are not teachers by profession.
3	204426	12-011 (PLM)	Association of Local Athletics Entrepreneurs	- Failure to show that its members belong to the marginalized; and

[8] *Rollo* (G.R. No. 204379), pp. 26-35. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph dissenting.

[9] *Rollo* (G.R. No. 204455), pp. 38-55; *rollo* (G.R. No. 204426), pp. 127-144. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph dissenting; Commissioner Armando C. Velasco also concurred except for Ala-Eh.

			and Hobbyists, Inc. (ALA-EH)	- Failure of the nominees to qualify.
Resolution dated 27 November 2012[10]				
4	204435	12-057 (PLM)	1 Alliance Advocating Autonomy Party(1AAAP)	- Failure of the nominees to qualify: although registering as a regional political party, two of the nominees are not residents of the region; and four of the five nominees do not belong to the marginalized and underrepresented.
Resolution dated 27 November 2012[11]				
5	204367	12-104 (PL)	Akbay Kalusugan (AKIN), Inc.	- Failure of the group to show that its nominees belong to the urban poor sector.
Resolution dated 29 November 2012[12]				
6	204370	12-011 (PP)	Ako An Bisaya (AAB)	- Failure to represent a marginalized sector of society, despite the formation of a sectoral wing for the benefit of farmers of Region 8;

[10] *Rollo* (G.R. No. 204435), pp. 47-55. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph dissenting.

[11] *Rollo* (G.R. No. 204367), pp. 30-35. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph dissenting.

[12] *Rollo* (G.R. No. 204370), pp. 37-50. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph dissenting.

				- Constituency has district representatives; - Lack of track record in representing peasants and farmers; and - Nominees are neither farmers nor peasants.
Resolution dated 4 December 2012[13]				
7	204436	12-009 (PP), 12-165 (PLM)	Abyan Ilonggo Party (AI)	- Failure to show that the party represents a marginalized and underrepresented sector, as the Province of Iloilo has district representatives; - Untruthful statements in the memorandum; and - Withdrawal of three of its five nominees.
Resolution dated 4 December 2012[14]				
8	204485	12-175 (PL)	Alliance of Organizations, Networks and Associations of the Philippines, Inc. (ALONA)	- Failure to establish that the group can represent 14 sectors; - The sectors of home-owners' associations, entrepreneurs and cooperatives are not marginalized and underrepresented; and

[13] *Rollo* (G.R. No. 204436), pp. 45-57. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph dissenting.

[14] *Rollo* (G.R. No. 204485), pp. 42-49. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, and Christian Robert S. Lim with Commissioners Lucenito N. Tagle and Elias R. Yusoph dissenting. Commissioner Maria Gracia Cielo M. Padaca took no part.

				- The nominees do not belong to the marginalized and underrepresented.
B. Via the COMELEC *En Banc's* review on motion for reconsideration of the COMELEC Division's resolutions denying registration of groups and organizations **Resolution dated 7 November 2012**[15]				
9	204139	12-127 (PL)	Alab ng Mamamahayag (ALAM)	- Failure to prove track record as an organization; - Failure to show that the group actually represents the marginalized and underrepresented; and - Failure to establish that the group can represent all sectors it seeks to represent.
Resolution dated 7 November 2012[16]				
10	204402	12-061 (PP)	Kalikasan Party-List (KALIKASAN)	- The group reflects an advocacy for the environment, and is not representative of the marginalized and underrepresented; - There is no proof that majority of its members belong to the marginalized and underrepresented; - The group represents sectors with conflicting interests; and

[15] *Rollo* (G.R. No. 204139), pp. 505-512. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, and Armando C. Velasco. Commissioners Elias R. Yusoph and Christian Robert S. Lim also voted in favor. Commissioner Maria Gracia Cielo M. Padaca took no part.

[16] *Rollo* (G.R. No. 204402), pp. 22-33. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim. Commissioners Armando C. Velasco and Maria Gracia Cielo M. Padaca on official business.

				- The nominees do not belong to the sector which the group claims to represent.
Resolution dated 14 November 2012[17]				
11	204394	12-145 (PL)	Association of Guard, Utility Helper, Aider, Rider, Driver/ Domestic Helper, Janitor, Agent and Nanny of the Philippines, Inc. (GUARDJAN)	- Failure to prove membership base and track record; - Failure to present activities that sufficiently benefited its intended constituency; and - The nominees do not belong to any of the sectors which the group seeks to represent.
Resolution dated 5 December 2012[18]				
12	204490	12-073 (PLM)	Pilipinas Para sa Pinoy (PPP)	- Failure to show that the group represents a marginalized and underrepresented sector, as Region 12 has district representatives; and - Failure to show a track record of undertaking programs for the welfare of the sector the group seeks to represent.

[17] *Rollo* (G.R. No. 204394), pp. 59-62. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Maria Gracia Cielo M. Padaca took no part.

[18] *Rollo*, (G.R. No. 204490), pp. 71-78. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Commissioners Lucenito N. Tagle and Rene V. Sarmiento concurred but took no part in Ang Ating Damayan. Commissioner Maria Gracia Cielo M. Padaca took no part.

In a Resolution dated 5 December 2012,[19] the COMELEC *En Banc* affirmed the COMELEC Second Division's resolution to grant Partido ng Bayan ng Bida's (PBB) registration and accreditation as a political party in the National Capital Region. However, PBB was denied participation in the 13 May 2013 party-list elections because PBB does not represent any "marginalized and underrepresented" sector; PBB failed to apply for registration as a party-list group; and PBB failed to establish its track record as an organization that seeks to uplift the lives of the "marginalized and underrepresented."[20]

These 13 petitioners (ASIN, Manila Teachers, ALA-EH, 1AAAP, AKIN, AAB, AI, ALONA, ALAM, KALIKASAN, GUARDJAN, PPP, and PBB) were not able to secure a mandatory injunction from this Court. The COMELEC, on 7 January 2013 issued Resolution No. 9604,[21] and excluded the names of these 13 petitioners in the printing of the official ballot for the 13 May 2013 party-list elections.

Pursuant to paragraph 2[22] of Resolution No. 9513, the COMELEC *En Banc* scheduled summary evidentiary hearings

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[19] *Rollo*, (G.R. No. 204484), pp. 42-45. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca.

[20] PBB's petition is docketed as G.R. No. 204484 before this Court, and as SPP No. 11-002 before the COMELEC.

[21] In the Matter of Clarifying the Inclusion in the Party-List Raffle of New Groups Denied Accreditation but were Able to Obtain a Status *Quo Ante* Order from the Supreme Court.

[22] (2) To set for **summary evidentiary hearings** by the Commission *En Banc*, for purposes of determining their continuing compliance with the requirements of R.A. No. 7941 and the guidelines in the *Ang Bagong Bayani case, and, if non-compliant, cancel the registration of the following:*

(a) Party-list groups or organizations which are already registered and accredited and will participate in the May 13, 2013 Elections, provided that the Commission *En Banc* has not passed upon the grant of their respective *Petitions for Registration*; and

(b) Party-list groups or organizations which are existing and retained in the list of Registered Party-List Parties per Resolution No. 9412,

to determine whether the groups and organizations that filed manifestations of intent to participate in the 13 May 2013 party-list elections have continually complied with the requirements of R.A. No. 7941 and *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[23] (*Ang Bagong Bayani*). The COMELEC disqualified the following groups and organizations from participating in the 13 May 2013 party-list elections:

	G.R. No.	SPP No.	Group	Grounds for Denial
Resolution dated 10 October 2012[24]				
1	203818-19	12-154 (PLM) 12-177 (PLM)	AKO Bicol Political Party(AKB)	Retained registration and accreditation as a political party, but denied participation in the May 2013 party-list elections - Failure to represent any marginalized and underrepresented sector; - The Bicol region already has representatives in Congress; and - The nominees are not marginalized and underrepresented.
OmnibusC Resolution dated 11 October 2012[25]				

promulgated on 27 April 2012, and which have filed their respective *Manifestations of Intent to Participate in the Party-List System of Representation in the May 13, 2013 Elections*. (Boldface and italics in the original)

[23] 412 Phil. 308 (2001).

[24] *Rollo* (G.R. Nos. 203818-19), pp. 83-87. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Maria Gracia Cielo M. Padaca took no part.

[25] *Rollo* (G.R. No. 203766), pp. 75-99; *rollo* (G.R. No. 203981), pp. 47-70; *rollo* (G.R. No. 204002), pp. 53-76; (G.R. No. 204318), pp. 23-46. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle,

2	203766	12-161 (PLM)	Atong Paglaum, Inc. (Atong Paglaum)	Cancelled registration and accreditation - The nominees do not belong to the sectors which the party represents; and - The party failed to file its Statement of Contributions and Expenditures for the 2010 Elections.
3	203981	12-187 (PLM)	Association for Righteousness Advocacy on Leadership (ARAL)	Cancelled registration and accreditation - Failure to comply, and for violation of election laws; - The nominees do not represent the sectors which the party represents; and - There is doubt that the party is organized for religious purposes.
4	204002	12-188 (PLM)	Alliance for Rural Concerns (ARC)	Cancelled registration and accreditation - Failure of the nominees to qualify; and - Failure of the party to prove that majority of its members belong to the sectors it seeks to represent.
5	204318	12-220 (PLM)	United Movement Against Drugs Foundation (UNIMAD)	Cancelled registration and accreditation - The sectors of drug counsellors and lecturers, veterans and the youth,

Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Rene V. Sarmiento also voted in favor. Commissioner Maria Gracia Cielo M. Padaca took no part.

				are not marginalized and underrepresented; - Failure to establish track record; and - Failure of the nominees to qualify as representatives of the youth and young urban professionals.
Omnibus Resolution dated 16 October 2012[26]				
6	204100	12-196 (PLM)	1-Bro Philippine Guardians Brotherhood, Inc. (1BRO-PGBI)	Cancelled registration - Failure to define the sector it seeks to represent; and - The nominees do not belong to a marginalized and underrepresented sector.
7	204122	12-223 (PLM)	1 Guardians Nationalist Philippines, Inc. (1GANAP/ GUARDIANS)	Cancelled registration - The party is a military fraternity; - The sector of community volunteer workers is too broad to allow for meaningful representation; and - The nominees do not appear to belong to the sector of community volunteer workers.
8	204263	12-257 (PLM)	Blessed Federation of Farmers and Fishermen	Cancelled registration - Three of the seven nominees do not belong to the sector of farmers

[26] *Rollo*, (G.R. No. 204100), pp. 52-67; *rollo* (G.R. No. 204122), pp. 36-51; *rollo* (G.R. No. 204263), pp. 28-43. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco. Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Maria Gracia Cielo M. Padaca took no part.

			International, Inc. (A BLESSED Party-List)	and fishermen, the sector sought to be represented; and - None of the nominees are registered voters of Region XI, the region sought to be represented.
Resolution dated 16 October 2012[27]				
9	203960	12-260 (PLM)	1st Consumers Alliance for Rural Energy, Inc. (1-CARE)	Cancelled registration - The sector of rural energy consumers is not marginalized and underrepresented; - The party's track record is related to electric cooperatives and not rural energy consumers; and - The nominees do not belong to the sector of rural energy consumers.
Resolution dated 16 October 2012[28]				
10	203922	12-201 (PLM)	Association of Philippine Electric Cooperatives (APEC)	Cancelled registration and accreditation - Failure to represent a marginalized and underrepresented sector; and

[27] *Rollo* (G.R. No. 203960), pp. 61-68. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Armando C. Velasco, and Elias R. Yusoph. Commissioner Christian Robert S. Lim also concurred but did not sign. Commissioners Rene V. Sarmiento and Maria Gracia Cielo M. Padaca took no part.

[28] *Rollo* (G.R. No. 203922), pp. 92-101. Signed by Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Chairman Sixto S. Brillantes, Jr. penned a Separate Concurring Opinion. Commissioner Maria Gracia Cielo M. Padaca took no part.

				- The nominees do not belong to the sector that the party claims to represent.
Resolution dated 23 October 2012[29]				
11	204174	12-232 (PLM)	Aangat Tayo Party-List Party (AT)	Cancelled registration and accreditation - The incumbent representative in Congress failed to author or sponsor bills that are beneficial to the sectors that the party represents (women, elderly, youth, urban poor); and - The nominees do not belong to the marginalized sectors that the party seeks to represent.
Omnibus Resolution dated 24 October 2012[30]				
12	203976	12-288 (PLM)	Alliance for Rural and Agrarian Reconstruction, Inc. (ARARO)	Cancelled registration and accreditation - The interests of the peasant and urban poor sectors that the party represents differ; - The nominees do not belong to the sectors that the party seeks to represent;

[29] *Rollo* (G.R. No. 204174), pp. 158-164. Signed by Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, and Elias R. Yusoph. Commissioner Christian Robert S. Lim also concurred but did not sign. Chairman Sixto S. Brillantes, Jr. penned an extended opinion. Commissioner Maria Gracia Cielo M. Padaca took no part.

[30] *Rollo* (G.R. No. 203976), pp. 21-37. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Christian Robert S. Lim. Commissioner Elias R. Yusoph also voted in favor. Commissioner Maria Gracia Cielo M. Padaca took no part.

				- Failure to show that three of the nominees are *bona fide* party members; and - Lack of a Board resolution to participate in the party-list elections.
Omnibus Resolution dated 24 October 2012[31]				
13	204240	12-279 (PLM)	Agri-Agra na Reporma Para sa Magsasaka ng Pilipinas Movement (AGRI)	Cancelled registration - The party ceased to exist for more than a year immediately after the May 2010 elections; - The nominees do not belong to the sector of peasants and farmers that the party seeks to represent; - Only four nominees were submitted to the COMELEC; and - Failure to show meaningful activities for its constituency.
14	203936	12-248 (PLM)	Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTM)	Cancelled registration - Failure to show that majority of its members are marginalized and underrepresented;

[31] *Rollo* (G.R. No. 204240), pp. 47-69; *rollo* (G.R. No. 203936), pp. 128-150; *rollo* (G.R. No. 204126), pp. 51-73; *rollo* (G.R. No. 204364), pp. 34-56; *rollo* (G.R. No. 204141), pp. 31-53; *rollo* (G.R. No. 204408), pp. 46-68; *rollo* (G.R. No. 204153), pp. 24-46; *rollo* (G.R. No. 203958), pp. 26-48. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle. Armando C. Velasco. Commissioner Elias R. Yusoph also voted in favor. Commissioner Christian Robert S. Lim also concurred but inhibited in KAKUSA. Commissioner Maria Gracia Cielo M. Padaca took no part.

				- Failure to prove that four of its nine nominees actually belong to the farmers sector; and - Failure to show that five of its nine nominees work on uplifting the lives of the members of the sector.
15	204126	12-263 (PLM)	Kaagapay ng Nagkakaisang Agilang Pilipinong Magsasaka (KAP)	Cancelled registration - The Manifestation of Intent and Certificate of Nomination were not signed by an appropriate officer of the party; - Failure to show track record for the farmers and peasants sector; and - Failure to show that nominees actually belong to the sector, or that they have undertaken meaningful activities for the sector.
16	204364	12-180 (PLM)	Adhikain at Kilusan ng Ordinaryong Tao Para sa Lupa,Pabahay, Hanapbuhay at Kaunlaran (AKO-BAHAY)	Cancelled registration - Failure to show that nominees actually belong to the sector, or that they have undertaken meaningful activities for the sector.
17	204141	12-229 (PLM)	The True Marcos Loyalist (for God, Country and People) Association of the Philippines, Inc. (BANTAY)	Cancelled registration - Failure to show that majority of its members are marginalized and underrepresented; and - Failure to prove that two of its nominees actually belong to the marginalized and underrepresented.

18	204408	12-217 (PLM)	Pilipino Association for Country-Urban Poor Youth Advancement and Welfare (PACYAW)	Cancelled registration - Change of sector (from urban poor youth to urban poor) necessitates a new application; - Failure to show track record for the marginalized and underrepresented; - Failure to prove that majority of its members and officers are from the urban poor sector; and - The nominees are not members of the urban poor sector.
19	204153	12-277 (PLM)	Pasang Masda Nationwide Party (PASANG MASDA)	Cancelled registration - The party represents drivers and operators, who may have conflicting interests; and - Nominees are either operators or former operators.
20	203958	12-015 (PLM)	Kapatiran ng mga Nakulong na Walang Sala, Inc. (KAKUSA)	Cancelled registration - Failure to prove that majority of its officers and members belong to the marginalized and underrepresented; - The incumbent representative in Congress failed to author or sponsor bills that are beneficial to the sector that the party represents (persons imprisoned without proof of guilt beyond reasonable doubt);

				- Failure to show track record for the marginalized and underrepresented; and - The nominees did not appear to be marginalized and underrepresented.
Resolution dated 30 October 2012[32]				
21	204428	12-256 (PLM)	Ang Galing Pinoy (AG)	Cancelled registration and accreditation - Failure to attend the summary hearing; - Failure to show track record for the marginalized and underrepresented; and - The nominees did not appear to be marginalized and underrepresented.
Resolution dated 7 November 2012[33]				
22	204094	12-185 (PLM)	Alliance for Nationalism and Democracy (ANAD)	Cancelled registration and accreditation - Failure to represent an identifiable marginalized and underrepresented sector; - Only three nominees were submitted to the COMELEC;

[32] *Rollo* (G.R. No. 204428), pp. 35-40. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, and Armando C. Velasco. Commissioner Christian Robert S. Lim also concurred but did not sign. Commissioner Elias R. Yusoph also voted in favor but was on official business at the time of signing. Commissioner Maria Gracia Cielo M. Padaca took no part.

[33] *Rollo* (G.R. No. 204094), pp. 30-40. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim. Commissioners Armando C. Velasco and Maria Gracia Cielo M. Padaca were on official business.

				- The nominees do not belong to the marginalized and underrepresented; and - Failure to submit its Statement of Contribution and Expenditures for the 2007 Elections.
Omnibus Resolution dated 7 November 2012[34]				
23	204239	12-060 (PLM)	Green Force for the Environment Sons and Daughters of Mother Earth (GREENFORCE)	Cancelled registration and accreditation - The party is an advocacy group and does not represent the marginalized and underrepresented; - Failure to comply with the track record requirement; and - The nominees are not marginalized citizens.
24	204236	12-254 (PLM)	Firm 24-K Association, Inc. (FIRM 24-K)	Cancelled registration and accreditation - The nominees do not belong to the sector that the party seeks to represent (urban poor and peasants of the National Capital Region); - Only two of its nominees reside in the National Capital Region; and - Failure to comply with the track record requirement.
25	204341	12-269 (PLM)	Action League of Indigenous Masses (ALIM)	Cancelled registration and accreditation - Failure to establish that its nominees are members

[34] *Rollo*, (G.R. No. 204239), pp. 25-42; *rollo* (G.R. No. 204236), pp. 57-74; *rollo* (G.R. No. 204341), pp. 29-46. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Armando C. Velasco was on official business. Commissioner Maria Gracia Cielo M. Padaca took no part.

				of the indigenous people in the Mindanao and Cordilleras sector that the party seeks to represent; - Only two of the party's nominees reside in the Mindanao and Cordilleras; and - Three of the nominees do not appear to belong to the marginalized.
Resolution dated 7 November 2012[35]				
26	204358	12-204 (PLM)	Alliance of Advocates in Mining Advancement for National Progress (AAMA)	Cancelled registration - The sector it represents is a specifically defined group which may not be allowed registration under the party-list system; and - Failure to establish that the nominees actually belong to the sector.
Resolution dated 7 November 2012[36]				
27	204359	12-272 (PLM)	Social Movement for Active Reform and Transparency (SMART)	Cancelled registration - The nominees are disqualified from representing the sectors that the party represents; - Failure to comply with the track record requirement; and

[35] *Rollo* (G.R. No. 204358), pp. 140-148. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca. Commissioner Armando C. Velasco was on official business.

[36] *Rollo* (G.R. No. 204359), pp. 42-50. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, and Elias R. Yusoph. Commissioner Christian Robert S. Lim also concurred but was on official business at the time of signing. Commissioner Maria Gracia Cielo M. Padaca took no part.

				- There is doubt as to whether majority of its members are marginalized and underrepresented.
Resolution dated 7 November 2012[37]				
28	204238	12-173 (PLM)	Alliance of Bicolnon Party (ABP)	Cancelled registration and accreditation - Defective registration and accreditation dating back to 2010; - Failure to represent any sector; and - Failure to establish that the nominees are employed in the construction industry, the sector it claims to represent.
Resolution dated 7 November 2012[38]				
29	204323	12-210 (PLM)	Bayani Party List (BAYANI)	Cancelled registration and accreditation - Failure to prove a track record of trying to uplift the marginalized and underrepresented sector of professionals; and - One nominee was declared unqualified to represent the sector of professionals.

[37] *Rollo* (G.R. No. 204238), pp. 54-58. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim. Commissioners Armando C. Velasco and Maria Gracia Cielo M. Padaca were on official business.

[38] *Rollo* (G.R. No. 204323), pp. 44-48. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca. Commissioner Armando C. Velasco was on official business.

Resolution dated 7 November 2012[39]				
30	204321	12-252 (PLM)	Ang Agrikultura Natin Isulong (AANI)	Cancelled registration and accreditation - Failure to establish a track record of enhancing the lives of the marginalized and underrepresented farmers which it claims to represent; and - More than a majority of the party's nominees do not belong to the farmers sector.
Resolution dated 7 November 2012[40]				
31	204125	12-292 (PLM)	Agapay ng Indigenous Peoples Rights Alliance, Inc. (A-IPRA)	Cancelled registration and accreditation - Failure to prove that its five nominees are members of the indigenous people sector; - Failure to prove that its five nominees actively participated in the undertakings of the party; and - Failure to prove that its five nominees are *bona fide* members.

[39] *Rollo* (G.R. No. 204321), pp. 43-51. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca. Commissioner Armando C. Velasco was on official business.

[40] *Rollo* (G.R. No. 204125), pp. 44-48. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Armando C. Velasco was on official business. Commissioner Maria Gracia Cielo M. Padaca took no part.

Resolution dated 7 November 2012[41]				
32	204216	12-202 (PLM)	Philippine Coconut Producers Federation, Inc. (COCOFED)	Cancelled registration and accreditation - The party is affiliated with private and government agencies and is not marginalized; - The party is assisted by the government in various projects; and - The nominees are not members of the marginalized sector of coconut farmers and producers.
Resolution dated 7 November 2012[42]				
33	204220	12-238 (PLM)	Abang Lingkod Party-List (ABANG LINGKOD)	Cancelled registration - Failure to establish a track record of continuously representing the peasant farmers sector; - Failure to show that its members actually belong to the peasant farmers sector; and - Failure to show that its nominees are marginalized and underrepresented, have actively participated in programs for the advancement of farmers, and adhere to its advocacies.

[41] *Rollo* (G.R. No. 204216), pp. 23-28. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, and Maria Gracia Cielo M. Padaca. Commissioner Christian Robert S. Lim penned a separate Concurring Opinion. Commissioner Armando C. Velasco was on official business.

[42] *Rollo* (G.R. No. 204220), pp. 39-44. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim. Commissioners Armando C. Velasco and Maria Gracia Cielo M. Padaca were on official business.

Resolution dated 14 November 2012[43]				
34	204158	12-158 (PLM)	Action Brotherhood for Active Dreamers, Inc. (ABROAD)	Cancelled registration and accreditation - Failure to show that the party is actually able to represent all of the sectors it claims to represent; - Failure to show a complete track record of its activities since its registration; and - The nominees are not part of any of the sectors which the party seeks to represent.
Resolution dated 28 November 2012[44]				
35	204374	12-228 (PLM)	Binhi-Partido ng mga Magsasaka Para sa mga Magsasaka (BINHI)	Cancelled registration and accreditation - The party receives assistance from the government through the Department of Agriculture; and - Failure to prove that the group is marginalized and underrepresented.
Resolution dated 28 November 2012[45]				
36	204356	12-136 (PLM)	Butil Farmers Party (BUTIL)	Cancelled registration and accreditation

[43] *Rollo* (G.R. No. 204158), pp. 59-64. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Maria Gracia Cielo M. Padaca took no part.

[44] *Rollo* (G.R. No. 204374), pp. 36-41. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Maria Gracia Cielo M. Padaca took no part.

[45] *Rollo* (G.R. No. 204356), pp. 56-64. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle,

				- Failure to establish that the agriculture and cooperative sectors are marginalized and underrepresented; and - The party's nominees neither appear to belong to the sectors they seek to represent, nor to have actively participated in the undertakings of the party.
Resolution dated 3 December 2012[46]				
37	204486	12-194 (PLM)	1st Kabalikat ng Bayan Ginhawang Sangkatauhan (1st KABAGIS)	Cancelled registration and accreditation - Declaration of untruthful statements; - Failure to exist for at least one year; and - None of its nominees belong to the labor, fisherfolk, and urban poor indigenous cultural communities sectors which it seeks to represent.
Resolution dated 4 December 2012[47]				
38	204410	12-198 (PLM)	United Transport Koalisyon (1-UTAK)	Cancelled accreditation - The party represents drivers and operators, who

Armando C. Velasco, Elias R. Yusoph, and Christian Robert S. Lim. Commissioner Maria Gracia Cielo M. Padaca took no part.

[46] *Rollo* (G.R. No. 204486), pp. 42-47. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim. Commissioners Lucenito N. Tagle and Maria Gracia Cielo M. Padaca took no part.

[47] *Rollo* (G.R. No. 204410), pp. 63-67. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco,

				may have conflicting interests; and - The party's nominees do not belong to any marginalized and underrepresented sector.
Resolution dated 4 December 2012[48]				
39	204421, 204425	12-157 (PLM), 12-191 (PLM)	Coalition of Senior Citizens in the Philippines, Inc. (SENIOR CITIZENS)	Cancelled registration - The party violated election laws because its nominees had a term-sharing agreement.

These 39 petitioners (AKB, Atong Paglaum, ARAL, ARC, UNIMAD, 1BRO-PGBI, 1GANAP/GUARDIANS, A BLESSED Party-List, 1-CARE, APEC, AT, ARARO, AGRI, AKMA-PTM, KAP, AKO-BAHAY, BANTAY, PACYAW, PASANG MASDA, KAKUSA, AG, ANAD, GREENFORCE, FIRM 24-K, ALIM, AAMA, SMART, ABP, BAYANI, AANI, A-IPRA, COCOFED, ABANG LINGKOD, ABROAD, BINHI, BUTIL, 1st KABAGIS, 1-UTAK, SENIOR CITIZENS) were able to secure a mandatory injunction from this Court, directing the COMELEC to include the names of these 39 petitioners in the printing of the official ballot for the 13 May 2013 party-list elections.

Petitioners prayed for the issuance of a temporary restraining order and/or writ of preliminary injunction. This Court issued Status Quo Ante Orders in all petitions. **This Decision governs**

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and Christian Robert S. Lim. Commissioner Lucenito N. Tagle penned a Dissenting Opinion and joined by Commissioner Elias R. Yusoph. Maria Gracia Cielo M. Padaca took no part.

[48] *Rollo* (G.R. No. 204421), pp. 43-50; *rollo* (G.R. No. 204425), pp. 21-28. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Christian Robert S. Lim, and Maria Gracia Cielo M. Padaca with Commissioners Lucenito N. Tagle, Armando C. Velasco, and Elias R. Yusoph, dissenting.

only the 54 consolidated petitions that were granted Status Quo Ante Orders, namely:

G.R. No.	SPP No.	Group
Resolution dated 13 November 2012		
203818-19	12-154 (PLM) 12-177 (PLM)	AKO Bicol Political Party (AKB)
203981	12-187 (PLM)	Association for Righteousness Advocacy on Leadership (ARAL)
204002	12-188 (PLM)	Alliance for Rural Concerns (ARC)
203922	12-201 (PLM)	Association of Philippine Electric Cooperatives (APEC)
203960	12-260 (PLM)	1st Consumers Alliance for Rural Energy, Inc. (1-CARE)
203936	12-248 (PLM)	Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTM)
203958	12-015 (PLM)	Kapatiran ng mga Nakulong na Walang Sala, Inc. (KAKUSA)
203976	12-288 (PLM)	Alliance for Rural and Agrarian Reconstruction, Inc. (ARARO)
Resolution dated 20 November 2012		
204094	12-185 (PLM)	Alliance for Nationalism and Democracy (ANAD)
204125	12-292 (PLM)	Agapay ng Indigenous Peoples Rights Alliance, Inc. (A-IPRA)
204100	12-196 (PLM)	1-Bro Philippine Guardians Brotherhood, Inc. (1BRO-PGBI)
Resolution dated 27 November 2012		
204141	12-229 (PLM)	The True Marcos Loyalist (for God, Country and People) Association of the Philippines, Inc. (BANTAY)

204240	12-279 (PLM)	Agri-Agra na Reporma Para sa Magsasaka ng Pilipinas Movement (AGRI)
204216	12-202 (PLM)	Philippine Coconut Producers Federation, Inc. (COCOFED)
204158	12-158 (PLM)	Action Brotherhood for Active Dreamer, Inc. (ABROAD)
Resolutions dated 4 December 2012		
204122	12-223 (PLM)	1 Guardians Nationalist Philippines, Inc. (1GANAP/ GUARDIANS)
203766	12-161 (PLM)	Atong Paglaum, Inc. (Atong Paglaum)
204318	12-220 (PLM)	United Movement Against Drugs Foundation (UNIMAD)
204263	12-257 (PLM)	Blessed Federation of Farmers and Fishermen International, Inc. (A BLESSED Party-List)
204174	12-232 (PLM)	Aangat Tayo Party-List Party (AT)
204126	12-263 (PLM)	Kaagapay ng Nagkakaisang Agilang Pilipinong Magsasaka (KAP)
204364	12-180 (PLM)	Adhikain at Kilusan ng Ordinaryong Tao Para sa Lupa, Pabahay, Hanapbuhay at Kaunlaran (AKO-BAHAY)
204139	12-127 (PL)	Alab ng Mamamahayag (ALAM)
204220	12-238 (PLM)	Abang Lingkod Party-List (ABANG LINGKOD)
204236	12-254 (PLM)	Firm 24-K Association, Inc. (FIRM 24-K)
204238	12-173 (PLM)	Alliance of Bicolnon Party (ABP)

204239	12-060 (PLM)	Green Force for the Environment Sons and Daughters of Mother Earth (GREENFORCE)
204321	12-252 (PLM)	Ang Agrikultura Natin Isulong (AANI)
204323	12-210 (PLM)	Bayani Party List (BAYANI)
204341	12-269 (PLM)	Action League of Indigenous Masses (ALIM)
204358	12-204 (PLM)	Alliance of Advocates in Mining Advancement for National Progress (AAMA)
204359	12-272 (PLM)	Social Movement for Active Reform and Transparency (SMART)
204356	12-136 (PLM)	Butil Farmers Party (BUTIL)
Resolution dated 11 December 2012		
204402	12-061 (PL)	Kalikasan Party-List (KALIKASAN)
204394	12-145 (PL)	Association of Guard, Utility Helper, Aider, Rider, Driver/Domestic Helper, Janitor, Agent and Nanny of the Philippines, Inc. (GUARDJAN)
204408	12-217 (PLM)	Pilipino Association for Country – Urban Poor Youth Advancement and Welfare (PACYAW)
204428	12-256 (PLM)	Ang Galing Pinoy (AG)
204490	12-073 (PLM)	Pilipinas Para sa Pinoy (PPP)
204379	12-099 (PLM)	Alagad ng Sining (ASIN)
204367	12-104 (PL)	Akbay Kalusugan (AKIN)
204426	12-011 (PLM)	Association of Local Athletics Entrepreneurs and Hobbyists, Inc. (ALA-EH)

204455	12-041 (PLM)	Manila Teachers Savings and Loan Association, Inc. (Manila Teachers)
204374	12-228 (PLM)	Binhi-Partido ng mga Magsasaka Para sa mga Magsasaka (BINHI)
204370	12-011 (PP)	Ako An Bisaya (AAB)
204435	12-057 (PLM)	1 Alliance Advocating Autonomy Party (1AAAP)
204486	12-194 (PLM)	1st Kabalikat ng Bayan Ginhawang Sangkatauhan (1st KABAGIS)
204410	12-198 (PLM)	1-United Transport Koalisyon (1-UTAK)
204421, 204425	12-157 (PLM) 12-191 PLM)	Coalition of Senior Citizens in the Philippines, Inc. (SENIOR CITIZENS)
204436	12-009 (PP), 12-165 (PLM)	Abyan Ilonggo Party (AI)
204485	12-175 (PL)	Alliance of Organizations, Networks and Associations of the Philippines, Inc. (ALONA)
204484	11-002	Partido ng Bayan ng Bida (PBB)
Resolution dated 11 December 2012		
204153	12-277 (PLM)	Pasang Masda Nationwide Party (PASANG MASDA)

The Issues

We rule upon two issues: *first*, whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in disqualifying petitioners from participating in the 13 May 2013 party-list elections, either by denial of their new petitions for registration under the party-list system, or by cancellation of their existing registration and accreditation as party-list organizations; and *second*, whether the criteria for

participating in the party-list system laid down in *Ang Bagong Bayani* and *Barangay Association for National Advancement and Transparency v. Commission on Elections*[49] (*BANAT*) should be applied by the COMELEC in the coming 13 May 2013 party-list elections.

The Court's Ruling

We hold that the COMELEC did not commit grave abuse of discretion in following prevailing decisions of this Court in disqualifying petitioners from participating in the coming 13 May 2013 party-list elections. However, since the Court adopts in this Decision new parameters in the qualification of national, regional, and sectoral parties under the party-list system, thereby abandoning the rulings in the decisions applied by the COMELEC in disqualifying petitioners, we remand to the COMELEC all the present petitions for the COMELEC to determine who are qualified to register under the party-list system, and to participate in the coming 13 May 2013 party-list elections, under the new parameters prescribed in this Decision.

The Party-List System

The 1987 Constitution provides the basis for the party-list system of representation. Simply put, the party-list system is intended to democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the House of Representatives.[50] The voter elects two representatives in the House of Representatives: one for his or her legislative district, and another for his or her party-list group or organization of choice. The 1987 Constitution provides:

Section 5, Article VI

(1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance

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[49] G.R. Nos. 179271 and 179295, 21 April 2009, 586 SCRA 210.

[50] II Record, CONSTITUTIONAL COMMISSION 566-567 (1 August 1986).

with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

Sections 7 and 8, Article IX-C

Sec. 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

Sec. 8. Political parties, or organizations or coalitions registered under the party-list system, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.

Commissioner Christian S. Monsod, the main sponsor of the party-list system, stressed that "**the party-list system is not synonymous with that of the sectoral representation**."[51] The constitutional provisions on the party-list system should be read in light of the following discussion among its framers:

MR. MONSOD: x x x.

I would like to make a distinction from the beginning that **the proposal for the party list system is not synonymous with that of the sectoral representation**. Precisely, the party list system seeks to avoid the dilemma of choice of sectors and who constitute the members of the sectors. In making the proposal on the party list system, we were made aware of the problems precisely cited by Commissioner Bacani of which sectors will have reserved seats. In

[51] II Record, CONSTITUTIONAL COMMISSION 85-86 (22 July 1986).

effect, a sectoral representation in the Assembly would mean that certain sectors would have reserved seats; that they will choose among themselves who would sit in those reserved seats. And then, we have the problem of which sector because as we will notice in Proclamation No. 9, the sectors cited were the farmers, fishermen, workers, students, professionals, business, military, academic, ethnic and other similar groups. So these are the nine sectors that were identified here as "sectoral representatives" to be represented in this Commission. The problem we had in trying to approach sectoral representation in the Assembly was whether to stop at these nine sectors or include other sectors. And we went through the exercise in a caucus of which sector should be included which went up to 14 sectors. And as we all know, the longer we make our enumeration, the more limiting the law become because when we make an enumeration we exclude those who are not in the enumeration. Second, we had the problem of who comprise the farmers. Let us just say the farmers and the laborers. These days, there are many citizens who are called "hyphenated citizens." A doctor may be a farmer; a lawyer may also be a farmer. And so, it is up to the discretion of the person to say "I am a farmer" so he would be included in that sector.

The third problem is that when we go into a reserved seat system of sectoral representation in the Assembly, we are, in effect, giving some people two votes and other people one vote. We sought to avoid these problems by presenting a party list system. Under the party list system, there are no reserved seats for sectors. Let us say, laborers and farmers can form a sectoral party or a sectoral organization that will then register and present candidates of their party. How do the mechanics go? Essentially, under the party list system, every voter has two votes, so there is no discrimination. First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. This can be a regional party, a sectoral party, a national party, UNIDO, Magsasaka or a regional party in Mindanao. One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party. At the end of the day, the COMELEC will then tabulate the votes that had been garnered by each party or each organization

— one does not have to be a political party and register in order to participate as a party — and count the votes and from there derive the percentage of the votes that had been cast in favor of a party, organization or coalition.

When such parties register with the COMELEC, we are assuming that 50 of the 250 seats will be for the party list system. So, we have a limit of 30 percent of 50. That means that the maximum that any party can get out of these 50 seats is 15. When the parties register they then submit a list of 15 names. They have to submit these names because these nominees have to meet the minimum qualifications of a Member of the National Assembly. At the end of the day, when the votes are tabulated, one gets the percentages. Let us say, UNIDO gets 10 percent or 15 percent of the votes; KMU gets 5 percent; a women's party gets 2 ½ percent and anybody who has at least 2 ½ percent of the vote qualifies and the 50 seats are apportioned among all of these parties who get at least 2 ½ percent of the vote.

What does that mean? It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. It also means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly. Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly. These sectors or these groups may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.

The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we

count their votes nationwide; have about 1,000,000 or 1,500,000 votes. But they were always third place or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party list system.

BISHOP BACANI: Madam President, am I right in interpreting that when we speak now of party list system though we refer to sectors, we would be referring to sectoral party list rather than sectors and party list?

MR. MONSOD: As a matter of fact, if this body accepts the party list system, we do not even have to mention sectors because the sectors would be included in the party list system. **They can be sectoral parties within the party list system.**

x x x x x x x x x

MR. MONSOD. Madam President, I just want to say that we suggested or proposed the party list system because we wanted to open up the political system to a pluralistic society through a multiparty system. x x x **We are for opening up the system, and we would like very much for the sectors to be there. That is why one of the ways to do that is to put a ceiling on the number of representatives from any single party that can sit within the 50 allocated under the party list system**. x x x.

x x x x x x x x x

MR. MONSOD**. Madam President, the candidacy for the 198 seats is not limited to political parties. My question is this: Are we going to classify for example Christian Democrats and Social Democrats as political parties? Can they run under the party list concept or must they be under the district legislation side of it only?**

MR. VILLACORTA. **In reply to that query, I think these parties that the Commissioner mentioned can field candidates for the Senate as well as for the House of Representatives. Likewise, they can also field sectoral candidates for the 20 percent or 30 percent, whichever is adopted, of the seats that we are allocating under the party list system**.

MR. MONSOD. **In other words, the Christian Democrats can field district candidates and can also participate in the party list system?**

MR. VILLACORTA. **Why not? When they come to the party list system, they will be fielding only sectoral candidates.**

MR. MONSOD. **May I be clarified on that? Can UNIDO participate in the party list system?**

MR. VILLACORTA. **Yes, why not? For as long as they field candidates who come from the different marginalized sectors that we shall designate in this Constitution.**

MR. MONSOD. Suppose Senator Tañada wants to run under BAYAN group and says that he represents the farmers, would he qualify?

MR. VILLACORTA. No, Senator Tañada would not qualify.

MR. MONSOD. But UNIDO can field candidates under the party list system and say Juan dela Cruz is a farmer. Who would pass on whether he is a farmer or not?

MR. TADEO. *Kay Commissioner Monsod, gusto ko lamang linawin ito*. **Political parties, particularly minority political parties, are not prohibited to participate in the party list election if they can prove that they are also organized along sectoral lines.**

MR. MONSOD. What the Commissioner is saying is that all political parties can participate because it is precisely the contention of political parties that they represent the broad base of citizens and that all sectors are represented in them. Would the Commissioner agree?

MR. TADEO. *Ang punto lamang namin, pag pinayagan mo ang UNIDO na isang* political party, it will dominate the party list *at mawawalang saysay din yung* sector. *Lalamunin mismo ng* political parties *ang* party list system. *Gusto ko lamang bigyan ng diin ang* "reserve." *Hindi ito* reserve seat *sa* marginalized sectors. *Kung titingnan natin itong* 198 seats, reserved *din ito sa* political parties.

MR. MONSOD. *Hindi po* reserved *iyon kasi* anybody can run there. But my question to Commissioner Villacorta and probably also to Commissioner Tadeo is that under this system, would UNIDO be banned from running under the party list system?

MR. VILLACORTA. **No, as I said, UNIDO may field sectoral candidates. On that condition alone, UNIDO may be allowed to register for the party list system.**

MR. MONSOD. **May I inquire from Commissioner Tadeo if he shares that answer?**

MR. TADEO. **The same.**

MR. VILLACORTA. ***Puwede po ang* UNIDO, *pero sa* sectoral lines.**

MR. MONSOD: *Sino po ang magsasabi kung iyong kandidato ng UNIDO ay hindi talagang* labor leader or *isang* laborer? *Halimbawa, abogado ito.*

MR. TADEO:

Iyong mechanics.

MR. MONSOD:

Hindi po mechanics *iyon* because we are trying to solve an inherent problem of sectoral representation. My question is: Suppose UNIDO fields a labor leader, would he qualify?

MR. TADEO: **The COMELEC may look into the truth of whether or not a political party is really organized along a specific sectoral line. If such is verified or confirmed, the political party may submit a list of individuals who are actually members of such sectors. The lists are to be published to give individuals or organizations belonging to such sector the chance to present evidence contradicting claims of membership in the said sector or to question the claims of the existence of such sectoral organizations or parties. This proceeding shall be conducted by the COMELEC and shall be summary in character. In other words, COMELEC decisions on this matter are final and unappealable.**[52] (Emphasis supplied)

Indisputably, the framers of the 1987 Constitution intended the party-list system to include not only sectoral parties but also non-sectoral parties. The framers intended the sectoral parties

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[52] II Record, CONSTITUTIONAL COMMISSION 85-86 (22 July 1986), 256-257 (25 July 1986).

to constitute a part, but not the entirety, of the party-list system. **As explained by Commissioner Wilfredo Villacorta, political parties can participate in the party-list system "[F]or as long as they field candidates who come from the different marginalized sectors that we shall designate in this Constitution**."[53]

In fact, the framers voted down, 19-22, a proposal to reserve permanent seats to sectoral parties in the House of Representatives, or alternatively, to reserve the party-list system exclusively to sectoral parties. As clearly explained by Justice Jose C. Vitug in his Dissenting Opinion in *Ang Bagong Bayani*:

> The draft provisions on what was to become Article VI, Section 5, subsection (2), of the 1987 Constitution took off from two staunch positions — the first headed by Commissioner Villacorta, advocating that of the 20 per centum of the total seats in Congress to be allocated to party-list representatives half were to be reserved to appointees from the marginalized and underrepresented sectors. The proposal was opposed by some Commissioners. Mr. Monsod expressed the difficulty in delimiting the sectors that needed representation. He was of the view that reserving seats for the marginalized and underrepresented sectors would stunt their development into full-pledged parties equipped with electoral machinery potent enough to further the sectoral interests to be represented. The Villacorta group, on the other hand, was apprehensive that pitting the unorganized and less-moneyed sectoral groups in an electoral contest would be like placing babes in the lion's den, so to speak, with the bigger and more established political parties ultimately gobbling them up. R.A. 7941 recognized this concern when it banned the first five major political parties on the basis of party representation in the House of Representatives from participating in the party-list system for the first party-list elections held in 1998 (and to be automatically lifted starting with the 2001 elections). The advocates for permanent seats for sectoral representatives made an effort towards a compromise — that the party-list system be open only to underrepresented and marginalized sectors. This proposal was further whittled down by allocating only half of the seats under the party-list system to candidates from the

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[53] II Record, CONSTITUTIONAL COMMISSION 257 (25 July 1986).

sectors which would garner the required number of votes. The majority was unyielding. **Voting 19-22, the proposal for permanent seats, and in the alternative the reservation of the party-list system to the sectoral groups, was voted down**. The only concession the Villacorta group was able to muster was an assurance of reserved seats for selected sectors for three consecutive terms after the enactment of the 1987 Constitution, by which time they would be expected to gather and solidify their electoral base and brace themselves in the multi-party electoral contest with the more veteran political groups.[54] (Emphasis supplied)

Thus, in the end, the proposal to give permanent reserved seats to certain sectors was outvoted. Instead, the reservation of seats to sectoral representatives was only allowed for the first three consecutive terms.[55] There can be no doubt whatsoever that the framers of the 1987 Constitution expressly rejected the proposal to make the party-list system exclusively for sectoral parties only, and that they clearly intended the party-list system to include both sectoral and non-sectoral parties.

The common denominator between sectoral and non-sectoral parties is that they cannot expect to win in legislative district elections but they can garner, in nationwide elections, at least the same number of votes that winning candidates can garner in legislative district elections. The party-list system will be the entry point to membership in the House of Representatives for both these non-traditional parties that could not compete in legislative district elections.

The indisputable intent of the framers of the 1987 Constitution to include in the party-list system both sectoral and non-sectoral parties is **clearly written** in Section 5(1), Article VI of the Constitution, which states:

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[54] 412 Phil. 347, 350 (2001).

[55] *Party-List System: The Philippine Experience,* Fritzie Palma Tangkia and Ma. Araceli Basco Habaradas, Ateneo School of Government and Friedrich Ebert Stiftung (FES), Philippine Office, April 2001, http://library.fes.de/pdf-files/bueros/philippinen/50076.pdf (accessed 30 March 2013).

Section 5. (1) The House of Representative shall be composed of not more that two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and **those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations**. (Emphasis supplied)

Section 5(1), Article VI of the Constitution is crystal-clear that there shall be "**a party-list system of registered national, regional, and sectoral parties or organizations**." The commas after the words "national[**,**]" and "regional[**,**]" separate national and regional parties from sectoral parties. Had the framers of the 1987 Constitution intended national and regional parties to be at the same time sectoral, they would have stated "national and regional sectoral parties." They did not, precisely because it was never their intention to make the party-list system exclusively sectoral.

What the framers intended, and what they expressly wrote in Section 5(1), could not be any clearer: the party-list system is composed of three different groups, and the sectoral parties belong to only one of the three groups. **The text of Section 5(1) leaves no room for any doubt that national and regional parties are separate from sectoral parties**.

Thus, the party-list system is composed of **three different groups**: (1) national parties or organizations; (2) regional parties or organizations; and (3) sectoral parties or organizations. National and regional parties or organizations are **different** from sectoral parties or organizations. National and regional parties or organizations need not be organized along sectoral lines and need not represent any particular sector.

Moreover, Section 5(2), Article VI of the 1987 Constitution mandates that, during the first three consecutive terms of Congress after the ratification of the 1987 Constitution, "one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant,

urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector." This provision clearly shows again that the party-list system is not exclusively for sectoral parties for two obvious reasons.

First, the other one-half of the seats allocated to party-list representatives would naturally be open to non-sectoral party-list representatives, clearly negating the idea that the party-list system is exclusively for sectoral parties representing the "marginalized and underrepresented." *Second*, the reservation of one-half of the party-list seats to sectoral parties applies only for the first "three consecutive terms after the ratification of this Constitution," clearly making the party-list system fully open after the end of the first three congressional terms. This means that, after this period, there will be no seats reserved for any class or type of party that qualifies under the three groups constituting the party-list system.

Hence, the clear intent, express wording, and party-list structure ordained in Section 5(1) and (2), Article VI of the 1987 Constitution cannot be disputed: the party-list system is not for sectoral parties only, but also for non-sectoral parties.

Republic Act No. 7941 or the Party-List System Act, which is the law that implements the party-list system prescribed in the Constitution, provides:

> Section 3. *Definition of Terms.* (a) The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections (COMELEC). Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system.
>
> (b) **A party means either a political party or a sectoral party or a coalition of parties**.
>
> (c) **A political party refers to an organized group of citizens advocating an ideology or platform, principles and policies for**

the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.

It is a national party when its constituency is spread over the geographical territory of at least a majority of the regions. It is a regional party when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.

(d) **A sectoral party refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof whose principal advocacy pertains to the special interest and concerns of their sector**.

(e) A sectoral organization refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.

(f) A coalition refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes. (Emphasis supplied)

Section 3(a) of R.A. No. 7941 defines a "party" as "**either a political party or a sectoral party** or a coalition of parties." Clearly, a political party is different from a sectoral party. Section 3(c) of R.A. No. 7941 further provides that a "**political party** refers to an organized **group of citizens *advocating an ideology or platform, principles and policies* for the general conduct of government**." On the other hand, Section 3(d) of R.A. No. 7941 provides that a "**sectoral party** refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof **whose principal advocacy pertains to the special interest and concerns of their sector**." R.A. No. 7941 provides different definitions for a political and a sectoral party. Obviously, they are separate and distinct from each other.

R.A. No. 7941 does not require national and regional parties or organizations to represent the "marginalized and underrepresented" sectors. To require all national and regional parties under the party-list system to represent the "marginalized

and underrepresented" is to deprive and exclude, by judicial fiat, ideology-based and cause-oriented parties from the party-list system. How will these ideology-based and cause-oriented parties, who cannot win in legislative district elections, participate in the electoral process if they are excluded from the party-list system? To exclude them from the party-list system is to prevent them from joining the parliamentary struggle, leaving as their only option the armed struggle. To exclude them from the party-list system is, apart from being obviously senseless, patently contrary to the clear intent and express wording of the 1987 Constitution and R.A. No. 7941.

Under the party-list system, an ideology-based or cause-oriented political party is clearly different from a sectoral party. A political party need not be organized as a sectoral party and need not represent any particular sector. There is no requirement in R.A. No. 7941 that a national or regional political party must represent a "marginalized and underrepresented" sector. It is sufficient that the political party consists of citizens who advocate the same ideology or platform, or the same governance principles and policies, **regardless of their economic status as citizens**.

Section 5 of R.A. No. 7941 states that "the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, **elderly**, handicapped, **women**, **youth**, veterans, overseas workers, and **professionals.**"[56] The sectors mentioned

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[56] Section 5. *Registration.* — Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: *Provided*, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

The COMELEC shall publish the petition in at least two (2) national newspapers of general circulation.

in Section 5 are not all necessarily "marginalized and underrepresented." For sure, "professionals" are not by definition "marginalized and underrepresented," not even the elderly, women, and the youth. However, professionals, the elderly, women, and the youth may "lack well-defined political constituencies," and can thus organize themselves into sectoral parties in advocacy of the special interests and concerns of their respective sectors.

Section 6 of R.A. No. 7941 provides another compelling reason for holding that the law does not require national or regional parties, as well as certain sectoral parties in Section 5 of R.A. No. 7941, to represent the "marginalized and underrepresented." Section 6 provides the grounds for the COMELEC to refuse or cancel the registration of parties or organizations after due notice and hearing.

Section 6. *Refusal and/or Cancellation of Registration*. — The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association organized for religious purposes;

(2) It advocates violence or unlawful means to seek its goal;

(3) It is a foreign party or organization;

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

The COMELEC shall, after due notice and hearing, resolve the petition within fifteen (15) days from the date it was submitted for decision but in no case not later than sixty (60) days before election.

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

None of the 8 grounds to refuse or cancel registration refers to non-representation of the "marginalized and underrepresented."

The phrase "**marginalized and underrepresented"** appears only ***once*** in R.A. No. 7941, in Section 2 on *Declaration of Policy*.[57] Section 2 seeks "to promote proportional representation in the election of representatives to the House of Representatives through the party-list system," which will enable Filipinos belonging to the "**marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies,**" to become members of the House of Representatives. While the policy declaration in Section 2 of R.A. No. 7941 broadly refers to "marginalized and underrepresented sectors, organizations and parties," the specific implementing provisions of R.A. No. 7941 do not define or require that the sectors, organizations or parties must be "marginalized and underrepresented." On the contrary, to even interpret that all the sectors mentioned in Section 5 are "marginalized and underrepresented" would lead to absurdities.

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[57] Section 2. *Declaration of Policy*. — The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to **marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies** but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provided the simplest scheme possible. (Emphasis supplied)

How then should we harmonize the broad policy declaration in Section 2 of R.A. No. 7941 with its specific implementing provisions, bearing in mind the applicable provisions of the 1987 Constitution on the matter?

The phrase "**marginalized and underrepresented"** should **refer only to the sectors in Section 5 that are, *by their nature,* economically "marginalized and underrepresented**." These sectors are: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, overseas workers, and other similar sectors. **For these sectors, a majority of the members of the sectoral party must belong to the "marginalized and underrepresented**." **The nominees of the sectoral party either must belong to the sector, or must have a track record of advocacy for the sector represented**. Belonging to the "marginalized and underrepresented" sector does not mean one must "wallow in poverty, destitution or infirmity." It is sufficient that one, or his or her sector, is below the middle class. More specifically, the economically "marginalized and underrepresented" are those who fall in the low income group as classified by the National Statistical Coordination Board.[58]

The recognition that national and regional parties, as well as sectoral parties of professionals, the elderly, women and the youth, need not be "marginalized and underrepresented" will allow small ideology-based and cause-oriented parties who lack "well-defined political constituencies" a chance to win seats in the House of Representatives. On the other hand, limiting to the "marginalized and underrepresented" the **sectoral** parties for labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, overseas workers, and other sectors that by their nature are economically at the margins

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[58] The National Statistical Coordination Board (NSDB) classifies the population into three income groups: the high income, the middle income, and the low income group. See Table 2. *Annual Family Income of the Low, Middle, and High Income Classes: 1997*, http://www.nscb.gov.ph/ncs/10thNCS/papers/contributed%20papers/cps-12/cps12-01.pdf (accessed 30 March 2013).

of society, will give the "marginalized and underrepresented" an opportunity to likewise win seats in the House of Representatives.

This interpretation will harmonize the 1987 Constitution and R.A. No. 7941 and will give rise to a multi-party system where those "marginalized and underrepresented," ***both in economic and ideological status***, will have the opportunity to send their own members to the House of Representatives. This interpretation will also make the party-list system honest and transparent, eliminating the need for relatively well-off party-list representatives to masquerade as "wallowing in poverty, destitution and infirmity," even as they attend sessions in Congress riding in SUVs.

The major political parties are those that field candidates in the legislative district elections. Major political parties cannot participate in the party-list elections since they neither lack "well-defined political constituencies" nor represent "marginalized and underrepresented" sectors. **Thus, the national or regional parties under the party-list system are necessarily those that do not belong to major political parties**. This automatically reserves the national and regional parties under the party-list system to those who "lack well-defined political constituencies," giving them the opportunity to have members in the House of Representatives.

To recall, *Ang Bagong Bayani* expressly declared, in its second guideline for the accreditation of parties under the party-list system, that "while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling 'Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives.' "However, the requirement in *Ang Bagong Bayani*, in its second guideline, that "the political party x x x must represent the marginalized and underrepresented," automatically disqualified major political parties from participating in the party-list system. This **inherent inconsistency** in *Ang Bagong Bayani* has been compounded by the COMELEC's

refusal to register sectoral wings officially organized by major political parties. *BANAT* merely formalized the prevailing practice when it **expressly prohibited** major political parties from participating in the party-list system, even through their sectoral wings.

Section 11 of R.A. No. 7941 expressly prohibited the "**first five (5) major political parties** on the basis of party representation in the House of Representatives at the start of the Tenth Congress" from participating in the May 1988 party-list elections.[59] **Thus, major political parties can participate in *subsequent* party-list elections since the prohibition is expressly limited only to the 1988 party-list elections**. However, major political parties should participate in party-list elections only through their **sectoral** wings. The participation of major political parties through their sectoral wings, a majority of whose members are "marginalized and underrepresented" or lacking in "well-defined political constituencies," will facilitate the entry of the "marginalized and underrepresented" and those who "lack well-defined political constituencies" as members of the House of Representatives.

The 1987 Constitution and R.A. No. 7941 allow major political parties to participate in party-list elections so as to encourage them to work assiduously in extending their constituencies to the "marginalized and underrepresented" and to those who "lack well-defined political constituencies." The participation of major political parties in party-list elections must be geared towards the entry, as members of the House of Representatives, of the "marginalized and underrepresented" and those who "lack well-defined political constituencies," giving them a voice in law-making. Thus, to participate in party-list elections, a major

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[59] Section 11 of R.A. No. 7941 provides in part:

x x x For purposes of the May 1988 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

x x x x x x x x x.

political party that fields candidates in the legislative district elections must organize a sectoral wing, like a labor, peasant, fisherfolk, urban poor, professional, women or youth wing, that can register under the party-list system.

Such sectoral wing of a major political party must have its own constitution, by-laws, platform or program of government, officers and members, a majority of whom must belong to the sector represented. The sectoral wing is in itself an independent sectoral party, and is *linked to a major political party through a coalition*. This linkage is allowed by Section 3 of R.A. No. 7941, which provides that "component parties or organizations of a coalition may participate independently (in party-list elections) provided the coalition of which they form part does not participate in the party-list system."

Section 9 of R.A. No. 7941 prescribes the qualifications of party-list nominees. This provision prescribes a special qualification only for the nominee from the youth sector.

> Section 9. *Qualifications of Party-List Nominees.* No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election, able to read and write, a *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.
>
> In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term.

A party-list nominee must be a *bona fide* member of the party or organization which he or she seeks to represent. **In the case of sectoral parties, to be a *bona fide* party-list nominee one must either belong to the sector represented, or have a track record of advocacy for such sector**.

In disqualifying petitioners, the COMELEC used the criteria prescribed in *Ang Bagong Bayani* and *BANAT*. *Ang Bagong Bayani* laid down the guidelines for qualifying those who desire to participate in the party-list system:

***First*, the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941**. x x x

Second, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling "Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives." x x x.

x x x x x x x x x

Third, x x x the religious sector may not be represented in the party-list system. x x x.

x x x x x x x x x

Fourth, a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification as follows:

"(1) It is a religious sect or denomination, organization or association, organized for religious purposes;

(2) It advocates violence or unlawful means to seek its goal;

(3) It is a foreign party or organization;

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes

cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered."

Fifth, the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government. x x x.

x x x x x x x x x

Sixth, the party must not only comply with the requirements of the law; its nominees must likewise do so. Section 9 of RA 7941 reads as follows:

"SEC 9. *Qualifications of Party-List Nominees*. — No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1)year immediately preceding the day of the election, able to read and write, a *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term."

***Seventh*, not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees**. x x x.

Eighth, x x x the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. (Emphasis supplied)

In 2009, by a vote of 8-7 in *BANAT*, this Court stretched the *Ang Bagong Bayani* ruling further. In *BANAT*, the majority officially excluded major political parties from participating in party-list elections,[60] abandoning even the lip-service that *Ang*

[60] G.R. Nos. 179271 and 179295, 21 April 2009, 586 SCRA 210, 258 citing Constitution, Art. XIII, Sec. 1.

Bagong Bayani accorded to the 1987 Constitution and R.A. No. 7941 that major political parties can participate in party-list elections.

The minority in *BANAT*, however, believed that major political parties can participate in the party-list system through their sectoral wings. The minority expressed that "[e]xcluding the major political parties in party-list elections is manifestly against the Constitution, the intent of the Constitutional Commission, and R.A. No. 7941. This Court cannot engage in socio-political engineering and judicially legislate the exclusion of major political parties from the party-list elections in patent violation of the Constitution and the law."[61] The experimentations in socio-political engineering have only resulted in confusion and absurdity in the party-list system. Such experimentations, in clear contravention of the 1987 Constitution and R.A. No. 7941, must now come to an end.

We cannot, however, fault the COMELEC for following prevailing jurisprudence in disqualifying petitioners. In following prevailing jurisprudence, the COMELEC could not have committed grave abuse of discretion. However, for the coming 13 May 2013 party-list elections, we must now impose and mandate the party-list system **actually envisioned and authorized** under the 1987 Constitution and R.A. No. 7941. In *BANAT*, this Court devised a new formula in the allocation of party-list seats, reversing the COMELEC's allocation which followed the then prevailing formula in *Ang Bagong Bayani*. In *BANAT*, however, the Court did not declare that the COMELEC committed grave abuse of discretion. Similarly, even as we acknowledge here that the COMELEC did not commit grave abuse of discretion, we declare that it would not be in accord with the 1987 Constitution and R.A. No. 7941 to apply the criteria in *Ang Bagong Bayani* and *BANAT* in determining who are qualified to participate **in the coming 13 May 2013 party-list elections**. For this purpose, we suspend our rule[62] that a party may appeal

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[61] *Id.* at 251.

[62] Rule 64 in relation to Rule 65, 1997 Rules of Civil Procedure.

to this Court from decisions or orders of the COMELEC only if the COMELEC committed grave abuse of discretion.

Thus, we remand all the present petitions to the COMELEC. In determining who may participate in the coming 13 May 2013 and subsequent party-list elections, the COMELEC shall adhere to the following parameters:

1. Three different groups may participate in the party-list system: (1) national parties or organizations, (2) regional parties or organizations, and (3) sectoral parties or organizations.

2. National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector.

3. Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.

4. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth.

5. A majority of the members of sectoral parties or organizations that represent the "marginalized and underrepresented" must belong to the "marginalized and

underrepresented" sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack "well-defined political constituencies" must belong to the sector they represent. The nominees of sectoral parties or organizations that represent the "marginalized and underrepresented," or that represent those who lack "well-defined political constituencies," either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors. The nominees of national and regional parties or organizations must be *bona-fide* members of such parties or organizations.

6. National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified.

The COMELEC excluded from participating in the 13 May 2013 party-list elections those that did not satisfy these two criteria: (1) **all** national, regional, and sectoral groups or organizations must represent the "marginalized and underrepresented" sectors, and (2) **all** nominees must belong to the "marginalized and underrepresented" sector they represent. Petitioners may have been disqualified by the COMELEC because as political or regional parties they are not organized along sectoral lines and do not represent the "marginalized and underrepresented." Also, petitioners' nominees who do not belong to the sectors they represent may have been disqualified, although they may have a track record of advocacy for their sectors. Likewise, nominees of non-sectoral parties may have been disqualified because they do not belong to any sector. Moreover, a party may have been disqualified because one or more of its nominees failed to qualify, even if the party has at least one remaining qualified nominee. As discussed above, the disqualification of petitioners, and their nominees, under such circumstances is contrary to the 1987 Constitution and R.A. No. 7941.

This Court is sworn to uphold the 1987 Constitution, apply its provisions faithfully, and desist from engaging in socio-

economic or political experimentations contrary to what the Constitution has ordained. Judicial power does not include the power to re-write the Constitution. Thus, the present petitions should be remanded to the COMELEC not because the COMELEC committed grave abuse of discretion in disqualifying petitioners, but because petitioners may now possibly qualify to participate in the coming 13 May 2013 party-list elections under the new parameters prescribed by this Court.

WHEREFORE, all the present 54 petitions are **GRANTED**. The 13 petitions, which have been granted Status Quo Ante Orders but without mandatory injunction to include the names of petitioners in the printing of ballots, are remanded to the Commission on Elections only for determination whether petitioners are qualified to register under the party-list system under the parameters prescribed in this Decision but they shall not participate in the 13 May 2013 party-list elections. The 41 petitions, which have been granted mandatory injunctions to include the names of petitioners in the printing of ballots, are remanded to the Commission on Elections for determination whether petitioners are qualified to register under the party-list system and to participate in the 13 May 2013 party-list elections under the parameters prescribed in this Decision. The Commission on Elections may conduct summary evidentiary hearings for this purpose. This Decision is immediately executory.

SO ORDERED.

Bersamin, del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.

Leonardo-de Castro, J., concurs and also with the additional grounds cited in Justice Brion's concurring opinion for revisiting the Ang Bagong Bayani ruling and his erudite analysis of the aim of the party-list system under the Constitution and law and its implications on political parties, party-list registrants and nominees.

Brion, J., see separate opinion.

Peralta and *Abad, JJ.,* join *J.* A.D. Brion in his separate opinion.

Mendoza, J., concurs to remand but there was a grave abuse of discretion but only with respect to the disqualification of nominees separate from the party organization.

Sereno, C.J., dissents; Ang Bagong Bayani should be upheld, not reversed. See concurring and dissenting opinion.

Reyes and *Leonen, JJ.*, with separate concurring and dissenting opinions.

Velasco, Jr., J., took no part due to relative's participation in party list election.

Perlas-Bernabe, J., on leave.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I submit this SEPARATE OPINION to reflect my views on the various questions submitted to the Court through consolidated petitions before us.

For ease of presentation and understanding, this Separate Opinion is laid out under the following structure:

I. The Case and the Issues

II. Summary of Positions: Substantive Aspect of the Petitions

- **A.** On reliance on *Ang Bagong Bayani* and its Guidelines.
  1. Points of Disagreement with *Ang Bagong Bayani*
  2. Effects on the Components of the Party-list System
- **B.** Nominees
- **C.** On the observation of the Chief Justice
- **D.** Grave abuse of discretion and Conclusion

III. Preliminary Matters

- A. The suspension of Rule 64; the existence of jurisdictional error that warrants reviewing COMELEC's action

I.A The Cases

The Court resolves **fifty-three (53) consolidated petitions** for *certiorari*/prohibition filed under Rule 64 of the Rules of Court by various party-list groups and organizations. They commonly assail the Comelec's resolutions, either cancelling their existing registrations and accreditations, or denying their new petitions for party-list registration.

Of the 53 petitions, **thirteen (13) were instituted by new party-list applicants** under Republic Act (*RA*) No. 7941 and Comelec Resolution No. 9366 (dated February 21, 2012). These petitions were denied by the Comelec *En Banc* upon its review of the Comelec Division's resolutions.

The **other forty (40) petitions** were similarly brought by **previously registered and accredited party-list organizations** whose registrations/accreditations have been cancelled. These petitioners participated in previous elections and cannot participate in the May 2013 election if the cancellation of their registration/accreditation would stand.

The consolidated petitions, uniformly citing **grave abuse of discretion** on the part of the Comelec and the **disregard of the relevant provisions of the Constitution and RA No. 7941**, variously questioned —

a. the Comelec *En Banc*'s authority under Comelec Resolution No. 9513 to conduct an *automatic review* of its Division's rulings despite the absence of motions for reconsideration, in disregard of Rule 19 of the Comelec Rules of Procedure;

2. with respect to the cancellation of previous registration/ accreditation of party-list groups or organizations, the *denial of due process* and the violation of the principle of *res adjudicata*; further, the Comelec's cancellation of their existing registration/accreditation is claimed to be an exercise of its *quasi-judicial powers* that the COMELEC Division, not the Comelec *En Banc*, can exercise at the first instance;

b. the Comelec *En Banc*'s appreciation of facts and its application of the guidelines of *Ang Bagong Bayani*, which either addressed defects or deficiencies on the part of the parties or of their nominees and which resulted in the refusal or cancellation of registration/accreditation.

I.B. The Issues

Based on these cited grounds, the issues for the Court's consideration may be condensed as follows:

1. Whether the Comelec *En Banc* may automatically review the decision of the COMELEC Division without the requisite filing of a motion for reconsideration under the Comelec Rules of Procedure; and

2. Whether the Comelec gravely abused its discretion in denying or cancelling the registration/accreditation of the petitioners, mainly relying on the eight point guidelines laid down by the Court in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*.

II. SUMMARY OF POSITIONS

THE SUBSTANTIVE ASPECT OF THE PETITIONS

II.A. On reliance on *Ang Bagong Bayani* and its Guidelines.

Ang Bagong Bayani-OFW Labor Party v. COMELEC's[1] **intrinsically flawed interpretation** of the relevant constitutional and statutory provisions is the main source of the present controversy. Its constricted interpretation of the statutory phrase "marginalized and underrepresented" has invited more questions than answers that the framers of the 1987 Constitution in fact sought to avoid.

II.A.1. Points of Disagreement with Ang Bagong Bayani.

I take the position that it is time to re-visit this oft-cited ruling before the party-list system is further led astray.

First, the party-list system came into being, principally driven by the constitutional framers' intent to ***reform the then prevailing electoral system*** by giving marginal and underrepresented parties (*i.e. those who cannot win in the legislative district elections and in this sense are marginalized and may lack the constituency to elect themselves there, but who — nationally — may generate votes equivalent to what a winner in the legislative district election would garner*) the chance to participate in the electoral exercise and to elect themselves to

[1] 412 Phil. 308, 342 (2001).

the House of Representatives through a system other than the legislative district elections.

Ang Bagong Bayani ***glossed over*** the constitutional text and made ***a slanted reading*** of the intent of the framers of the Constitution. By these means, it erroneously concluded that *the party-list system is primarily intended as a social justice tool, and was not principally driven by intent to reform electoral system.* Thus, under its First Guideline, ***Ang Bagong Bayani*** **solely viewed the party-list system from the *prism of social justice*, and not from the *prism of electoral reform* as the framers of the Constitution originally intended.**

Second. In the constitutional deliberations, the proponents of the electoral reform concept were opposed by those who wanted a party-list system open ***only*** to sectoral representation, particularly to sectoral groups with social justice orientation.

The oppositors were defeated, but the proponents nevertheless opened the system to sectoral representation and in fact gave the social justice groups a head-start by providing for their representation through selection in the first three elections.

In the resulting *approved* wording, the Constitution made a textual commitment ***to open the party-list system to registered national, regional and sectoral parties or organizations***. The Article on the Commission on Election also pointedly provided that there shall be a ***"free and open party system,"*** and ***votes for parties, organizations or coalitions shall only be recognized in the party-list system.***

II.A.2. Effects on the Components of the Party-list System

Ang Bagong Bayani admits that even political parties may run in the party-list elections but **maintains** under its Second Guideline that **they must qualify as marginal and underrepresented as this phrase is understood in the social justice context**. **This is totally incorrect**.

Based on the reasons discussed above and further expounded below, even major ***political parties*** can participate in party-list elections because *the party-list system is open to all registered*

political, national, regional, sectoral organizations and parties, subject only to the limitations imposed by the Constitution and by law. Further, *both political and sectoral parties have equal roles and participation in the party-list system;* again, they are subject to the same limitations imposed by law (the Constitution and RA No. 7941) and are separately burdened only by the limitations intrinsic to their respective natures. To summarize:

a) **For political parties (whether national or regional)**: to be classified as political parties, they must advocate an ideology or platform, principles and policies, for the general conduct of government. The application of the further requirement under RA No. 7941 (that as the most immediate means of securing the adoption of their principles of governance, they must regularly nominate and support their leaders and members as candidates for public office) shall depend on the particular circumstances of the party.

The marginal and under-representation in the electoral sense (*i.e.*, in the legislative district elections) and lack of constituency requirements fully apply, but there is no reason not to presume compliance with these requirements *if political parties are not participants in any legislative district elections*.

Major political parties, if they participate in the legislative district elections, cannot participate in the party-list elections, nor can they form a coalition with party-list parties and run as a coalition in the party-list elections.

A coalition is a formal party participant in the party-list system; what the party-list system forbids directly (*i.e.*, participation in both electoral arenas), the major political parties cannot do indirectly through a coalition. No prohibition, however, exists against *informal alliances* that they can form with party-list parties, organizations or groups running for the party-list elections. The party-

list component of these informal alliances is not prohibited from running in the party-list elections.

b) **For sectoral parties and organizations**, they must belong to the sectors enumerated in Section 5(2), Article VI of the 1987 Constitution and Section 5 of RA No. 7941 that are mainly based on social justice characteristics; or must have interests, concerns or characteristics specific to their sectors although they do not require or need to identify with any social justice characteristic. In either case, they are subject to the "marginalized and under-represented" and the "constituency" requirements of the law through a showing, supported by evidence, that they belong to a sector that is actually characterized as marginal and under-represented.

These parties and organizations are additionally subject to the general overriding requirement of **electoral marginalization and under-representation** and **the constituency requirements** of the law, but there is no reason why compliance with these requirements cannot be presumed if they are not participants in any legislative district elections.

c) **Compliance with COMELEC Rules**. To justify their existence, all party-list groups must comply with the requirements of law, their own internal rules on membership, and with the Comelec's Rules of Procedure. They must submit to the Commission on Elections (*COMELEC*) their constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require.[2]

To sum up these *Ang Bagong Bayani* objections, the party-list system — as **principally espoused by Commissioner Christian Monsod** and duly approved by the Commission's vote — maintained its electoral reform objectives while

[2] RA No. 7941, Section 5.

significantly contributing to the social justice thrust of the Constitution.

It is not correct to say, as the Chief Justice did in her Reflections, that this Separate Opinion is not "*appropriately sensitive to the context from which it [the 1987 Constitution] arose.*" I recognize the social justice content of the party-list provisions in the Constitution and the law; *I simply cannot give these provisions the* ***primacy*** that both the framers of the Constitution and Congress did not see fit to accord.

B. On Nominees

Third. Considering the Constitution's solicitous concern for the marginalized and under-represented sectors as understood in the social justice context, and RA 7941's requirement of mere bona fide membership of a nominee in the party-list group, ***a nominee who does not actually possess the marginalized and underrepresented status represented by the party-list group but proves to be a genuine advocate of the interest and concern of the marginalized and underrepresented sector represented*** is still qualified to be a nominee.

This classification of nominees, however, is relevant only to ***sectoral parties and organizations*** which are marginalized and underrepresented in the social justice sense or in terms of their special interests, concerns or characteristics. To be consistent with the *sectoral representation* envisioned by the framers, ***a majority of the members*** of the party must actually belong to the sector represented, while ***nominees must be a member of the sectoral party or organization***.

Since ***political parties*** are identified by their ideology or platform of government, ***bona fide membership***, in accordance with the political party's constitution and by-laws, ***would suffice***.

In both political or sectoral party or group, **party membership** is the most tangible link ***of the nominees*** to their respective parties and to the party-list system.

Subject to the above, the ***disqualification of the nominee*** does not necessarily mean the disqualification of the party since

all the grounds for cancellation or refusal of registration pertain to the party itself.

I make the qualification that the law's[3] requirement of the submission of a ***list containing at least five (qualified) nominees*** is mandatory, and a party's inexcusable failure to comply with this requirement warrants the refusal or cancellation of its registration under Section 6 of RA 7941.

C. On the Observations of the Chief Justice

As my **fourth and final point**, the "textualist" approach that the Chief Justice objects to, has been driven, and is fully justified, by the above reading of the Constitution and the law.

*As a **basic constitutional point**, the business and principal function of this Court (and of the whole Judiciary) is not to create policy or to supplant what the Constitution and the law expressly provide.* The framers of the Constitution and Congress (through RA No. 7941 in this case) provided the policy expressed through the words of the Constitution and the law, and through the intents the framers; both were considered and cited to ensure that the constitutional policy is properly read and understood. The whole Judiciary, including this Court, can only apply these policies in the course of their assigned task of adjudication *without adding anything of our own*; we can interpret the words only in case of ambiguity.

This Court and its Members cannot likewise act as advocates, even for social justice or for any ideology for that matter, as advocacy is not the task assigned to us by the Constitution. *To play the role of advocates, or to formulate policies that fall within the role of the Legislative Branch of government, would be a violation of our sworn duty.*

D. Grave Abuse of Discretion and Conclusion

As agreed upon by the Majority during the deliberations of this case, the Court suspended the Rules of Court in considering

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[3] R.A. No. 7941, Section 8.

the Rule 64 petitions before us in light of the clear and patent violation of the Constitution that the Majority **unanimously** found.

Thus, without an explicit ruling on the grave abuse of discretion in this case, I vote to **VACATE** the ruling of the COMELEC pursuant to the suspended rules in light of our finding of patent violation of the Constitution after revisiting and overturning the *Ang Bagong Bayani* ruling.

Having said these, however, I reflect for the record my view that a grave abuse of discretion exists.

Undeniably, all the parties to these consolidated cases — namely, the petitioners and the COMELEC — relied upon and were all guided by the *Ang Bagong Bayani* ruling. However, my re-examination of *Ang Bagong Bayani* and its standards, in light of what the text and intents of the Constitution and RA No. 7491 provide, yield a result different from what *Ang Bagong Bayani* reached.

As will be discussed extensively in this Separate Opinion, **wrong considerations were used** in ruling on the consolidated petitions, resulting in **gross misinterpretation and misapplication of the Constitution**. This is **grave abuse of discretion** that taints a decision maker's action,[4] infinitely made worse in this case because the Constitution itself is involved.

An added basis for a finding of grave abuse of discretion pertains specifically to the COMELEC's refusal or cancellation of registration of the party-list group based, solely or partly, on the disqualification of the nominee. As discussed below, **this action and any refusal or cancellation of registration is completely devoid of basis in fact and in law and in this sense constitutes grave abuse of discretion**.

In these lights, **I vote for the REMAND of ALL the petitions** to the COMELEC in accordance with the terms of this Separate Opinion.

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[4] *Varias v. COMELEC,* G.R. No. 189078, Feb. 11, 2010.

III. PRELIMINARY MATTERS

A. The existence of jurisdictional error that warrants reviewing COMELEC's action

Whether acting in the exercise of its purely administrative power, on one hand, or quasi-judicial powers, on the other hand, the judicial remedy available to an aggrieved party is the remedy of *certiorari* under Rule 64, in relation with Rule 65. Court action under this rule is rendered necessary by the reality that, by law, the COMELEC *en banc* decision is final and executory and should stand unless nullified by this Court through a writ of *certiorari.*

For the writ of *certiorari* to issue, the Rules of Court expressly require that the tribunal must have acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The requisite grave abuse of discretion is in keeping with the office of the writ of *certiorari*; its function is to keep the tribunal within the bounds of its jurisdiction under the Constitution and law.

The term grave abuse of discretion, while it defies exact definition, generally refers to capricious or whimsical exercise of judgment that 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.[5]

Arguably under the above standards, it may be claimed that since the COMELEC merely complied with the prevailing jurisprudence (in particular. with the Court's pronouncement in *Ang Bagong Bayani v. COMELEC* and *Banat v. COMELEC),* then it could not have acted without or in excess of its jurisdiction, much less with grave abuse of discretion. Besides, the writ of *certiorari* only lies when the respondent is exercising

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[5] *Mitra v. Commission on Elections,* G.R. No. 191938, July 2, 2010.

judicial or quasi-judicial functions, which is not so in the present case.

This rationalization, however, is *only superficially sound* as the gross misinterpretation and misapplication of the Constitution cannot be allowed by this Court in its role and duty as guardian of the Constitution. Where a misinterpretation or misapplication of the Constitution occurs, the result is a constitutional violation that this Court cannot be prevented from addressing through the exercise of its powers through the available medium of review under the Rules of Court. To hold otherwise is to countenance a violation of the Constitution — a lapse that cannot and should not happen under our legal system.

Otherwise stated, if the Court were to sustain the view that the mere application of a prevailing rule or doctrine negates a finding of grave abuse of discretion, ***in spite of a glaring error in the doctrine's interpretation of the Constitution***, then the Court would have no chance to correct the error, except by laying down a new doctrine that would operate prospectively *but* at the same time dismissing the petition for failure to show grave abuse of discretion. To be sure, this is a course of action the Court cannot take if it were to faithfully discharge its solemn duty to hold the Constitution inviolate. For the Court, action under these circumstances is a must; no ifs or buts can be allowed to be heard about its right and duty to act.

It should be considered, too, that in the adjudication of a case with constitutional dimensions, it is the letter and the spirit of the Constitution itself that reign supreme. The Court's previous ruling on a matter serves as a guide in the resolution of a similar matter in the future, but this prior ruling cannot inflexibly bind the Court in its future actions. As the highest Court in our judicial hierarchy, the Court cannot tie its hands through its past actions, particularly when the Constitution is involved; it is invested with the innate authority to rule according to what it sees best in its role as guardian of the Constitution.[6]

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[6] See: *De Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010.

Additionally, be it remembered that the rulings of this Court are not written in stone and do not remain un-erased and applicable for all times *under all circumstances*. The Supreme Court's review of its rulings is in a sense a continuing one as these are made and refined in the cases before the Court, taking into account what it has said on the similar points in the past. This is the principle of *stare decisis* that fosters the stability of rulings and decisions. This principle, however, is not an absolute one that applies even if an incisive examination shows that a past ruling is inaccurate and is far from a faithful interpretation of the Constitution, or in fact involves a constitutional violation. In this excluded circumstance, both the rule of reason and the commands of the Constitution itself require that the past ruling be modified and, if need be, overturned.[7] Indeed, if the act done

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[7] See: Justice Arturo Brion's Concurring and Dissenting Opinion in *De Castro v. Judicial and Bar Council*. See also Justice Reynato Puno's Dissenting Opinion in *Lambino v. Commission on Elections*, G.R. No. 174153, October 25, 2006, where he stated:

> ". . . Two strains of *stare decisis* have been isolated by legal scholars. The first, known as vertical *stare decisis* deals with the duty of lower courts to apply the decisions of the higher courts to cases involving the same facts. The second, known as horizontal *stare decisis* requires that high courts must follow its own precedents. Prof. Consovoy correctly observes that vertical *stare decisis* has been viewed as an obligation, while horizontal *stare decisis*, has been viewed as a policy, imposing choice but not a command. Indeed, *stare decisis* is not one of the precepts set in stone in our Constitution."
>
> It is also instructive to distinguish the two kinds of horizontal *stare decisis* — constitutional *stare decisis* and statutory *stare decisis*. **Constitutional *stare decisis*** involves judicial interpretations of the Constitution while **statutory *stare decisis*** involves interpretations of statutes. The distinction is important for courts enjoy more flexibility in refusing to apply *stare decisis* in constitutional litigations. **Justice Brandeis' view** on the binding effect of the doctrine in constitutional litigations still holds sway today. In soothing prose, Brandeis stated: "*Stare decisis* is not . . . a universal and inexorable command. The rule of *stare decisis* is not inflexible. Whether it shall be followed or departed from, is a question entirely within the discretion of the court, which is again called upon to consider a question once decided." In the same vein, the venerable **Justice Frankfurter** opined: "the ultimate touchstone of constitutionality is the Constitution itself and

is contrary to the Constitution, then the existence of grave abuse of discretion cannot be doubted.[8]

As will be discussed extensively in this Separate Opinion, the *Ang Bagong Bayani* ruling does not rest on firm constitutional and legal grounds; its slanted reading of the text of the constitution and its myopic view of constitutional intent led it to a grave error never envisioned by the framers of our constitution.

By ordering the remand of all the petitions to the COMELEC and for the latter to act in accordance with the new ruling laid down by the Court — *i.e.*, allowing political parties to participate in the party-list elections without need of proving that they are "marginalized and under-represented" (as this term is understood in *Ang Bagong Bayani)*, and in recognizing that a genuine advocate of a sectoral party or organization may be validly included in the list of nominees — the Court would not be violating the principle of prospectivity.[9]

The rationale behind the principle of prospectivity — both in the application of law and of judicial decisions enunciating new doctrines — is the protection of vested rights and the obligation of contracts. When a new ruling overrules a prior ruling, the prospective application of the new ruling is made in

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not what we have said about it." In contrast, the application of *stare decisis* on judicial interpretation of statutes is more inflexible. As **Justice Stevens** explains: "after a statute has been construed, either by this Court or by a consistent course of decision by other federal judges and agencies, it acquires a meaning that should be as clear as if the judicial gloss had been drafted by the Congress itself." This stance reflects both respect for Congress' role and the need to preserve the courts' limited resources.

[8] *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159139, January 13, 2004.

[9] Articles 4 and 8 of the Civil Code reads:

Art. 4. Laws shall have no retroactive effect, unless the contrary is provided.

Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

favor of parties who have relied in good faith on the prior ruling under the familiar rule of *lex prospicit, non respicit*.

Obviously, the force of this rationale finds no application in this case, for, ***a ruling overturning Ang Bagong Bayani broadens the base of participation in the party-list system of election*** based on the text and intent of the Constitution. Thus, no one can claim that the application of this ruling in the upcoming 2013 election would operate to the prejudice of parties who relied on the *Ang Bagong Bayani* ruling; the marginalized and under-represented sectors (as the term in understood in *Ang Bagong Bayani*) continue to be eligible to participate in the party-list elections, subject to the determination of parties' individual circumstances by the COMELEC.

B. COMELEC power to register and to cancel registration of a party-list group is an exercise of its administrative powers

The COMELEC *En Banc*'s authority under COMELEC Resolution No. 9513 — *i.e.*, to conduct summary hearings for the purpose of determining the registered parties' continuing compliance with the law and the regulations and to review the COMELEC Division's ruling granting a petition for registration – is appropriately an exercise of the COMELEC's **administrative power** rather than its quasi-judicial power. In the exercise of this authority, the Comelec may automatically review the decision of its Divisions, without need for a motion to reconsider the grant of a petition for registration; it may also conduct summary hearings when previously registered party-list groups file their manifestation of intent to participate in the coming elections.

The case of *Santiago, Jr., etc. v. Bautista, et al.*[10] already provides us ample guidance and insights into what distinguishes administrative and quasi-judicial powers from one another. On the issue of whether the remedy of *certiorari* (which can only

[10] 143 Phil. 209 (1970).

be invoked when the respondent exercises judicial or quasi-judicial functions) would lie against a public school committee whose function was to determine the ranking of selected honor students for its graduating class, the Court gave a negative answer and said:

> From the [foregoing], it will be gleaned that before a tribunal, board, or officer may exercise judicial or quasi judicial acts, it is necessary that there be a **law that gives rise to some specific rights** of persons or property under which **adverse claims** to such rights are made, and the controversy ensuing therefrom is brought, in turn, before the tribunal, board or officer clothed with power and authority to determine what that law is and thereupon **adjudicate the respective rights of the contending parties**. As pointed out by appellees, however, there is nothing on record about any rule of law that provides that when teachers sit down to assess the individual merits of their pupils for purposes of rating them for honors, such function involves the determination of what the law is and that they are therefore automatically vested with judicial or quasi judicial functions.[11] (citation omitted; emphases ours)

In the present case, no pretense at all is claimed or made that a petition for registration or the determination of a registered party's continuing compliance with existing laws, rules and jurisprudence entails the assertion of a right or the presence of a conflict of rights. In a registration or compliance proceeding, an applicant simply attempts to prove its possession or continued possession of the requisite qualifications for the purpose of availing the ***privilege*** of participating in an electoral exercise. Thus, no real adjudication entailing the exercise of quasi-judicial powers actually takes place.

Additionally, the inapplicability of the principle of *res judicata* in these registration proceedings necessarily weakens any claim that adjudication, done in the exercise of quasi-judicial functions, is involved. Each election period is *sui generis* — a class in itself, and any registration or accreditation by a party-list group is only for the purpose of the coming election; it does not grant

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[11] *Id.* at 219.

any registered party-list group any mantle of immunity from the COMELEC's power of review as an incident of its power to register. To hold otherwise would emasculate the COMELEC as an independent constitutional commission, and weaken the crucial role it plays in our republican democracy.

IV. DISCUSSION: MERITS OF THE PETITIONS

I take the firm position that this Court should now **revisit** its ruling in ***Ang Bagong Bayani*** before our party-list system drifts any farther from the text and spirit of the constitutional and statutory commands.

These Discussions shall dwell on the reasons supporting this approach and my conclusions.

A. The Constitutional Provisions on the Party-list System

a. The Constitutional Text.

The only constitutional provisions directly dealing with the party-list system of election are **Section 5(1) and (2) of Article VI**, and **Sections 2, 6 and 7, Article IX-C** of the **1987 Constitution**.

The cited Article VI section reads:

> Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, **and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations**.
>
> (2) The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided

by law, except the religious sector. [emphasis, underscores and italics ours]

Article IX-C of the 1987 Constitution, on the other hand, is the article on the COMELEC, and the cited sections quoted below are its provisions related to the party-list system.

Section 2. The Commission on Elections shall exercise the following powers and functions:

x x x x x x x x x

(5) ***Register***, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. x x x

x x x x x x x x x

Section 6. A ***free and open party system*** shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article.

Section 7. No votes cast ***in favor of a political party, organization, or coalition*** shall be valid, except for those registered under the party-list system as provided in this Constitution. [emphases and italics ours]

These provisions are specifically mentioned and shall be cited throughout this Separate Opinion as they are the essential take-off points in considering, appreciating and implementing the party-list system.

b. <u>The Constitutional Text Summarized</u>

Paraphrased and summarized, the terms of the Constitution relating to the party-list system essentially provide that:

1. The House of Representatives shall be composed of members elected from ***legislative districts***, and ***those who are elected through a party-list system***.
2. The ***members of the House of Representatives under the party-list system*** are those who are ***elected, as***

provided by law, thus, plainly leaving the mechanics of the system to future legislation.

3. The members under the system shall be ***elected through registered national, regional, sectoral parties and organizations***, thus, textually identifying the recognized component groupings in the party-list system; they must all ***register with the Comelec*** to be able to participate.

4. ***To be voted*** under the party-list system are the ***component political parties, organizations and coalitions***, in contrast with the individual candidates voted upon in legislative district elections.

5. The party-list representatives shall constitute ***twenty per centum of the total number of representatives***, including those in the party-list.

6. For ***three consecutive terms*** after the ratification of the Constitution, one-half of the seats allocated to party-list representatives shall be filled as provided by law, by selection or election from the *labor, peasant, urban poor, indigenous cultural minorities, women, youth, and such other sectors as may be provided by law*, except the religious sector

7. The Constitution allows a ***free and open party system*** that shall evolve according to the free choice of the people, within the limits of the Constitution.

c. <u>Purpose Behind the Party-list Innovation</u>

Unmistakably, the quoted constitutional texts are both terse and general in their terms. However, they are not, in fact, as bare as they would seem, as the words used carry ***meanings and intents***[12] expressed during the deliberations *and the voting*

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[12] In *Francisco, Jr. v. The House of Representatives* (460 Phil. 830, 885-886), the Court held: "where there is ambiguity, *ratio legis est anima.* x x x

x x x x x x x x x

x x x *The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the*

that took place to determine what the Constitution would exactly provide.[13]

Basic **in understanding the constitutional text is the intent** that led to the modification of the system of legislative district elections that the country has used even before the 1935 Constitution.

The traditional system, incidentally, is the ***legislative district system*** that remains described in the Constitution as election by district "apportioned among the provinces, cities and the Metropolitan Manila area in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio."[14]

The proponent, Commissioner Christian Monsod, described the **new party-list system in terms of its purpose**, as follows:[15]

> The purpose of this is ***to open the system***. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always ***third place or fourth place in each of the districts***. So, they have no voice in the Assembly. But this way, ***they would have five or six representatives in the Assembly even if they would not win individually in legislative districts***. So, **that is essentially the mechanics, the purpose and objectives of the party list system**. [italics, emphases and underscores ours]

These same purpose and objective were reiterated in the Commissioner's subsequent statement when he said —

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framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. *It may also be safely assumed that* **the people in ratifying the Constitution were guided mainly by the explanation offered by the framers**. [italics, emphasis and underscore supplied]

[13] The deliberations, together with voting on the various issues raised and the wording of the constitutional text of the party-list provision, took place on July 22, 1986, July 25, 1986 and August 1, 1986.

[14] 1987 CONSTITUTION, Article VI, Section 5(1).

[15] II RECORD of the CONTITUTIONAL COMMISSION, p. 86.

The whole purpose of the system is precisely to give room for those who have a national constituency who may never be able to win a seat on a legislative district basis. But they must have a constituency of at least 400,000 in order to claim a voice in the National Assembly.[16]

thus, leaving no doubt on ***what the party-list system conceptually is and why it was established***.

B. RA No. 7941, the Party-List System Act

Following the ratification of the 1987 Constitution, President Corazon Aquino appointed representatives of the sectors mentioned in the Constitution, namely: labor, peasant, urban poor, indigenous cultural minorities, women, and youth, who acted as the party-list representatives for the first three (3) elections under this Constitution.

In March 1995, Congress enacted **RA No. 7941, the Party-List System Act,** as the law that would implement the party-list election scheduled for May 1998. The law at the same time fleshed out the mechanics for party-list elections, in accordance with the terms of the Constitution. The law specifically provided for:

a. a ***declaration of the policy*** behind the law;
b. a ***definition of terms***, specifically defining the terms ***national, political, regional, and sectoral parties, and their coalitions****;*
c. the requisites and terms for ***registration***; the grounds for ***refusal and cancellation of registration***; and the certified list of registered parties;
d. the nomination and qualification for ***party-list representatives***;
e. the ***manner of voting***;
f. the ***number and procedure*** for the allocation of party-list representatives; and
g. the ***proclamation of the winning party-list representatives***, their term of office; the limitation on their change of affiliation; their rights; and the provisions in case of vacancy.

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[16] *Id.* at 259.

Reflecting the constitutional intents, the law defined the **party-list system** as:

> a ***mechanism of proportional representation*** in the election of representatives to the House of Representatives ***from national, regional and sectoral parties or organizations or coalitions*** thereof registered with the Commission on Elections (COMELEC). Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system.[17] (emphases and italics ours)

and clarified the State's **policy, objectives and means**, as follows:

> a. the ***promotion of proportional representation*** in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof;
>
> b. with the aim of ***enabling Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties***, and who ***lack well-defined political constituencies*** but who could ***contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole***, to become members of the House of Representatives; and
>
> c. for the development and guarantee of a ***full, free and open party system*** in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature under the simplest scheme possible.[18]

RA No. 7941 likewise succinctly **defined the component groupings recognized by law** in the party-list system, as follows:

> (b) A ***party*** means either a political party or a sectoral party or a coalition of parties.
>
> (c) A ***political party*** refers to an organized group of citizens advocating an *ideology or platform, principles and policies for the*

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[17] RA No. 7941, Section 3(a).

[18] RA No. 7941, Section 2.

general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.

It is a ***national party*** when its constituency is spread over the geographical territory of at least a majority of the regions. It is a ***regional party*** when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.

(d) A ***sectoral party*** refers to an organized group of citizens belonging to any of the sectors enumerated [labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals] whose principal advocacy pertains to the special interest and concerns of their sector.

(e) A ***sectoral organization*** refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.

(f) A ***coalition*** refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.[19] (emphases and italics ours)

Notably, the definitions carried no significant qualifications, preferences, exclusions or limitations by law on what the recognized party-list groupings should be, although Section 6 of RA No. 7941 specified and defined the grounds for disqualification.

C. Jurisprudential Developments

a. The *Ang Bagong Bayani* Case

In 2001, the first judicial test in the implementation of the party-list system came through the *Ang Bagong Bayani* case where the petitioners sought the disqualification of the private respondents, among whom were major political parties. The Court resolved, among others, the following issues:

1. whether political parties may participate in party-list elections; and

[19] RA No. 7941, Section 3(b) to (f).

2. whether the party-list system is exclusive to "marginalized and underrepresented" sectors and organizations.

The majority ruling held that ***political parties may participate*** in party-list elections, provided that the requisite character of these parties or organizations must be consistent with the Constitution and RA No. 7941. The ***party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies***, identifying them, non-exclusively, as the labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. The ***party-list nominees***, as well, must be ***Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties***.

Based on its conclusions, the majority provided the guidelines for the party-list system, summarized below:

First, the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. In other words, it must show — through its constitution, articles of incorporation, bylaws, history, platform of government and track record — that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, ***majority of its membership should belong to the marginalized and underrepresented***. And it must demonstrate that in a conflict of interests, it has chosen or is likely to choose the interest of such sectors.

Second, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling "Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives." In other words, while ***they are not disqualified merely on the ground that they are political parties, they must show, however, that they represent the interests of the marginalized and underrepresented.*** x x x

x x x x x x x x x

Third, [by an] express constitutional provision[,] the religious sector may not be represented in the party-list system. x x x

x x x x x x x x x

Fourth, a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification[.]

x x x x x x x x x

Fifth, the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government. By the very nature of the party-list system, the party or organization must be a group of citizens, organized by citizens and operated by citizens. It must be independent of the government. x x x

Sixth, the party must not only comply with the requirements of the law; its nominees must likewise do so. Section 9 of RA 7941 [contains the qualifications of party-list nominees, with special age-related terms for youth sector candidates].

Seventh, not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees. x x x [U]nder Section 2 of RA 7941, the nominees must be Filipino citizens "who belong to marginalized and underrepresented sectors, organizations and parties." x x x

Eighth, x x x the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.[20] (italics and emphases ours)

b. BANAT Case

Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections[21] is essentially a case on the computation of the allocation of seats based on the party-list votes. Despite the *Ang Bagong Bayani* ruling, the question of ***whether the Constitution prohibits political parties from participating in the party-list elections*** remained a live issue in this case.

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[20] *Ang Bagong Bayani-OFW Labor Party v. COMELEC, supra* note 4, at 342-345.

[21] G.R. Nos. 179271 and 179295, April 21, 2009, 586 SCRA 210.

By a vote of 8-7, the Court decided to **disallow major political parties from participating in the party-list elections, directly or indirectly**; thus, effectively reversing the ruling in *Ang Bagong Bayani* that major political parties may participate in the party-list system, provided they represent the marginalized and underrepresented sectors. Chief Justice Reynato S. Puno cited two reasons for disallowing the participation of major political parties:

1. Limiting the party-list system to the marginalized and excluding the major political parties from participating in the election of their representatives are aligned with the constitutional mandate to reduce social, economic and political inequalities and remove cultural inequalities by equitably diffusing wealth and political power for the common good.

2. Allowing major political parties to participate in the party-list system electoral process will suffocate the voice of the marginalized, frustrate their sovereignty, and betray the democratic spirit of the Constitution.

The minority view[22] took the position that neither the Constitution nor RA No. 7941 prohibits major political parties from participating in the party-list system. It maintained that, on the contrary, the framers of the Constitution clearly intended the major political parties to participate in party-list elections through their sectoral wings, and this Court cannot engage in socio-political engineering and judicially legislate the exclusion of major political parties from party-list elections, in patent violation of the Constitution and the law.

Moreover, the minority maintained that the Party-List System Act and the deliberations of the Constitutional Commission state that major political parties are allowed to coalesce with sectoral organizations for electoral or political purposes. The other major political parties can thus organize or affiliate with their chosen sector or sectors, provided that their nominees belong to their respective sectors. Nor is it necessary that the party-list

[22] See *ponencia* of Justice Antonio T. Carpio.

organization's nominee "wallow in poverty, destitution, and infirmity," as there is no financial status or educational requirement in the law. It is enough that the nominee of the sectoral party belongs to the marginalized and underrepresented sectors; that is, if the nominee represents the fisherfolk, he must be a fisherfolk, if the nominee represents the senior citizens, he must be a senior citizen.

D. The Party-list System of elections under the constitution and RA 7941: Revisiting *Ang Bagong Bayani* and its errors

I opened these Discussions by quoting the plain terms of the Constitution and of the law to stress these terms for later comparison with ***Ang Bagong Bayani***. In this manner, *Ang Bagong Bayani's* slanted reading of the Constitution and the laws can be seen in bold relief. ***Its main mistake is its erroneous reading of the constitutional intent, based on the statements of a constitutional commissioner that were quoted out of context, to justify its reading of the constitutional intent***.[23] Specifically, it relied on the statements of Commissioner Villacorta, an advocate of sectoral representation, and glossed over those of Commissioner Monsod and the results of the deliberations, as reflected in the resulting words of the Constitution.[24]

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[23] II RECORD of the Constitutional Commission, p. 561. Stated by Commissioner Villacorta prior to the approval of the amendment that became Section 5(1), Article VI of the 1987 Constitution:

> Mr. Villacorta. I would like to report that the proponents of sectoral representation and of the party list system met to thoroughly discuss the issues and have arrived at a compromise formula.
>
> **On this first day of August 1986, we shall, hopefully, usher in a new chapter in our national history by giving genuine power to our people in the legislature**. Commissioner Monsod will present to the Committee on the Legislative the amendment to Section 5 which we have agreed upon. [emphasis and underscore ours]

The underlined and boldfaced portion was lifted out of context in *Ang Bagong Bayani*.

[24] See Dissent of J. Vicente V. Mendoza which discussed the Villacorta and Monsod positions, as well as the statements of Commissioners Jaime Tadeo and Blas Ople, based on the record of the Constitutional Commission.

Thus, its conclusion is not truly reflective of the intent of the framers of the Constitution. This error is fatal as its conclusion was then used to justify his interpretation of the statute, leading to a bias for the social justice view.

a. The Aim or Objective of the Party-List System

a.1. From the Constitutional Perspective.

The ***aim of the party-list provision***, Section 5, Article VI of the Constitution, is principally ***to reform*** the then existing electoral system by adding a new system of electing the members of the House of Representatives. The innovation is a party-list system that would expand opportunities for electoral participation to allow those who could not win in the legislative district elections a fair chance to enter the House of Representatives other than through the district election system.

Otherwise stated, the aim is ***primarily electoral reform — not to provide a social justice mechanism*** that would guarantee that sectors (described in social justice context by its constitutional deliberation proponents as "marginalized") would exclusively occupy, or have reserved, seats in the House of Representatives under the party-list system. This is one glaring error that is evident right from the opening statement of *Ang Bagong Bayani* when it described the party-list system as "*a social justice tool*." While the party-list system can indeed serve the ends of social justice by providing the *opportunity* – through an open, multi-party system – for the social justice sector groups that have no chance to win in legislative district elections, the party-list system was not established primarily for this purpose.

The best proof of this characteristic comes from the words of the Constitution itself which do not provide for exclusive or guaranteed representation for sectoral groups in the party-list system. If at all, the constitutional text only provided a guarantee of 50% participation for specified sectoral groups, but the ***guarantee was only for the first three (3) elections after the ratification*** of the Constitution.[25]

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[25] 1987 CONSTITUTION, Article VI, Section 5(2).

The deliberations where the words of the Constitution were framed and adopted confirm the primacy of electoral reform as against social justice objectives. The electoral reform view was espoused by the author of the provision, Commissioner Monsod, and his proposed amendment[26] met vigorous objections from Commissioner Eulogio Lerum and Commissioner Jaime Tadeo, who then sought to have guaranteed or reserved seats for the "marginalized" sectors in order to prevent their "political massacre" should the Monsod amendment be allowed.[27]

When voting took place, those ***against*** reserved seats for the marginalized sector won. Eventually, what was conceded to the latter was what the Constitution, as worded now, provides — *i.e.*, "***For three consecutive terms*** after the ratification of this Constitution, ***one-half*** of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from" the enumerated sectors.

Indeed, if the concept of "marginalized" would be applied to the party-list system, ***the term should apply to the national, regional, and sectoral parties or organizations that cannot win in the traditional legislative district elections*** (following the explanation of Commissioner Monsod), not necessarily to those claiming marginalization in the social justice context or because of their special interests or characteristics. The term, of course, can very well be applicable to the latter if they indeed cannot win on their own in the traditional legislative district elections. These aspects of the case are further discussed and explained below.

a.2. From the Statutory Perspective.

Even from the perspective of RA No. 7941, the policy behind the party-list system innovation does not vary or depart from the basic constitutional intents. The objective continues to be

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[26] On July 25, 1986.

[27] II RECORD of the Constitutional Commission, pp. 255, 561-562. See also the Dissents of Justice Jose C. Vitug and Justice Vicente Mendoza in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, *supra* note 4.

electoral reform, expressed as the ***promotion of proportional representation in the election of representatives*** to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions, ***under a full, free and open party system*** in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives.[28]

It should be noted that it was under RA No. 7941 that the words "marginalized and underrepresented" made their formal appearance in the party-list system. It was used in the context of defining ***one of the aims*** of the system, *i.e.*, to ***enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties,*** and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, ***to become members of the House of Representatives***.

This entry and use of the term is admittedly an effective and formal statutory recognition that ***accommodates*** the sectoral (in the special interest or concern or social justice senses) character into the party-list system (*i.e.*, in addition to the primary electoral reform purpose contemplated in the Constitution), but nevertheless does not render sectoral groups the exclusive participants in party-list elections. As already mentioned, this conclusion is not justified by the wording, aims and intents of the party-list system as established by the Constitution and under RA No. 9741.

Nor does the use of the term "marginalized and underrepresented" (understood in the narrow sectoral context) render it an absolute requirement to qualify a party, group or organization for participation in the party-list election, except for those in the sectoral groups or parties who by the nature of their parties or organizations necessarily are subject to this requirement. For all parties, sectors, organizations or coalition, however, the absolute overriding requirement — as justified by the principal aim of the system — remains to be a party, group or organization's

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[28] See Section 2 of RA No. 7941.

inability to participate in the legislative district elections with a fair chance of winning. To clearly express the logical implication of this statement, a party, group or organization already participating in the legislative district elections is presumed to have assessed for itself a fair chance of winning and should no longer qualify to be a participant in the party-list elections.

b. Party Participation under the Party-list System

The ***members of the House of Representatives under the party-list system*** are those who would be ***elected, as provided by law,*** thus, plainly leaving the mechanics of the system to future legislation. They are likewise constitutionally identified as the ***registered national, regional, sectoral parties and organizations***, and are the party-list groupings ***to be voted*** under the party-list system under a ***free and open party system*** that should be allowed to evolve according to the free choice of the people within the limits of the Constitution.[29]

From the perspective of the law, this party structure and system would hopefully foster proportional representation that would lead to the election to the House of Representatives of Filipino citizens: (1) who belong to marginalized and underrepresented sectors, organizations and parties; and (2) who lack well-defined constituencies; but (3) who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. The **key words** in this policy are ***"proportional representation," "marginalized and underrepresented,"*** and ***"lack of well-defined constituencies.***"

The term "marginalized and underrepresented" has been partly discussed above and would merit further discussion below. *Ang Bagong Bayani-OFW Labor Party v. COMELEC*,[30] on the other hand, defined the term *"proportional representation"* in this manner:

[I]t refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration in Section 5

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[29] Pages 19-23 of this Separate Opinion.

[30] *Supra* note 4.

of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural, communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.[31]

As well, the case defined the phrase *"who lack well-defined political constituency"* to mean:

> refers to the absence of a traditionally identifiable electoral group, like voters of a congressional district or territorial unit of government. Rather, it points again to those with disparate interests identified with the "marginalized or underrepresented.[32]

Thus, in both instances, *Ang Bagong Bayani* harked back to the term "marginalized and underrepresented," clearly showing how, in its view, the party-list system is bound to this descriptive term. As discussed above, *Ang Bagong Bayani's* use of the term is not exactly correct on the basis of the primary aim of the party-list system. This error becomes more glaring as the case applies it to the phrases "proportional representation" and "lack of political constituency."

For clarity, Section 2 — the only provision where the term "marginalized and underrepresented" appears — reads in full:

> Section 2. *Declaration of Policy.* — **The State shall promote proportional representation** in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the **marginalized and under-represented sectors, organizations and parties**, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. **Towards this end, the State shall develop and guarantee a full, free and open party system** in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their

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[31] *Id.* at 333.

[32] *Ang Bagong Bayani-OFW Labor Party v. COMELEC, supra* note 4, at 334.

chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.

As defined in the law, a **party** refers to any of the three: a political party, a sectoral party, or a coalition of parties (Section 3[b] of RA No. 7941). As distinguished from sectoral parties or organizations — which generally advocate "interests or concerns" — a political party is one which advocates "an **ideology or platform, principles and policies" of the government.** In short, its identification is with or through its program of governance.

Under the ***verba legis*** or plain terms rule of statutory interpretation[33] and the maxim ***ut magis valeat quam pereat***,[34]

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[33] Per *Francisco, Jr. v. The House of Representatives* (*supra* note7, at 884-885): ***verba legis*** signifies that "wherever possible, the words used in the Constitution must be given their ordinary meaning *except* where technical terms are employed. x x x 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 these are the cases where the need for construction is reduced to a minimum." (emphasis, underscore and italics ours)

[34] *Id.* at 887, "***ut magis valeat quam pereat***" — the Constitution is to be interpreted as a whole. "It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together." (Citing *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 & 83815, February 22, 1991, 194 SCRA 317.)

a combined reading of Section 2 and Section 3 shows that the status of being "marginalized and underrepresented" is not limited merely to sectors, particularly to those enumerated in Section 5 of the law. The law itself recognizes that the same status can apply as well to "political parties."

Again, the explanation of Commissioner Monsod on the principal objective of the party-list system comes to mind as it provides a ready and very useful answer dealing with the relationship and inter-action between sectoral representation and the party-list system as a whole:

We sought to avoid these problems by presenting a party list system. Under the party list system, there are no reserved seats for sectors. Let us say, laborers and farmers can form a sectoral party or a sectoral organization that will then register and present candidates of their party. How do the mechanics go? Essentially, under the party list system, every voter has two votes, so there is no discrimination. First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. **This can be a regional party, a sectoral party, a national party, UNIDO, Magsasaka or a regional party in Mindanao**. One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party. At the end of the day, the COMELEC will then tabulate the votes that had been garnered by each party or each organization — one does not have to be a political party and register in order to participate as a party — and count the votes and from there derive the percentage of the votes that had been cast in favor of a party, organization or coalition.

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It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. It also means that, let us say,

there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly. Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly. These sectors or these groups may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.

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BISHOP BACANI: Madam President, am I right in interpreting that when we speak now of party list system though we refer to sectors, we would be referring to sectoral party list rather than sectors and party list?

MR. MONSOD: **As a matter of fact, if this body accepts the party list system, we do not even have to mention sectors because the**

In other words, the Court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.

If, however, the plain meaning of the word is not found to be clear, resort to other aids is available.

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof. (*Id.*)

sectors would be included in the party list system. They can be sectoral parties within the party list system.

BISHOP BACANI: Thank you very much.[35] (emphases and underscores supplied)

These exchanges took place on July 22, 1986. When the discussion on the party-list system of election resumed on July 25, 1986, Commissioner Monsod proposed an amendment[36] (that substantially became Section 5[1], Article VI of 1987 Constitution) that further clarified what this innovative system is.

Thus, the words "marginalized" and "underrepresented" should be understood in the ***electoral sense***,[37] *i.e.*, those who cannot win in the traditional district elections and who, while they may have a national presence, lacked "well-defined political constituency" within a district sufficient for them to win. For emphasis, sectoral representation of those perceived in the narrow sectoral (including social justice) sense as "marginalized" in society is encapsulated within the broader multiparty (party-list system) envisioned by the framers.

This broader multiparty (party-list system) seeks to address *not only* the concerns of the marginalized sector (in the narrow sectoral sense) but also the concerns of those "underrepresented" (in the legislative district) as a result of the winner-take-all system prevailing in district elections — a system that ineluctably "disenfranchises" those groups or mass of people who voted for the second, third or fourth placer in the district elections and even those who are passive holders of Filipino citizenship.

RA No. 7941 itself amply supports this idea of "underrepresented" when it used a broad qualitative requirement in defining "political parties" as ideology or policy-based groups and, "sectoral parties" as those whose principal advocacy pertains to the special interest and concerns of identified sectors.

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[35] II RECORD of the Constitutional Commission, pp. 85-86.

[36] *Id.* at 252.

[37] See Justice Vicente Mendoza's Dissent in *Ang Bagong Bayani-OFW Labor Party v. COMELEC, supra* note 4, at 369-370.

Based on these considerations, it becomes vividly clear that — contrary once again to what *Ang Bagong Bayani* holds — **proportional representation refers to the representation of different political parties, sectoral parties and organizations in the House of Representatives in proportion to the number of their national constituency or voters, consistent with the constitutional policy to allow an "open and free party system" to evolve**.

In this regard, the ***second sentence of Section 2*** of RA No. 7941 is itself notably anchored on the "open and free party system" mandated by Article IX-C of the Constitution. For some reason, *Ang Bagong Bayani* never noted this part of ***Section 2*** and its significance, and is utterly silent as well on the constitutional anchor provided by ***Section 6, Article IX-C*** of the Constitution. It appears to have simply and conveniently focused on the ***first sentence*** of the Section and its constricted view of the term "marginalized and underrepresented," while wholly fixated on a social justice orientation. Thus, it opened its ruling, as follows:

> The party-list system is a ***social justice tool*** designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy.[38] (emphasis supplied)

Reliance on the concept of social justice, to be sure, involves a motherhood statement that offers little opportunity for error, yet relying on the concept ***solely and exclusively*** can be ***misleading***. To begin with, the creation of an avenue by which "sectoral parties or organizations" can meaningfully join an electoral exercise is, in and by itself, a social justice mechanism but it served other purposes that the framers of the Constitution were addressing. Looking back, the appeal to the social justice

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[38] 412 Phil. 322 (2001).

concept to make the party-list elections an exclusive affair of the "marginalized and underrepresented sector" (as defined in *Ang Bagong* Bayani) proceeds from the premise that a multiparty-system is antithetical to sectoral representation. This was effectively the argument of the proponents of the exclusive sectoral representation view in the constitutional party-list debates; to allow political parties to join a multiparty election is a pre-determination of the sectors' political massacre. This issue, however, has been laid to rest in the constitutional debates and should not now be revived and resurrected by coursing it through the Judiciary.

As the constitutional debates and voting show, what the framers envisioned was a multiparty system that already *includes* sectoral representation. Both sectoral representation and multiparty-system under our party-list system are concepts that comfortably fall within this vision of a Filipino-style party-list system. Thus, both the text and spirit of the Constitution do not support an interpretation of exclusive sectoral representation under the party-list system; what was provided was an avenue for the marginalized and underrepresented sectors to participate in the electoral system — it is an invitation for these sectors to join and take a chance on what democracy and republicanism can offer.

Indeed, our democracy becomes more vibrant when we allow the interaction and exchange of ideas, philosophies and interests within a broader context. By allowing the marginalized and underrepresented sectors who have the numbers, to participate together with other political parties and interest groups that we have characterized, under the simple and relatively inexpensive mechanism of party-list we have today, the framers clearly aimed to enrich principled discourse among the greater portion of the society and hoped to create a better citizenry and nation.

b.1. Impact on Political Parties

To summarize the above discussions and to put them in operation, political parties are not only "not excluded" from the party-list system; they are, in fact, expressly allowed by law to participate. This participation is not impaired by any

"marginalized and underrepresented" limitation understood in the *Ang Bagong Bayani* sense.

As applied to political parties, this limitation must be understood in the ***electoral sense***, *i.e.*, they are parties espousing their unique and "marginalized" principles of governance and who must operate in the party-list system because they only have a "marginal" chance of winning in the legislative district elections. This definition assumes that the political party is ***not also a participant in the legislative district elections as the basic concept and purpose of the party-list innovation negate the possibility of playing in both legislative district and party-list arenas***.

Thus, parties — whether national, regional or sectoral – with legislative district election presence anywhere in the country can no longer participate as the party-list system is national in scope and no overlap between the two electoral systems can be allowed anywhere.

c. The Parties and Their Nominees

c.1. Refusal and/or Cancellation of Party Registration Due to Nominee Problems

The COMELEC's refusal and cancellation of registration or accreditation of parties based on Section 6 of RA No. 7941 is a sore point when applied to parties based on the defects or deficiencies attributable to the nominees. On this point, I maintain the view that ***essential distinctions exist between the parties and their nominees that cannot be disregarded***. As quoted in the Summary of Positions, however, the need to make a distinction between the two types of nominees is relevant only to sectoral parties and organizations.

The cancellation of registration or the refusal to register some of the petitioners on the ground that their nominees are not qualified implies that ***the COMELEC viewed the nominees and their party-list groups as one and the same entity***; hence, the disqualification of the nominee necessarily results in the disqualification of his/her party.

Sadly, this interpretation ***ignores*** the factual and legal reality that the party-list group, not the nominee, ***is*** the candidate in the party-list election, and at the same time blurs the distinction between a party-list representative and a district representative.

c.2. The Party-Nominee Relationship

That the party-list group, rather than the nominee, is voted for in the elections is not a disputed point. Our essential holding, however, is that a party-list group, in order to be entitled to participate in the elections, must satisfy the following express statutory requirements:

1. must be composed of Filipino citizens **belonging to marginalized and underrepresented sectors, organizations and parties**;
2. has no well-defined political constituencies; and
3. must be capable of contributing to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.

The Constitution requires, too, that the members of the House of Representatives are those who are elected from legislative districts, and those who are elected through a party-list system (Section 5[1], Article VI) where the votes are in favor of a political party, organization or coalition (Section 6, Article IX-C).

These requirements embody the concept behind the party-list system and demonstrate that it is a system completely different from the legislative district representation. ***From the point of view of the nominee, he or she is not the candidate, the party is the entity voted for.*** This is in far contrast from the legislative district system where the candidate is directly voted for in a personal electoral struggle among candidates in a district. Thus, ***the nominee in the party-list system is effectively merely an agent of the party***.[39] It is the party-list group for whom the right of suffrage[40]

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[39] Separate Dissenting Opinion of Justice Jose C. Vitug in *Ang Bagong Bayani-OFW Labor Party v. COMELEC, supra* note 4, at 354.

[40] 1987 Constitution, Article V. In *Akbayan-Youth v. COMELEC* (407 Phil. 618, 636 [2001]), the Court characterized the requirement of registration

is exercised by the national electorate with the divined intent of casting a vote for a party-list group in order that the particular ideology, advocacy and concern represented by the group may be heard and given attention in the halls of the legislature.

This concept and its purpose negate the idea that the infirmities of the nominee that do not go into the qualifications *of the party itself* should prejudice the party. In fact, the law does not expressly provide that the disqualification of the nominee results in the disqualification of a party-list group from participating in the elections. In this regard, Section 6 of RA No. 7941 reads:

> Section 6. *Removal and/or Cancellation of Registration*. The COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:
>
> (1) It is a religious sect or denomination, organization or association organized for religious purposes;
>
> (2) It advocates violence or unlawful means to seek its goal;
>
> (3) It is a foreign party or organization;
>
> (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
>
> (5) It violates or fails to comply with laws, rules or regulations relating to elections;
>
> (6) It declares untruthful statements in its petition;

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as an "indispensable precondition" to the exercise of the right of suffrage. The Court said: "Proceeding from the significance of registration as a necessary requisite to the right to vote, the State undoubtedly, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the ultimate purpose of conducting honest, orderly and peaceful election, to the incidental yet generally important end, that even pre-election activities could be performed by the duly constituted authorities in a realistic and orderly manner — one which is not indifferent and so far removed from the pressing order of the day and the prevalent circumstances of the times."

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two percentum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. [italics supplied]

Notably, all these grounds **pertain to the party itself**. Thus, if the law were to be correctly applied, the law, rules and regulations that the party violated under Section 6(5) of RA No. 7941 must affect the party itself to warrant refusal or cancellation of registration.

To take one of the presented issues as an example, it is only after a party's failure to submit its list of five qualified candidates, after being notified of its nominees' disqualification, that refusal or cancellation of registration may be warranted. Indeed, if the party-list group inexcusably fails to comply with this simple requirement of the law (Section 8 of RA No. 7941), then its registration deserves to be denied or an existing one cancelled as this omission, by itself, demonstrates that ***it cannot then be expected to "contribute to the formulation and enactment of appropriate legislation."***[41]

The nominee is supposed to carry out the ideals and concerns of the party-list group to which he/she belongs; to the electorate, he/she embodies the causes and ideals of the party-list group. However, unlike the political parties' official candidates — who can, for whatever reason, disaffiliate from his party and run as an independent candidate — the linkage between a nominee and his party-list group is actually a ***one-way mirror relationship.*** The nominee can only see (and therefore run) through the party-list group[42] but the party-list group can see *beyond* the nominee-member.

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[41] See Section 2 of RA No. 7941.

[42] In fact, a nominee's change of party affiliation during his term results in the forfeiture of his seat in Congress (see Section 15 of RA No. 7941). If the party-list group fails to obtain a seat in Congress, the law nevertheless requires a nominee to be a *bona fide* member of the party-list group.

While the nominee is the entity "elected" to Congress, a companion idea that cannot be glossed over is that *he only carried this out because of the nomination made by the party to which he belongs and only through the unique party-list system.* Note in this regard that the registration with the COMELEC confers personality (for purposes of election) *on the party-list group itself* — and to no other. Note, too, that what the Constitution and the law envision is *proportional representation through the group and the latter, not the nominee, is the one voted for* in the elections. Even the manner of his nomination and the duties his official relation to his party entails are matters that are primarily determined by the party's governing constitution and by-laws. To be sure, political dynamics take place within the party itself prior to or after the period of registration that transcend the nominee's status as a representative. These realities render indisputable that a party has the right (in fact, the duty) to replace a nominee who fails to keep his *bona fide* membership in the party — *i.e.*, keeping true to the causes of the party — even while the nominee is serving in Congress.

The preceding discussions show that the COMELEC's action of apparently treating the nominee and his party as one and the same is clearly and plainly unwarranted and could only proceed from its commission of grave abuse of discretion, correctible under Rule 65.

These distinctions do not discount at all the position or the role of the party-list nominee; it is from the list of nominees submitted by the party that party-list representatives are chosen should the party obtain the required number of votes. In fact, once the party-list group submits the list of its nominees, the law provides specific grounds for the change of nominees or for the alteration of their order of nomination. While the nominee may withdraw his nomination, we ruled it invalid to allow the party to withdraw the nomination it made[43] in order "to save the nominee from falling under the whim of the party-list

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[43] *Lokin, Jr. v. Commission on Elections*, G.R. Nos. 179431-32 and 180443, June 22, 2010, 621 SCRA 385, 412.

organization once his name has been submitted to the COMELEC, and to spare the electorate from the capriciousness of the party-list organizations."[44]

We also recognize the importance of informing the public who the nominees of the party-list groups are as these nominees *may* eventually be in Congress.[45] For the nominees themselves, the law requires that:

1. he has given his written consent to be a nominee;
2. he must be a natural-born citizen of the Philippines;
3. he must be a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election;
4. he must be able to read and to write;
5. he must be a *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election; and
6. he must be at least twenty-five (25) years of age on the day of the election.

From this list, what clearly serves as the **legal link** between the party and its nominee is **only the latter's *bona fide* membership in the party that wishes to participate in the party-list system of election. Because of this relationship, membership is a fact that the COMELEC must be able to confirm as it is the link between the party the electorate votes for and the representation that the nominee subsequently undertakes in the House of Representatives.** To illustrate, if a sectoral party's nominee, who does not "actually share the attribute or characteristic" of the sector he seeks to represent, fails to prove that he is a genuine advocate of this sector, then the presence of bona fide membership cannot be maintained.

To automatically disqualify a party without affording it opportunity to meet the challenge on the eligibility of its nominee

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[44] *Ibid.*

[45] *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, G.R. Nos. 177271 and 177314, May 4, 2007, 523 SCRA 1, 16-17.

or to undertake rectifications deprives the party itself of the legal recognition of its own personality that registration actually seeks.

The qualifications of a nominee at the same time that it determines whether registration shall be granted.[46] When under the COMELEC's lights, the shadow cast by the party-list nominee is not truly reflective of the group he/she is supposed to represent, what the COMELEC must do is to give the party the opportunity to field in the five qualified candidates. The COMELEC acts with grave abuse of discretion when it immediately cancels or refuses the registration of a party without affording it the opportunity to comply.

In line with the idea of proportional and sectoral representation, the law provides that a nominee-representative who changes his affiliation during his term forfeits his seat. Likewise, in providing for the rule in case of vacancy for seats reserved for party-list representatives, the reason for the vacancy is broad enough to include not only the valid causes provided for in the party's constitution and by-laws (such as the non-possession of the necessary qualifications), but likewise includes the situation where the House of Representatives Electoral Tribunal finds that the nominee-representative unqualified for failure to measure up to the necessary statutory and other legal requirements.[47] If these can be remedied without affecting the status of the party itself, no reason exists why the registration of a party-list group should automatically be cancelled or refused by reason of individual failures imputable and affecting only the nominee.

Based on these considerations and premises, the party-list group and its nominees cannot be wholly considered as one identifiable entity, with the fault attributable and affecting only the nominee, producing disastrous effects on the otherwise

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[46] For party-list groups already previously registered, the COMELEC can determine the qualifications of their nominees once they file a Manifestation of Intent to participate.

[47] See *Abayon v. House of Representatives Electoral Tribunal*, *supra* note 42; and *Lokin, Jr. v. Commission on Elections*, *supra* note 45.

qualified collective merit of the party. If their identification with one another can be considered at all, it is in the ideal constitutional sense that one ought to be a reflection of the other — *i.e.*, the party-list group acts in Congress through its nominee/s and the nominee in so acting represents the causes of the party in whose behalf it is there for.

E. Observations on Chief Justice Sereno's Reflections.

Essentially, the Reflections defend the *Ang Bagong Bayani* ruling and do not need to be further discussed at this point lest this Opinion be unduly repetitious. One point, however, that needs to be answered squarely is the statement that this Separate Opinion is not "*appropriately sensitive to the context from which it [the 1987 Constitution] arose.*" The Reflections asserted that the heart of the 1987 Constitution is the Article on Social Justice," citing, in justification, the statements endorsing the approval of the 1987 Constitution, particularly those of Commissioner Cecilia Munoz Palma, the President of the 1986 Constitutional Commission; President Munoz Palma described the Constitution as reaching out to the social justice sectors.

These cited statements, however, were endorsements of the Constitution *as a whole* and did not focus solely on the electoral reform provisions. **As must be evident in the discussions above, I have no problem in accepting the social justice thrust of the 1987 Constitution as it indeed, *on the whole,* shows special concern for social justice compared with the 1935 and the 1973 Constitution. The Reflections, however, apparently misunderstood the thrust of my Separate Opinion as already fully explained above.**

This Separate Opinion simply explains that the provisions under consideration in the present case are the Constitution's electoral provisions, specifically the elections for the House of Representatives and the nation's basic electoral policies (expressed in the Article on the Commission on Elections) that the constitutional framers wanted to reform.

What the 1987 constitutional framers simply wanted, *by way of electoral reform*, was to "open up" the electoral system by

giving more participation to those who could not otherwise participate under the then existing system — *those who were marginalized in the legislative district elections because they could not be elected in the past for lack of the required votes and specific constituency in the winner-take-all legislative district contest, and who, by the number of votes they garnered as 3rd or 4th placer in the district elections, showed that nationally, they had the equivalent of what the winner in the legislative district would garner.* This was the concept of "marginalized and underrepresented" and the "lack of political constituency" that came out in the constitutional deliberations and led to the present wordings of the Constitution. RA No. 7941 subsequently faithfully reflected these intents.

Despite this overriding intent, the framers recognized as well that those belonging to specifically-named sectors (*i.e.*, the marginalized and underrepresented in the social justice sense) should be given a head-start — a "push" so to speak — in the first three (3) elections so that their representatives were simply to be selected as party-list representatives in these initial elections.

Read in this manner, the party-list system as defined in the Constitution cannot but be one that is ***"primarily"*** grounded on electoral reform and one that was principally driven by electoral objectives. As written, it admits of national and regional political parties (which may be based on ideology, *e.g.* the Socialist Party of the Philippines), with or without social justice orientation. At the same time, the system shows its open embrace of social justice through the preference it gave to the social justice sectors (*labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector*) in the first three elections after ratification of the Constitution, and to the *labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals*, in the RA No. 7941 definition of sectoral party.

The objection regarding the "textualist" approach has been fully discussed in the Summary of Positions and need not be repeated here.

F. The Eleven-Point Parameters for the COMELEC

I close this Opinion by outlining the **eleven-point parameters** that should guide the COMELEC in the exercise of its power to register parties under the party-list system of elections. For ease of application, these parameters refer back to the *Ang Bagong Bayani* guidelines, particularly on what points in these guidelines should be discarded and what remains intact and effective.

In view of our prior ruling in *BANAT v. Commission on Elections* (disqualifying political parties from participating in the party-list elections), the petitioners understandably attempted to demonstrate, in one way or another, that they represent the marginalized and underrepresented sectors, as the term is understood in *Bagong Bayani*. As discussed in this Separate Opinion, however, the requirement of being marginalized and underrepresented should be understood, not only in the narrow sectoral sense, but also in the broader electoral sense.

We likewise take note of the fact that this is the first time that the Court ever attempted to make a categorical definition and characterization of the term "marginalized and underrepresented," a phrase that, correctly understood, must primarily be interpreted in the electoral sense and, in case of sectoral parties and organizations, also partly in the special interests and social justice contexts. The COMELEC understandably has not been given parameters under the present pronouncements either in evaluating the petitions for registration filed before it, on one hand, or in determining whether existing party-list groups should be allowed to participate in the party-list elections. Hence, the need for the following parameters as we order a remand of all these consolidated petitions to the COMELEC.

1. **Purpose and Objective of Party-list System**. The primary objective and purpose of the party-list system (established under the Constitution and RA 7941 is ***electoral reform*** by giving marginalized and underrepresented parties (*i.e. those who cannot win in the legislative district elections and in this sense are marginalized and may lack the constituency to elect themselves there, but who – nationally – may generate*

the following and votes equivalent to what a winner in the legislative district election would garner), the chance to participate in the electoral exercise and to elect themselves to the House of Representatives through a system other than the legislative district elections.

At the same time, the party-list system recognizes sectoral representation through sectoral organizations (that, as defined did not require or identify any social justice characteristic but were still subject to the "marginalized and underrepresented" and the "constituency" requirements of the law), and through sectors identified by their common "social justice" characteristics (but which must likewise comply with the "marginalized and underrepresented" and "constituency" requirements of the law).

2. **<u>For political parties (whether national or regional)</u>**: a) to be classified as political parties, they must advocate an ideology or platform, principles and policies, for the general conduct of government. The application of the further requirement under RA No. 7941 (that as the most immediate means of securing the adoption of their principles of governance, they must regularly nominate and support their leaders and members as candidates for public office) shall depend on the particular circumstances of the party.

b) The ***marginal and under-representation in the electoral sense*** (*i.e.*, in the legislative district elections) and the lack of constituency requirements fully apply to political parties, but there is no reason not to presume compliance with these requirements *if political parties are not participants in any legislative district elections*.

c) ***Role of Major Political Parties in Party-list Elections***. Major political parties, if they participate in the legislative district elections, cannot participate in the party-list elections, nor can they form a coalition with party-list parties and run as a coalition in the party-list elections.

A coalition is a formal party participant in the party-list system; what the party-list system forbids directly (*i.e.*, participation in both electoral arenas), the major political parties cannot do indirectly through a coalition.

No prohibition, however, exists against *informal alliances* that they can form with party-list parties, organizations or groups running for the party-list elections. The party-list component of these informal alliances is not prohibited from running in the party-list elections.

The plain requirements intrinsic to the nature of the political party evidently ***render the first and second Ang Bagong Bayani guideline invalid, and significantly affects the fourth guideline.*** To stress, political parties are not only "not excluded" from the party-list system; they are, in fact, expressly allowed by law to participate without being limited by the "marginalized and underrepresented" requirement, as narrowly understood in *Ang Bagong Bayani*

3. **Sectoral parties, groups and organizations** must belong to the sectors enumerated in Section 5(2), Article VI of the 1987 Constitution and Section 5 of RA No. 7941 that are mainly based on social justice characteristics; or must have interests, concerns or characteristics specific to their sectors although they do not require or need to identify with any social justice characteristic.

In either case, they are subject to the "marginalized and under-represented" and the "constituency" requirements of the law through a showing, supported by evidence, that they belong to a sector that is actually characterized as marginal and under-represented.

Sectoral parties, groups and organizations are additionally subject to the general overriding requirement of **electoral marginalization and under-representation** and **the constituency requirements** of the law, but there is no reason why compliance with these requirements

cannot be presumed if they are not participants in any legislative district elections.

4. Registration with the COMELEC.

Political parties (whether national or regional, already registered with the COMELEC as regular political parties but not under the party-list system) must register under the party-list system to participate in the party-list elections. For party-list registration purposes, they must submit to the COMELEC their constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information that the COMELEC may require.[48]

Similarly, **sectoral parties, groups or organizations** already registered under the general COMELEC rules for registration of political parties (but not under the party-list system), must register under the party-list system to be eligible to participate in the party-list elections, and must likewise submit relevant documentation that the COMELEC shall require.

Political and sectoral parties, groups or organizations already previously registered and/or accredited under the party-list system, shall maintain their previous registration and/or accreditation and shall be allowed to participate in the party-list elections unless there are grounds for cancellation of their registration and/or accreditation under Section 6, RA 7941.

5. Submission of Relevant Documents. The statutory requirement on the submission of relevant documentary evidence to the COMELEC is not an empty and formal ceremony. The **eighth (8th) *Ang Bagong Bayani* guideline** relating to the ability of the party-list group (not just the nominee but directly through the nominee or indirectly through the group) to contribute to the formulation and enactment of appropriate legislation

[48] RA No. 7941, Section 5.

that will benefit the nation remains wholly relevant and should be complied with through the required submissions the COMELEC shall require.

The platform or program of government, among others, is very important considering the significant role the party-list group itself, as a collective body, plays in the party-list system dynamics even as its nominee or nominees is the one who is considered "Member" of the House of Representatives. The statutory recognition of an "appropriate legislation" beneficial to the nation injects the meaningful democracy that the party-list system seeks to add stimulus into.

6. **Party Disqualification**. Political parties and sectoral parties and organizations alike must not possess any of the disqualifying grounds under Section 6, RA 7941 to be able to participate in the party-list elections.

Insofar as the **third *Ang Bagong Bayani*** guideline merely reiterates the first ground for cancellation or refusal of registration under Section 6, RA 7941 — that the party-list group is a religious sect or denomination, organization or association, organized for religious purpose — and the same ground is **retained under these parameters**.

7. **Compliance with Substantive Requirements**. To justify their existence, all party-list groups must comply with the substantive requirements of the law specific to their own group, their own internal rules on membership, and with the Comelec's Rules of Procedure.

8. **Prohibited Assistance from Government**. The party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by the government. It must be independent of the government. This is the **fifth *Ang Bagong Bayani* guideline**. While this requirement only contemplated of the marginalized and underrepresented sector in the narrow sense in *Ang Bagong Bayani*, no reason exists not to extend this

requirement even to political parties participating in the party-list elections.

To emphasize, the general overriding requirement in the party-list elections is ***inability to participate in the legislative district elections with a fair chance of winning***. If a political party at the very least obtains the assistance of the government, whether financially or otherwise, then its participation in the party-list system defeats the broad electoral sense in which the term "marginalized" and "underrepresented" is understood as applied to political parties.

9. **Qualification of Party-list Nominee**. The ***sixth Ang Bagong Bayani guideline***, being a mere faithful reiteration of Section 9 of RA 7941 (qualification of a party-list nomine), should remain. In addition, the party-list nominee must comply with the proviso in Section 15 of RA 7941.

10. **Party and Nominee Membership**. For sectoral parties and organizations, the ***seventh Ang Bagong Bayani guideline*** — *i.e.*, that the nominees must also represent the marginalized and underrepresented sectors – refers not only to the actual possession of the marginalized and underrepresented status represented by the sectoral party or organization but also to one who genuinely advocates the interest or concern of the marginalized and underrepresented sector represented by the sectoral party or organization.

To be consistent with the *sectoral representation* envisioned by the framers, ***majority of the members*** of the sectoral party or organization must ***actually*** belong to the sector represented.

For political parties, it is enough that their nominees are bona fide member of the group they represent.

11. **Effects of Disqualification of Nominee**. The disqualification of a nominee (on the ground that he is not a *bona fide* member of the political party; or that

> he does not possess the actual status or characteristic or that he is not a genuine advocate of the sector represented) does not automatically result in the disqualification of the party since all the grounds for cancellation or refusal of registration pertain to the party itself.
>
> The party-list group should be given opportunity either to refute the finding of disqualification of its nominee or to fill in a qualified nominee before cancellation or refusal of registration is ordered. Consistent with Section 6 (5) and Section 8 of RA 7941, the party-list group must submit a list containing at least five nominees to the COMELEC. If a party-list group endeavors to participate in the party-list elections on the theoretical assumption that it has a national constituency (as against district constituency), then compliance with the clear requirement of the law on the number of nominees must all the more be strictly complied with by the party-list group.

Considering that the thirteen petitioners, who are new applicants, only secured a *Status Quo Ante* Order (instead of mandatory injunction that would secure their inclusion in the ballots now being printed by the COMELEC), the remand of their petitions is only for the academic purpose of determining their entitlement to registration under the party-list system but not anymore for the purpose of participating in the 2013 elections.

Any of the remaining party-list groups involved in the remaining 40 petitions[49] that obtain the number of votes required to obtain a seat in the House of Representatives would still be subject to the determination by the COMELEC of their qualifications based on the parameters and rationale expressed in this Separate Opinion.

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[49] The petitioners in GR Nos. 204421 and 204425 refer to one and the same party-list group, only that they are represented by different personalities, claiming to be the legitimate officers of the party.

CONCURRING AND DISSENTING OPINION

SERENO, *C.J.*:

The party-list system is primarily a tool for social justice.

I believe that the *ponencia* may have further marginalized the already marginalized and underrepresented of this country. In the guise of political plurality, it allows national and regional parties or organizations to invade what is and should be constitutionally and statutorily protected space. What the *ponencia* fails to appreciate is that the party-list system under the 1987 Constitution and the party-list law or RA 7941 is not about mere political plurality, but plurality with a heart for the poor and disadvantaged.

The creation of a party-list system under the 1987 Constitution and RA 7941 was not done in a vacuum. It comprehends the reality of a Filipino nation that has been and still is struggling to come to terms with much social injustice that has been perpetrated over centuries against a majority of its people by foreign invaders and even by its own governments.

This injustice is the fertile ground for the seeds which, watered by the blood spilled during the Martial Law years, ripened to the revolution of 1986. It is from this ferment that the 1987 Constitution was born. Thus, any reading of the 1987 Constitution must be appropriately sensitive to the context from which it arose. As stated in *Civil Liberties Union v. Executive Secretary*:

> 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.[1] (Emphasis supplied)

The heart of the 1987 Constitution is the Article on Social Justice. This is appropos since it is a document that not only recognizes but tries to heal the wounds of history. To harken to the words of Cecilia Muñoz-Palma, President of the 1986 Constitutional Commission:

THE PRESIDENT: My distinguished colleagues in this Assembly:

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My colleagues, in all humility, but with profound pride, I vote in favor of the Constitution drafted by this Constitutional Commission because I believe that the document is a worthy and inspiring legacy we can hand down to the Filipino people of today, tomorrow, and for posterity.

The reasons I will give have been given by most of the Members of this Constitutional Commission this evening. But permit me to restate them just to stress the reasons why I am voting in favor.

For the first time in the history of constitution-making in our country, we set forth in clear and positive terms in the Preamble which is the beacon light of the new Charter, the noble goal to establish a just and humane society. This must be so because at present we have to admit that there are so few with so much and so many with so little. We uphold the Rule of Law where no man is above the law, and we adhere to the principles of truth, justice, freedom, equality, love and peace. Yes, for the first time and possibly this is the first Constitution where "love" is enshrined. This is most significant at this period in our national life when the nation is bleeding under the forces of hatred and violence, brothers fighting against brothers, Filipinos torturing and killing their own countrymen. Without love, there can be no peace.

The new Charter establishes a republican democratic form of government with three branches each independent and coequal of each other affording a check and balance of powers. Sovereignty resides in the people.

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[1] G.R. Nos. 83896, 83815, 22 February 1991.

For the first time, and possibly this is the first and only Constitution which provides for the creation of a Commission on Human Rights entrusted with the grave responsibility of investigating violations of civil and political rights by any party or groups and recommending remedies therefor. The new Charter also sets forth quite lengthily provisions on economic, social and cultural rights spread out in separate articles such as the **Articles on Social Justice,** Education and Declaration of Principles. **It is a document which in clear and in unmistakable terms reaches out to the underprivileged, the paupers, the sick, the elderly, disabled, veterans and other sectors of society. It is a document which opens an expanded improved way of life for the farmers, the workers, fishermen, the rank and file of those in service in the government. And that is why I say that the Article on Social Justice is the heart of the new Charter.**[2] (Emphasis supplied)

That is why Section 1, Article XIII, provides that: "The Congress shall give **highest priority** to the enactment of measures that protect and enhance the right of all the people to human dignity, **reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."**[3] As explained by this Court:

Further, the quest for a better and more "equal" world calls for the use of equal protection as a tool of effective judicial intervention.

Equality is one ideal which cries out for bold attention and action in the Constitution. The Preamble proclaims "equality" as an ideal precisely in protest against crushing inequities in Philippine society. **The command to promote social justice in Article II, Section 10, in "all phases of national development," further explicitated in Article XIII, are clear commands to the State to take affirmative action in the direction of greater equality. . . . [T]here is thus in the Philippine Constitution no lack of doctrinal support for a more vigorous state effort towards achieving a reasonable measure of equality.**

Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including

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[2] Vol. V, R.C.C No. 106, 12 October 1986.

[3] Emphasis supplied.

labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. **Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.**[4] (Emphasis supplied)

That is also why the 1987 Constitution is replete with other social justice provisions, including Sections 9, 10, 13, 14, 18 and 22 of Article II, Section 2 of Article V, Section 5 (1) (2) of Article VI, Sections 1, 2, 3, 5, 6, 10, 11, 12, 13 of Article XII, and Article XIII. As aptly pointed out by Commissioner Guingona in his sponsorship speech for the approval of the entire draft of the 1987 Constitution, social justice was the underlying philosophy of the drafters when crafting the provisions of the fundamental law. Thus:

MR. GUINGONA: Thank you, Mr. Presiding Officer.

This sponsorship speech is for the entire draft of the Constitution of the Republic of the Philippines.

Today, we have completed the task of drafting a Constitution which is reflective of the spirit of our time -a spirit of nationalism, a spirit of liberation, a spirit of rising expectations.

On June 2, forty-eight men and women met in this hall-men and women from different walks of life with diverse backgrounds and orientations, even with conflicting convictions, but all sharing the same earnest desire to serve the people and to help draft a Constitution which will establish a government that the people can trust and enthusiastically support, a Constitution that guarantees individual rights and serves as a barrier against excesses of those in authority.

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[4] *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, 15 December 2004.

A Constitution of the people and for the people derives its authenticity and authority from the sovereign will; the power of the people precedes it. As such, it should reflect the norms, the values, the modes of thought of our society, preserve its heritage, promote its orderliness and security, protect its cherished liberties and guard against the encroachments of would-be dictators. These objectives have served as the framework in the work of drafting the 1986 Constitution.

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A significant innovation, as far as the legislative department is concerned, refers to the composition of the members of the House of Representatives. Representation in the Lower House has been broadened to embrace various sectors of society; in effect, enlarging the democratic base. It will be constituted by members who shall be elected in the traditional manner, representing political districts, as well as by members who shall be elected through the party list system.

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The institutions through which the sovereign people rule themselves are essential for the effective operation of government. But these are not enough in order that the body politic may evolve and progress. **There is need for an underlying socio-economic philosophy which would direct these political structures and serve as the mainspring for development. So it is that the draft Constitution contains separate Articles on Social Justice and National Economy and Patrimony.**

Talk of people's freedom and legal equality would be empty rhetoric as long as they continue to live in destitution and misery, without land, without employment, without hope. But in helping to bring about transformation, in helping the common man break away from the bondage of traditional society, in helping restore to him his dignity and worth, the right to individual initiative and to property shall be respected.

The Social Justice Article, to which our Commission President, the Honorable Cecilia Muñoz Palma, refers to as the "heart of the Constitution," provides that Congress shall give highest priority to the enactment of measures that would reduce social, economic and political inequalities. The same article addresses the problems of (1) labor — local and overseas, organized and unorganized — recognizing the rights of all workers in the private as well as in the

public sector, the rank and file and the supervisory, to self-organization, collective bargaining and peaceful and concerted activities including the right to strike in accordance with law; (2) the farmers, the farm workers, the subsistence fishermen and the fishworkers, through agrarian and natural resources reform; (3) the underprivileged and homeless citizens in urban centers and resettlement areas, through urban land reform and housing; (4) the health of the people, through an integrated and comprehensive approach to health development; (5) the women, by ensuring the fundamental equality of women and men before the law, and (6) people's organizations, by facilitating the establishment of adequate consultation mechanisms.

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These are some of the provisions which we have constitutionalized. These are some of the innovations that we have introduced. These are the ideas, values and institutions which we have drawn and which we trust would serve as the foundation of our society, the keystone of our national transformation and development, the driving force for what we pray would be our irreversible march to progress. In brief, this is what the men and women of the 1986 Constitutional Commission have drafted under the able, firm and dedicated leadership of our President, the Honorable Cecilia Muñoz Palma.

The Constitution that we have drafted is a practical instrument suited to the circumstances of our time. It is also a Constitution that does not limit its usefulness to present needs; one which, in the words of U.S. Supreme Court Chief Justice John Marshall, and I quote, "is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs." As we present the proposed fundamental law, we pray that our efforts would pave the way towards the establishment of a renewed constitutional government which we were deprived of since 1972, that these efforts would ensure that the triumph at EDSA so deservingly won by the people shall continue to be enjoyed by us and our posterity for all time, that these efforts would result in the drafting of a democratic Constitution — a Constitution which is the repository of the people's inalienable rights; a Constitution that enshrines people's power and the rule of law; a Constitution which would seek to establish in this fair land a community characterized by moral regeneration, social progress, political stability, economic prosperity, peace, love and concern for one another; a Constitution that embodies vital living principles

that seek to secure for the people a better life founded on liberty and welfare for all.

Mr. Presiding Officer, on behalf of this Commission's Sponsorship Committee, I have the honor to move for the approval of the draft Constitution of the Republic of the Philippines on Second Reading.[5]

It is within this historical and textual millieu that the party-list provisions in the 1987 Constitution should be interpreted. Every provision should be read in the context of all the other provisions so that contours of constitutional policy is made clear.[6]

The place of the party-list system in the constitutional scheme was that it provided for the realization of the ideals on social justice in the political arena.[7]

The concept is not new, as discussed by political theorist Terry MacDonald:

First, an idea that has received much attention among democratic theorists is that representatives should be selected to 'mirror' the characteristics of those being represented — in terms of gender, ethnicity, and other such characteristics judged to be socially relevant. **This idea has been advocated most notably in some recent democratic debates focused on the need for special representation of disadvantaged and under-represented social groups within democratic assemblies.** The applicability of this idea of 'mirror' representation is not confined to debates about representing marginalized minorities within nation-states; Iris Young further applies this model of representation to global politics, arguing that global representation should be based on representation of the various 'peoples' of the world, each of which embodies its own distinctive identity and 'perspective'. In practice, special representation for certain social groups within a 'mirror' framework can be combined with election mechanisms in various ways — **such as by according quotas of elected representatives to designated social groups.**

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[5] VOL. V, R.C.C No. 106, 12 October 1986.

[6] See *Chavez v. JBC*, G.R. No. 202242, 17 July 2012.

[7] CHIEF JUSTICE REYNATO PUNO, EQUAL DIGNITY & RESPECT: THE SUBSTANCE OF EQUAL PROTECTION AND SOCIAL JUSTICE (2012), 265 [hereinafter, PUNO].

But since the selection of these 'social groups' for special representation would nonetheless remain a distinct element of the process of selecting legitimate representatives, occurring prior to the electoral process, such 'mirror' representation is still recognizable as a distinct mechanism for selecting representative agents.[8] (Emphasis supplied)

Two months after their initial debates on the form and structure of government that would best promote equality, the Commission broke ground on the promotion of political equality and provided for sectoral representation in the party-list system of the legislature. Commissioner Villacorta opened the debates on the party-list system.[9]

MR. VILLACORTA: . . . On this first day of August 1986, we shall, hopefully, usher in a new chapter in our national history by *giving genuine power to our people in the legislature . . .*

Commissioner Jaime Tadeo explained the circumstances the party-list system sought to address:[10]

MR. TADEO: . . . *Ang Cory government ay iniakyat ng people's power. Kaya kami naririto sa Con-Com ay dahil sa people's power — nasa amin ang people, wala sa amin ang power. Ganito ito kahalaga.*

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The Legislature is supposed to implement or give flesh to the needs and aspirations of the Filipino people.

Ganoon kahalaga ang National Assembly kaya't napakahalaga noong Section 5 and Section 31 ng ating Constitution. Our experience, however, has shown that legislation has tended to benefit more the propertied class who constitutioes (sic) a small minority in our society than the impoverished majority, 70 percent of whom live below the poverty line. This has come about because the rich have managed to dominate and control the legislature, while the basic sectors

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[8] TERRY MACDONALD, GLOBAL STAKEHOLDER DEMOCRACY: POWER AND REPRESENTATION BEYOND LIBERAL STATES (2008), at 166-167.

[9] Puno, 265.

[10] *Id.*

have been left out of it. So, the critical question is, how do we ensure ample representation of basic sectors in the legislature so that laws reflect their needs and aspirations?

RA 7941 was enacted pursuant to the party-list provisions of the 1987 Constitution. Not only is it a "social justice tool", as held in Ang Bagong Bayani,[11] but it is **primarily so**. This is not mere semantics but a matter of legal and historical accuracy with material consequences in the realm of statutory interpretation.

The *ponencia* gives six (6) parameters that the COMELEC should adhere to in determining who may participate in the coming 13 May 2013 and subsequent party-list elections. I shall discuss below my position in relation to the second, fourth and sixth parameter enunciated in the *ponencia*.

"Marginalized and underrepresented" under Section 2 of RA 7941 qualifies national, regional and sectoral parties or organizations.

Under the second parameter, "[n]ational parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector." In a nutshell, the *ponencia* interprets "marginalized and underrepresented" in Section 2 of RA 7941 to qualify only sectoral parties or organizations, and not national and regional parties or organizations.

I dissent for the following reasons.

First, since the party-list system is primarily a tool for social justice, the standard of "marginalized and underrepresented" under Section 2 must be deemed to qualify **national**, **regional** and **sectoral** parties or organizations. To argue otherwise is to divorce national and regional parties or organizations from the primary objective of attaining social justice, which objective surrounds, permeates, imbues, and underlies the entirety of both the 1987 Constitution and RA 7941.

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[11] G.R. No. 147589, 26 June 2001.

Second, Section 2 of RA 7941 states that the party-list system seeks to "enable Filipino citizens belonging to the **marginalized and underrepresented sectors, organizations and parties** . . . to become members of the House of Representatives." On its face, it is apparent that "marginalized and underrepresented" qualifies "sectors," "organizations" and "parties."

Third, even assuming that it is not so apparent, in terms of statutory construction, the import of "social justice" that has developed in various decisions is that when the law is clear and valid, it simply must be applied; but when the law can be interpreted in more ways than one, an interpretation that favors the underprivileged must be favored.[12]

Lastly, deliberations of the Constitutional Commission show that the party-list system is a countervailing means for the weaker segments of our society to overcome the preponderant advantages of the more entrenched and well-established political parties. To quote:

MR. OPLE:	So, Commissioner Monsod grants that **the basic principle for a party list system is that it is a countervailing means for the weaker segments of our society, if they want to seek seats in the legislature, to overcome the preponderant advantages of the more entrenched and well-established political parties,** but he is concerned that the mechanics might be inadequate at this time.
MR. MONSOD:	**Not only that;** talking about labor, for example — I think Commissioner Tadeo said there are 10 to 12 million laborers and I understand that organized labor is about 4.8 million or 4.5 million — if the laborers get together, they can have seats. With 4 million votes, they would have 10 seats under the party list system.
MR. OPLE:	So, the Commissioner would favor a party list system that is open to all and would not agree

[12] See *Perez-Rosario v. CA*, G.R. No. 140796, 30 Jun 2006; BERNAS, *PRIMER ON THE 1987 CONSTITUTION* (2006), 488.

> to a party list system which seeks to accommodate, in particular, the so-called sectoral groups that are predominantly workers and peasants?
>
> MR. MONSOD: If one puts a ceiling on the number that each party can put within the 50, and I am assuming that maybe there are just two major parties or three at the most, then it is already a form of opening it up for other groups to come in. All we are asking is that they produce 400,000 votes nationwide. **The whole purpose of the system is precisely to give room for those who have a national constituency who may never be able to win a seat on a legislative district basis.** But they must have a constituency of at least 400,000 in order to claim a voice in the National Assembly.[13] [emphasis supplied]

However, the second parameter would allow the more entrenched and well-established political parties and organizations to compete with the weaker segments of society, which is the very evil sought to be guarded against.

The *ponencia's* second parameter is premised on the following grounds, among others.

First, the *ponencia* explains that the text of the 1987 Constitution and RA 7941, and the proceedings of the Constitutional Commission evince an indisputable intent to allow national, regional, and sectoral parties and organizations to participate in the party-list system. To require national and regional parties and organizations to represent the marginalized and underrepresented makes them effectively sectoral parties and organizations and violates this intent.

The error here is to conclude that if the law treats national, regional and sectoral parties and organizations the same by requiring that they represent the "marginalized and underrepresented," they become the same. By analogy, people can be treated similarly but that does not make them identical.

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[13] Volume II, R.C.C., 258-259, 25 July 1986.

Second, the ponencia rules that since under the Section 5 (2), Article VI of the 1987 Constitution, only 50% of the seats are allocated during the first three consecutive terms of Congress after the ratification of the 1987 Constitution to representatives from the labor, peasant, urban poor, *etc*., it necessarily follows that the other 50% would be allocated to representatives from sectors which are non-marginalized and underrepresented.

The error here is to conclude that the latter statement necessarily follows if the former is true. This is not so since the latter 50% can very well include representatives from other non-enumerated sectors, or even national or regional parties and organizations, all of which can be "marginalized and underrepresented."

Third, the *ponencia* adds that it would prevent ideology-based and cause-oriented parties, who cannot win in legislative district elections, from participating in the party-list system.

The error here is to conclude that such ideology-based or cause-oriented parties are necessarily non-marginalized or underrepresented, which would in turn depend on how "marginalization and underrepresentation" is defined. The *ponencia* appears to be operating under a preconceived notion that "marginalized and underrepresented" refers only to those "economically" marginalized.

However, there is no need for this Court to define the phrase "marginalized and underrepresented," primarily because it already constitutes sufficient legislative standard to guide the COMELEC as an administrative agency in the exercise of its discretion to determine the qualification of a party-list group.

As long as such discretion is not gravely abused, the determination of the COMELEC must be upheld. This is consistent with our pronouncement in *Ang Bagong Bayani* that, "the role of the COMELEC is to see to it that only those Filipinos that are 'marginalized and underrepresented' become members of the Congress under the party-list system."

For as long as the agency concerned will be able to promulgate rules and regulations to implement a given legislation and effectuate its policies, and that these regulations are germane

to the objects and purposes of the law and not in contradiction to but in conformity with the standards prescribed by the law, then the standard may be deemed sufficient.[14]

We should also note that there is a time element to be considered here, for those who are marginalized and underrepresented today may no longer be one later on. Marginalization and underrepresentation is an ever evolving concept, created to address social disparities, to be able to give life to the "social justice" policy of our Constitution.[15] Confining its definition to the present context may unduly restrict the COMELEC of its quasi-legislative powers which enables it to issue rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress.[16]

Flexibility of our laws is a key factor in reinforcing the stability of our Constitution, because the legislature is certain to find it impracticable, if not impossible, to anticipate situations that may be met in carrying laws into effect.[17] The growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the laws, the rigidity of the theory of separation of governmental powers is largely responsible in empowering the COMELEC to not only execute elections laws, but also promulgate certain rules and regulations calculated to promote public interest.[18] This is the principle of subordinate legislation discussed in *People v. Rosenthal*[19] and in *Pangasinan Transportation vs. Public Service Commission*.[20]

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[14] *Eastern Shipping Lines v. POEA*, G.R. No. 76633, 18 October 1988.

[15] *Gandara Mill Supply v. NLRC*, G.R. No. 126703, 29 December 1998.

[16] *Bedol v. COMELEC*, G.R. No. 179830, 3 December 2009.

[17] *Conference of Maritime Manning Agencies v. POEA*, G.R. No. 114714, 21 April 1995.

[18] *Id.*

[19] G.R. No. L-46076, 46077, 12 June 1939.

[20] G.R. No. L-47065, 26 June 1940.

This is consistent with our pronouncement in *Ang Bagong Bayani* that, "the role of the COMELEC is to see to it that only those Filipinos that are 'marginalized and underrepresented' become members of the Congress under the party-list system."

Fourth, the *ponencia* holds that failure of national and regional parties to represent the marginalized and underrepresented is not a ground for the COMELEC to refuse or cancel registration under Section 6 of RA 7941.

The error here is that under Section 6 (5), the COMELEC may refuse or cancel if the party "violates or fails to comply with laws." Thus, before the premise can be correct, it must be first established that "marginalization and underrepresentation" is not a requirement of the law, which is exactly what is at issue here.

Fifth, the *ponencia* makes too much of the fact that the requirement of "marginalization and underrepresentation" appears only once in RA 7941.

The error here is to conclude that the phrase has to appear more than once to carry sufficient legal significance. "Marginalization and underrepresentation" is in the nature of a legislative standard to guide the COMELEC in the exercise of its administrative powers. This Court has held that to avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. The standard does not even have to be spelled out. It could be implied from the policy and purpose of the act considered as a whole.[21] Consequently, we have held that "public welfare"[22] and "public interest"[23] are examples of such sufficient standards. Therefore,

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[21] *Trade Unions of the Philippines v. Ople*, G.R. 67573, 19 June 1985.

[22] *Calalang v. Williams*, 70 Phil. 726 (1940).

[23] *People v. Rosenthal*, 68 Phil. 328 (1939).

that it appears only once in RA 7941 is more than sufficient, since a standard could even be an implied one.

National, regional and sectoral parties or organizations must both represent the "marginalized and underrepresented" and lack "well-defined political constituencies".

The fourth parameter in the *ponencia* states:

> 4. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth.

I dissent for the following reasons.

First, Section 2 of RA 7941 clearly makes the "lack of a well-defined political constituency" as a requirement along with "marginalization and underrepresentation." They are cumulative requirements, not alternative. Thus, sectoral parties and organizations intending to run in the party-list elections must meet both.

Second, the *ponencia* appears to be operating under preconceived notions of what it means to be "marginalized and underrepresented" and to "lack a well-defined political constituency." For reasons discussed above, the exact content of these legislative standards should be left to the COMELEC. They are ever evolving concepts, created to address social disparities, to be able to give life to the "social justice" policy of our Constitution.

The disqualification of a nominee should not disqualify the party-list group provided that: (1) it meets

Guideline Nos. 1-5 of Ang Bagong Bayani (alternately, on the basis of the new parameters set in the *ponencia*, that they validly qualify as national, regional or sectoral party-list group); and (2) one of its top three (3) nominees remains qualified.

I concur with the *ponencia* that an advocate may qualify as a nominee. However, I would like to explain my position with regard to the sixth parameter set forth in the *ponencia* with respect to nominees.

To recall, the sixth parameter in the *ponencia* provides:

> 6. National, regional and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remain qualified.

I propose the view that the disqualification of a party-list group due to the disqualification of its nominee is only reasonable if based on material misrepresentations regarding the nominee's qualifications. **Otherwise, the disqualification of a nominee should not disqualify the party-list group provided that: (1) it meets Guideline Nos. 1-5 of Ang Bagong Bayani (alternately, on the basis of the new parameters set in the *ponencia*, that they validly qualify as national, regional or sectoral party-list group); and (2) one of its top three (3) nominees remains qualified, for reasons explained below.**

The constitutional policy is to enable Filipinos belonging to the marginalized and underrepresented sectors to contribute legislation that would benefit them. Consistent therewith, R.A. No. 7941 provides that the State shall develop and guarantee a full, free and open party-list system that would achieve proportional representation in the House of Representatives by enhancing party-list groups' "chances to compete for and win seats in the legislature."[24] Because of this policy, I believe that the COMELEC cannot interpret Section 6 (5) of R.A. No. 7941

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[24] Section 2, Republic Act No. 7941.

as a grant of purely administrative, quasi-legislative or quasi-judicial power to *ipso facto* disqualify party-list groups based on the disqualification of a single nominee.

It should also be pointed out that the law itself considers a violation of election laws as a disqualifying circumstance. However, for an act or omission to be considered a violation of election laws, it must be demonstrative of gross and willful disregard of the laws or public policy. The standard cannot be less for the rules and regulations issued by the COMELEC. Thus, any disqualification of a party-list group based on the disqualification of its nominee must be based on a material misrepresentation regarding that nominee's qualifications. This also finds support in Section 6 (6) of R.A. No. 7941 which considers declaring "untruthful statements in its petition" as a ground for disqualification.

As regards the second qualification mentioned above, party-list groups should have at least one qualified nominee among its top three nominees for it to be allowed to participate in the elections. This is because if all of its top three nominees are disqualified, even if its registration is not cancelled and is thus allowed to participate in the elections, and should it obtain the required number of votes to win a seat, it would still have no one to represent it, because the law does not allow the group to replace its disqualified nominee through substitution. This is a necessary consequence of applying Sections 13 in relation to Section 8 of R.A. No. 7941.

Section 13 provides that party-list representatives shall be proclaimed by the COMELEC based on "the list of names submitted by the respective parties . . . according to their ranking in the said list." The ranking of a party-list group's nominees is determined by the applicability or the inapplicability of Section 8, the last paragraph of which reads:

> . . . No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list.

Thus, only in case of death, incapacity, or withdrawal does the law allow a party-list group to change the ranking of its nominees in the list it initially submitted. The ranking of the nominees is changed through substitution, which according to Section 8 is done by placing the name of the substitute at the end of the list. In this case, all the names that come after the now vacant slot will move up the list. After substitution takes effect, the new list with the new ranking will be used by COMELEC to determine who among the nominees of the party-list group shall be proclaimed, from the first to the last, in accordance with Section 13.

If any/some of the nominees is/are disqualified, no substitution will be allowed. Thus, their ranking remains the same and should therefore be respected by the COMELEC in determining the one/s that will represent the winning party-list group in Congress. This means that if the first nominee is disqualified, and the party-list group is able to join the elections and becomes entitled to one representative, the second cannot take the first nominee's place and represent the party-list group. If, however, the party-list group gets enough votes to be entitled to two seats, then the second nominee can represent it.

Allowing a party-list group, which has successfully passed Guideline Nos. 1-5 of *Ang Bagong Bayani* [25] (alternately, pursuant to the present holding of the *ponencia*, that it qualifies as a national, regional or sectoral party or organization) and has established the qualification of at least one (1) of its top three (3) nominees, to participate in the elections is a better interpretation of the law. It is fully consistent with the policy of developing and guaranteeing a full, free and open party-list system that would achieve proportional representation in the House of Representatives by enhancing party-list groups' "chances to compete for and win seats in the legislature"[26] while providing sufficient disincentives for party-list groups to flood the COMELEC with nominees as Section 8 of R.A. No. 7941 only requires that they submit not less than five (5).

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[25] *Supra*.

[26] Section 2, Republic Act No. 7941.

It must be noted that this method, together with the seat-allocation system introduced in *BANAT v. COMELEC*,[27] will allow more party-list groups to be represented in Congress.

Let us use a hypothetical scenario to illustrate.

The table below uses the seat-allocation system introduced in *BANAT*. It assumes the following facts: (1) 35 party-list groups participated in the elections; (2) 20 million votes were cast for the party-list system; and (3) there are 50 seats in Congress reserved for the party-list representatives.

The succeeding paragraphs will explain how the *BANAT* method will operate to distribute the 50 seats reserved in the House of Representatives given the foregoing facts and the number of votes obtained by each of the 35 party-list groups.

Rank	Party-list group	Votes Garnered	%	1st Round (guaranteed seats)	2nd Round (additional seats)	Total # of seats
1	AAA	1,466,000	7.33%	1	2	3
2	BBB	1,228,000	6.14%	1	2	3
3	CCC	1,040,000	4.74%	1	1	2
4	DDD	1,020,000	3.89%	1	1	2
5	EEE	998,000	3.88%	1	1	2
6	FFF	960,000	3.07%	1	1	2
7	GGG	942,000	2.92%	1	1	2
8	HHH	926,000	2.65%	1	1	2
9	III	910,000	2.57%	1	1	2
10	JJJ	796,000	2.57%	1	1	2
11	KKK	750,000	2.42%	1	1	2
12	LLL	738,000	2.35%	1	1	2
13	MMM	718,000	2.32%	1	1	2
14	NNN	698,000	2.13%	1	1	2

[27] G.R. Nos. 179271 and 179295, 21 April 2009.

15	OOO	678,000	2.12%	1	1	2
16	PPP	658,000	2.06%	1	1	2
17	QQQ	598,000	2.02%	1	1	2
18	RRR	482,000	1.95%		1	1
19	SSS	378,000	1.89%		1	1
20	TTT	318,000	1.54%		1	1
21	UUU	294,000	1.47%		1	1
22	VVV	292,000	1.44%		1	1
23	WWW	290,000	1.43%		1	1
24	XXX	280,000	1.37%		1	1
25	YYY	274,000	1.37%		1	1
26	ZZZ	268,000	1.34%		1	1
27	1-A	256,000	1.24%		1	1
28	1-B	248,000	1.23%		1	1
29	1-C	238,000	1.18%		1	1
30	1-D	222,000	1.11%		1	1
31	1-E	214,000	1.07%		1	1
32	1-F	212,000	1.06%			
33	1-G	210,000	1.05%			
34	1-H	206,000	1.03%			
35	1-I	194,000	1.02%			
		20,000,000		17	33	50

We explained in *BANAT* that the first clause of Section 11 (b) of R.A. 7941 guarantees a seat to the party-list groups "receiving at least two percent (2%) of the total votes cast for the party-list system." In our hypothetical scenario, the party-list groups ranked 1st to 17th received at least 2% of the 20 million votes cast for the party-list system. In effect, all 17 of them were given guaranteed seats. The distribution of these so-called guaranteed seats to the "two percenters" is what *BANAT* calls the "first round of seat allocation."

From the first round of seat allocation, the total number of guaranteed seats allocated to the two percenters will be subtracted from "20% of the members of the House of Representatives" reserved by the Constitution for party-list representatives, which in this hypothetical scenario is 50 seats. Assuming all 17 of the two percenters were able to establish the qualification of their first nominee, the remaining 33 will be distributed in what *BANAT* termed as the "second round of seat allocation."

These remaining 33 seats are called "additional seats." The rules followed in the distribution/allocation of these seats are fairly simple. If a party-list group's percentage is multiplied by the total number of additional seats and the product is no less than 2, then that party-list will be entitled to 2 additional seats. This is to keep in line with the 3-seat limit rule. In our hypothetical scenario as shown by the table above, only the top two party-list groups, AAA and BBB are entitled to 2 additional seats. Assuming, again, that the 2nd and 3rd nominees of both AAA and BBB are qualified, then only 29 will be left for distribution.

In distributing the remaining 29 seats, it must be kept in mind that the number of votes cast in favor of the remaining party-list groups becomes irrelevant. At this stage, the only thing that matters is the group's ranking. The party-list group that comes after BBB will be given 1 additional seat and the distribution of one seat per party-list group, per rank, continues until all 50 seats are accounted for; the second round of seat allocation stops at this point. In the table above, the 50th seat was awarded to I-E the party-list group that ranked 31st in the election.

In the foregoing discussion, all the nominees of the party-list groups are qualified. What happens if one or some of the nominees are disqualified? Following the proposed method, if one or two of the party-list groups with guaranteed seats have a disqualified first nominee, their second nominee, if qualified, can still represent them in Congress based on the second round of seat allocation.

In the event that some of the nominees of party-list groups — whether or not entitled to guaranteed seats — are disqualified, then those party-list groups, which without the disqualification of these nominees would not be entitled to a seat, would now have a higher chance to have a representative elected in Congress.

If, for example, the first nominee of BBB is disqualified, then it forfeits its guaranteed seat and the additional seats for distribution in the second round will be increased by 1. With 34 seats to be allocated, I-E will now qualify to obtain a seat in its favor, assuming that its first nominee is qualified. If I-E's first nominee is disqualified, then we will proceed to the party-list next-in-rank, which is I-G. This method is followed down the line until all 50 seats are allocated.

If we follow the proposed method, this would yield a higher number of party-list groups represented in Congress, but with fewer representatives per group.

This proposed method can be further illustrated through another example, this time using a "non-two percenter" party-list group. In the table above, RRR failed to garner at least 2% of the total votes. However, in the second round of seat allocation, it was granted 1 seat. To be able to send a representative in Congress, RRR's first nominee should be qualified to sit. Assuming that its first nominee was disqualified, its second or third nominee cannot occupy said seat; instead, it will forfeit the seat and such seat will now go to I-E. Again, this method is followed down the line until all 50 seats are allocated.

In conclusion, I submit that a party-list group should be allowed to participate in the elections despite the disqualification of some of its nominees, provided that there remains a qualified nominee out of the top three initially submitted. Not only is this the better policy, but this is also the interpretation supported by law.

Only nine of the petitions should be remanded.

Given the circumstances above-mentioned, I respectfully dissent on the remand of all petitions to the COMELEC for reasons to be discussed below.

The *ponencia* justifies the remand of all petitions in this wise, *viz*.:

> x x x Thus, the present petitions should be remanded to the COMELEC not because COMELEC committed grave abuse of discretion in disqualifying petitioners, but because petitioners may now possibly qualify to participate in the coming 13 May 2013 party-list elections **under the new parameters prescribed by this Court.** (Emphasis supplied)

The "new parameters" set forth in the *ponencia's* guidelines focus mainly on two (2) grounds used by the COMELEC to cancel registration: (1) the standard of marginalized and underrepresented as applied to national, regional and sectoral parties and organizations; and (2) the qualification of nominees. From such examination, we can conclude that, in relation to the other grounds used by COMELEC to cancel registration (other than those two grounds mentioned above), the doctrines remain unchanged. Thus, a remand of those petitions is unnecessary, considering that the acts of the COMELEC pertaining to their petitions are upheld. The *ponencia* even admits that COMELEC did not commit grave abuse of discretion in following prevailing jurisprudence in disqualifying petitioners.

Consequently, the remand should only pertain to those party-list groups whose registration was cancelled on the basis of applying the standard of "marginalized and underrepresented" and the qualification of nominees wherein the "new parameters" apply. If other grounds were used by COMELEC other than those with "new parameters," — say, for example, failure to prove track record, a remand would be uncalled for because the doctrine pertaining to the other grounds remain unchanged.

Despite the new doctrine set forth in the *ponencia*, at the very least, only nine (9) petitions should be ordered remanded to the COMELEC. In these nine (9) petitions, the COMELEC cancelled the registration of the party-list groups solely on the ground that their nominees are disqualified. In making such a pronouncement, the COMELEC merely used as yardstick whether the nominees actually belong to the marginalized and underrepresented, and not whether they could qualify as advocates,

and for this reason, I recommend that the following cases be REMANDED to the COMELEC. These are:

1. Alliance for Rural and Agrarian Reconstruction, Inc. (ARARO)
2. Agapay ng Indigenous Peoples Rights Alliance, Inc. (A-IPRA)
3. Aangat Tayo (AT)
4. A Blessed Party-List (*a.k.a.* Blessed Federation of Farmers and Fishermen International, Inc.) [A BLESSED]
5. Action League of Indigenous Masses (ALIM)
6. Butil Farmers Party (BUTIL)
7. Adhikain at Kilusan ng Ordinaryong Tao Para sa Lupa, Pabahay, Hanapbuhay at Kaunlaran (AKO BAHAY)
8. Akbay Kalusugan, Inc. (AKIN)
9. 1-UNITED TRANSPORT KOALISYON (1-UTAK)

Assuming for the sake of argument that we agree with the *ponencia's* take that the phrase "marginalized and underrepresented" qualifies only sectoral parties, still, a remand of all the petitions remain uncalled for. Out of the 52 petitions, there are only 11 party-list groups which are classified as national or regional parties.[28] Thus, if we were to strictly apply the *ponencia's* guidelines, only 20 petitions ought to be remanded.

The COMELEC did not violate Section 3, Article IX-C of the Constitution.

It bears stressing that COMELEC Resolution No. 9513 does not violate Section 3, Article IX-C of the Constitution which requires a prior motion for reconsideration before the COMELEC

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[28] The national parties are Alliance for Nationalism and Democracy (ANAD), Bantay Party-List (BANTAY), and Alliance of Bicolnon Party (ABP). On the other hand, the regional parties are Ako Bicol Political Party (AKB), Akyson Magsasaka — Partido Tining ng Masa (AKMA-PTM), Ako an Bisaya (AAB), Kalikasan Party-List (KALIKASAN), 1 Alliance Advocating Autonomy Party (1AAAP), Abyan Ilonggo Party (AI), Partido ng Bayan and Bida (PBB), and Pilipinas Para sa Pinoy (PPP).

can decide election cases *en banc*. To recall, the Resolution allows the COMELEC *en banc*, without a motion for reconsideration, to conduct (1) an automatic review of a decision of a COMELEC division granting a petition for registration of a party-list group or organization; and (2) a summary evidentiary hearing for those already accredited and which have manifested their intent to participate in the 2013 national and local elections for the purpose of determining their continuing compliance with the requirements of RA No. 7941 and the Ang Bagong Bayani[29] guidelines.

Section 3 only applies when the COMELEC is exercising its quasi-judicial powers which can be found in Section 2 (2) of the same article. However, since the conduct of automatic review and summary evidentiary hearing is an exercise of COMELEC's administrative powers under Section 2 (5), the prior motion for reconsideration in Section 3 is not required.

It is in this light that I would like to further elucidate why the power under Section 2 (5) is not quasi-judicial but administrative in nature in order to help clarify the true distinction between the two. In a number of cases, this Court has had the opportunity to distinguish quasi-judicial from administrative power. Thus, in *Limkaichong v. COMELEC*,[30] we held that:

> The term "administrative" connotes or pertains to "administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things." **It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon.** This is to be distinguished from "quasi-judicial function", a term which applies, among others, to the action or discretion of public administrative officers or bodies, who are required **to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.** [emphasis supplied]

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[29] G.R. No. 147589, 26 June 2001.

[30] G.R. Nos. 178831-32, 179120, 179132-33, 179240-41, 1 April 2009.

However, there are administrative proceedings, such as a preliminary investigation before the public prosecutor, that also entail the "opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon," but are not considered quasi-judicial in the proper sense of the term. As held in *Bautista v. CA*:[31]

> Petitioner submits that a prosecutor conducting a preliminary investigation performs a quasi-judicial function, citing *Cojuangco v. PCGG, Koh v. Court of Appeals, Andaya v. Provincial Fiscal of Surigao del Norte and Crespo v. Mogul*. **In these cases this Court held that the power to conduct preliminary investigation is quasi-judicial in nature. But this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court. Here is where the similarity ends.**
>
> A closer scrutiny will show that **preliminary investigation is very different from other *quasi-judicial* proceedings.** A *quasi-judicial* body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."
>
> x x x x x x x x x
>
> On the other hand, **the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.**

Hence, the Office of the Prosecutor is not a quasi-judicial body; necessarily, its decisions approving the filing of a criminal complaint

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[31] G.R. No. 143375, 6 July 2001.

are not appealable to the Court of Appeals under Rule 43. Since the ORSP has the power to resolve appeals with finality only where the penalty prescribed for the offense does not exceed *prision correccional,* regardless of the imposable fine, the only remedy of petitioner, in the absence of grave abuse of discretion, is to present her defense in the trial of the case. (emphasis supplied)

While the exercise of quasi-judicial and administrative power may both involve an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon, the distinction I believe is that the exercise of the former has for its purpose the adjudication of rights with finality.[32] This makes it akin to judicial power which has for its purpose, among others, the settlement of actual controversies involving rights which are legally demandable and enforceable.[33]

Another way to dispose of the issue of the necessity of a prior motion for reconsideration is to look at it through the lens of an election case. The phrase "all such election cases" in Section 3 has been read in relation to Section 2 (2) of Article IX-C, *viz*.:

What is included in the phrase "all such election cases" may be seen in Section 2(2) of Article IX(C) of the Constitution which states:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> x x x x x x x x x
>
> (2) Exercise exclusive original jurisdiction over all **contests** relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all **contests** involving elective municipal of officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction.[34]

As to the nature of "contests," the Court has already defined it under the penumbra of election as follows:

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[32] *Dole Philippines v. Esteva*, G.R. No. 161115, 30 November 2006.

[33] 1987 CONSTITUTION, ARTICLE VIII, SECTION 1.

[34] *Mendoza v. Commission on Elections*, G.R. No. 191084, 25 March 2010.

Ordinary usage would characterize a "contest" in reference to a post-election scenario. Election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, *i.e.*, to dislodge the winning candidate from office.

x x x x x x x x x

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President," of the Philippines, and not of "candidates" for President or Vice-President. A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. **In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.**

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, **would not include cases directly brought before it, questioning the qualifications of a candidate** for the presidency or vice-presidency before the elections are held. (Emphasis supplied)[35]

In *Panlilio v. Commission on Elections*,[36] it was also held that the primary purpose of an election case is the ascertainment of the real candidate elected by the electorate. Thus, there must first be an election before there can be an election case. Since the national and local elections are still to be held on 13 May 2013, the conduct of automatic review and summary evidentiary hearing under the Resolution No. 9513 cannot be an election case. For this reason, a prior motion for reconsideration under Section 3 is not required.

In view of the foregoing, I vote to **REMAND** only the following cases: ARARO, A-IPRA, AT, A BLESSED, ALIM, BUTIL, AKO BAHAY, AKIN, and 1-UTAK. The Petitions of all the other Petitioners should be dismissed.

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[35] *Tecson v. Commission on Elections*, G.R. No. 161434, 3 March 2004.

[36] G.R. No. 181478, 15 July 2009.

CONCURRING AND DISSENTING OPINION

REYES, *J.*:

> In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, it invites those marginalized and underrepresented in the past — the farm hands, the fisher folk, the urban poor, even those in the underground movement — to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling and desecrating this social justice vehicle.[1]

The Court is tasked to resolve the fifty-three (53) consolidated Petitions for *Certiorari* and Petitions for *Certiorari* and Prohibition filed under Rule 64, in relation to Rule 65, of the Rules of Court by various party-list groups and organizations. The petitions assail the resolutions issued by the respondent Commission on Elections (COMELEC) that either cancelled their existing registration and accreditation, or denied their new petitions for registration under the party-list system.[2]

Of the fifty-three (53) petitions, thirteen (13) are instituted by new applicants to the party-list system, whose respective applications for registration and/or accreditation filed under Republic Act No. 7941[3] (RA 7941) and COMELEC Resolution No. 9366[4] dated February 21, 2012 were denied by the

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[1] *Ang Bagong Bayani-OFW Labor Party vs. Commission on Elections*, 412 Phil. 308 (2001).

[2] Resolutions dated November 13, 2012, November 20, 2012, December 4, 2012, December 11, 2012 and February 19, 2013.

[3] "An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor"

[4] Rules and Regulations Governing The: 1) Filing of Petitions for Registration; 2) Filing of Manifestations of Intent to Participate; 3) Submission of Names of Nominees; and 4) Filing of Disqualification Cases Against Nominees or Party-List Groups of Organizations Participating Under the Party-List System of Representation in Connection with the May 13, 2013 National and Local Elections, and Subsequent Elections Thereafter.

COMELEC *En Banc* upon its review of the resolutions of a division of the Commission.

The forty (40) other petitions are instituted by party-list groups or organizations that have been previously registered and accredited by the COMELEC, with most of them having been allowed to participate under the party-list system in the past elections. These 40 petitions involve the COMELEC's recent cancellation of their groups' registration and accreditation, which effectively denied them of the chance to participate under the party-list system in the May 2013 National and Local Elections.

The Antecedents

All petitions stem from the petitioners' desire and intent to participate as candidates in the party-list system of representation, which takes its core from Section 5, Article VI of the 1987 Constitution which reads:

Article VI
THE LEGISLATIVE DEPARTMENT

Section 5. 1. **The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts** apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, **and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.**

2. **The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.**

x x x x x x x x x

(Emphasis ours)

In 1995, RA 7941 was enacted to provide for the matters that shall govern the party-list system, including the registration of party-list groups, the qualifications of party-list nominees, and the election of party-list representatives. In 1998, the country's first party-list election was held. Since then, the Court has been called upon on several instances to resolve controversies on the system, oftentimes on questions involving the qualifications of party-list groups and their nominees. Among the landmark cases on these issues is *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[5] decided by the Court in 2001, wherein the Court laid down the eight-point guidelines[6] in the determination of the qualifications of party-list participants.

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[5] *Supra* note 1.

[6] *First*, the political party, sector, organization or coalitions must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. In other words, it must show – through its constitution, articles of incorporation, bylaws, history, platform of government and track record – that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, majority of its membership should belong to the marginalized and underrepresented. x x x

Second, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling "Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives." In other words, while they are not disqualified merely on the ground that they are political parties, they must show, however, that they represent the interests of the marginalized and underrepresented. x x x

x x x x x x x x x

Third, x x x the religious sector may not be represented in the party-list system.

x x x x x x x x x

Fourth, a party or an organization must not be disqualified under Section 6 of RA 7941 x x x

x x x x x x x x x

Fifth, the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government. x x x

Sixth, the party must not only comply with the requirements of the law; its nominees must likewise do so.

Pursuant to its specific mandate under Section 18 of RA 7941 to "promulgate the necessary rules and regulations as may be necessary to carry out the purposes of [the] Act," the COMELEC issued on February 21, 2012 Resolution No. 9366. About 280[7] groups, comprised of new applicants and previously-registered party-list groups, formally signified their intent to join the party-list system in the May 13, 2013 elections.

As required in Rule 1, Resolution No. 9366 on the registration of organized groups that are not yet registered under the party-list system, among the groups that filed with the COMELEC their respective petitions for registration were: (1) Alab ng Mamamahayag (**ALAM**), petitioner in **G.R. No. 204139**; (2) Akbay Kalusugan (**AKIN**), petitioner in **G.R. No. 204367**; (3) Ako An Bisaya (**AAB**), petitioner in **G.R. 204370**; (4) Alagad ng Sining (**ASIN**), petitioner in **G.R. No. 204379**; (5) Association of Guard, Utility Helper, Aider, Rider, Driver/Domestic Helper, Janitor, Agent and Nanny of the Philippines, Inc. (**GUARDJAN**), petitioner in **G.R. No. 204394**; (6) Kalikasan Party-List (**KALIKASAN**), petitioner in **G.R. No. 204402**; (7) Association of Local Athletics Entrepreneurs and Hobbyists, Inc. (**ALA-EH**), petitioner in **G.R. No. 204426**; (8) 1 Alliance Advocating Autonomy Party (**1AAAP**), herein petitioner in **G.R. No. 204435**; (9) Manila Teachers Savings and Loan Association, Inc. (**Manila Teachers**), petitioner in **G.R. No. 204455**; (10) Alliance of Organizations, Networks and Associations of the Philippines, Inc. (**ALONA**), petitioner in **G.R. No. 204485**; and (11) Pilipinas Para sa Pinoy (**PPP**), petitioner in **G.R. No. 204490**. The political parties Abyan Ilonggo Party (**AI**), petitioner in **G.R. No. 204436**, and Partido ng Bida (**PBB**), petitioner in **G.R. No. 204484**, also sought to participate for the first time in the party-list

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x x x x x x x x x

Seventh, not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominess. x x x

Eighth, x x x the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. x x x

[7] Consolidated Comment dated December 26, 2012, p. 54.

elections, although their petitions for registration were not filed under Rule 1 of Resolution No. 9366.

Party-list groups that were previously registered and accredited merely filed their *Manifestations of Intent to Participate in the Party-List System of Representation in the May 13, 2013 Elections*, as provided in Rule 3 of Resolution No. 9366. Among these parties were: (1) Atong Paglaum, Inc. (**Atong Paglaum**), petitioner in **G.R. No. 203766**; (2) AKO Bicol Political Party (**AKB**), petitioner in **G.R. Nos. 203818-19**; (3) Association of Philippine Electric Cooperatives (APEC), petitioner in **G.R. No. 203922**; (4) Aksyon Magsasaka-Partido Tinig ng Masa (**AKMA-PTM**), petitioner in **G.R. No. 203936**; (5) Kapatiran ng mga Nakulong na Walang Sala, Inc. (**KAKUSA**), petitioner in **G.R. No. 203958**; (6) 1st Consumers Alliance for Rural Energy, Inc. (**1-CARE**), petitioner in **G.R. No. 203960**; (7) Alliance for Rural and Agrarian Reconstruction, Inc. (**ARARO**), petitioner in **G.R. No. 203976**; (8) Association for Righteousness Advocacy on Leadership (**ARAL**), petitioner in **G.R. No. 203981**; (9) Alliance for Rural Concerns (**ARC**), petitioner in **G.R. No. 204002**; (10) Alliance for Nationalism and Democracy (**ANAD**), petitioner in **G.R. No. 204094**; (11) 1-Bro Philippine Guardians Brotherhood, Inc. (**1BRO-PGBI**), petitioner in **G.R. No. 204100**; (12) 1 Guardians Nationalist Philippines, Inc. (**1GANAP/ GUARDIANS**), petitioner in **G.R. No. 204122**; (13) Agapay ng Indigenous Peoples Rights Alliance, Inc. (**A-IPRA**), petitioner in **G.R. No. 204125**; (14) Kaagapay ng Nagkakaisang Agilang Pilipinong Magsasaka (**KAP**), petitioner in **G.R. No. 204126**; (15) The True Marcos Loyalist (for God, Country, and People) Association of the Philippines, Inc. (**BANTAY**), petitioner in **G.R. No. 204141**; (16) Pasang Masda Nationwide Party (**PASANG MASDA**), petitioner in **G.R. No. 204153**; (17) Action Brotherhood for Active Dreamer, Inc. (**ABROAD**), petitioner in **G.R. No. 204158**; (18) Aangat Tayo Party-List Party (**AT**), petitioner in **G.R. No. 204174**; (19) Philippine Coconut Producers Federation, Inc (**COCOFED**), petitioner in **G.R. No. 204216**; (20) Abang Lingkod Party-List (**ABANG LINGKOD**), petitioner in **G.R. No. 204220**; (21) Firm 24-K Association, Inc. (**FIRM 24-K**), petitioner in **G.R. No. 204236**; (22) Alliance of Bicolnon

Party (**ABP**), petitioner in **G.R. No. 204238**; (23) Green Force for the Environment Sons and Daughters of Mother Earth (**GREENFORCE**), petitioner in **G.R. No. 204239**; (24) Agri-Agra na Reporma Para sa Magsasaka ng Pilipinas Movement (**AGRI**), petitioner in **G.R. No. 204240**; (25) Blessed Federation of Farmers and Fishermen International, Inc. (**A BLESSED Party-List**), petitioner in **G.R. No. 204263**; (26) United Movement Against Drugs Foundation (**UNIMAD**), petitioner in **G.R. No. 204318**; (27) Ang Agrikultura Natin Isulong (**AANI**), petitioner in **G.R. No. 204321**; (28) Bayani Party List (**BAYANI**), petitioner in **G.R. No. 204323**; (29) Action League of Indigenous Masses (**ALIM**), petitioner in **G.R. No. 204341**; (30) Butil Farmers Party (**BUTIL**), petitioner in **G.R. No. 204356**; (31) Alliance of Advocates in Mining Advancement for National Progress (**AAMA**), petitioner in **G.R. No. 204358**; (32) Social Movement for Active Reform and Transparency (**SMART**), petitioner in **G.R. No. 204359**; (33) Adhikain at Kilusan ng Ordinaryong Tao Para sa Lupa, Pabahay, Hanapbuhay at Kaunlaran (**AKO-BAHAY**), petitioner in **G.R. No. 204364**; (34) Binhi – Partido ng mga Magsasaka Para sa mga Magsasaka (**BINHI**), petitioner in **G.R. No. 204374**; (35) Pilipino Association for Country – Urban Poor Youth Advancement and Welfare (**PACYAW**), petitioner in **G.R. No. 204408**; (36) 1-United Transport Koalisyon (**1-UTAK**), petitioner in **G.R. No. 204410**; (37) Coalition of Associations of Senior Citizens in the Philippines, Inc. (**SENIOR CITIZENS**), petitioner in **G.R. No. 204421** and **G.R. No. 204425**; (38) Ang Galing Pinoy (**AG**), petitioner in **G.R. No. 204428**; and (39) 1st Kabalikat ng Bayan Ginhawang Sangkatauhan (**1st KABAGIS**), petitioner in **G.R. No. 204486**.

On August 2, 2012, the COMELEC issued **Resolution No. 9513**, which provides for additional rules on the Commission's disposition of the new petitions and manifestations of intent that were filed with it under Resolution No. 9366. Resolution No. 9513, entitled *In the Matter of: (1) The Automatic Review by the Commission En Banc of Pending Petitions for Registration of Party-List Groups; and (2) Setting for Hearing the Accredited Party-List Groups or Organizations which are Existing and*

which have Filed Manifestations of Intent to Participate in the 2013 National Elections, reads in part:

WHEREAS, it is necessary and indispensable for the Commission *En Banc* to review and affirm the grant of registration and accreditation to party-list groups and organizations in view of its role in ensuring that only those parties, groups, or organizations with the requisite character consistent with the purpose of the party-list system is registered and accredited to participate in the party-list system of representation;

WHEREAS, Section 4, Rule 1 of the Commission's Rules of Procedure authorize[s] the suspension of the Rules or any portion thereof in the interest of justice and in order to obtain the speedy disposition of all matters pending before it; and

WHEREAS, Section 19 of the Commission's Rules of Procedure on *Motions for Reconsideration* should be suspended in order for the Commission *En Banc* to fulfill its role as stated in the ***Ang Bagong Bayani*** case**.**

NOW THEREFORE, in view of the foregoing, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Omnibus Election Code, and Republic Act No. 7941 or the "Party List System Act", hereby **RESOLVES** to promulgate the following:

1. In all **pending** cases where a *Division* **grants** the *Petition for Registration* of a party-list group or organization, the records shall be forwarded to the Commission *En Banc* for automatic review within five (5) days from the promulgation of the *Resolution* without need of a motion for reconsideration. It shall be understood that a party-list group shall not be deemed accredited without affirmation from the Commission *En Banc* of the *Division*'s ruling. For this purpose, the provisions of Rule 19 of the 1993 COMELEC Rules of Procedure shall be **suspended**.

2. To set for **summary evidentiary hearings** by the Commission *En Banc*, for purposes of determining their continuing compliance with the requirements of R.A. No. 7941 and the guidelines in the ***Ang Bagong Bayani*** case, and, if non-compliant, cancel the registration of the following:

(a) Party-list groups or organizations which are already registered and accredited and will participate in the May 13, 2013 Elections, provided that the Commission *En Banc* has not passed upon the grant of their respective *Petitions for Registration*; and

(b) Party-list groups or organizations which are existing and retained in the list of Registered Party-List Parties per Resolution No. 9412, promulgated on 27 April 2012, and which have filed their respective *Manifestations of Intent to Participate in the Party-List System of Representation in the May 13, 2013 Elections*.

With the provision in Resolution No. 9513 on the COMELEC'S determination of the continuing compliance of registered/ accredited parties that have filed their manifestations of intent, the Commission *En Banc* scheduled summary hearings on various dates, and allowed the party-list groups to present their witnesses and submit their evidence.[8] After due proceedings, the COMELEC *En Banc* issued the following resolutions:

1. Resolution[9] dated October 10, 2012 in SPP No. 12-154 (PLM) and SPP No. 12-177 (PLM)

The COMELEC retained the registration and accreditation of **AKB**[10] as a political party, but denied its participation in the May 2013 party-list elections. The COMELEC's ruling is founded on several grounds. *First*, the party does not represent or seek to uplift any marginalized and underrepresented sector. From its constitution and by-laws, the party seeks to represent and uplift the lives of *Bicolanos*, who, for the COMELEC, cannot be considered or even associated with persons who are marginalized and underrepresented. *Second*,

[8] Order dated August 9, 2012; *rollo* (G.R. No. 204323), pp. 16-19.

[9] *Rollo* (G.R. No. 203818), pp. 83-87; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[10] SPP No. 12-154 (PLM) and SPP No. 12-177 (PLM).

the provinces in the Bicol Region already have their respective representatives in Congress. To allow more representatives for the *Bicolanos* and the Bicol Region would violate the rule on proportional representation of "provinces, cities and the Metropolitan Manila in accordance with the number of their inhabitants, and on the basis of a uniform and progressive ratio."[11] *Third*, **AKB**'s nominees, a businessman, three lawyers and an ophthalmologist, are not marginalized and underrepresented; thus, they fail to satisfy the seventh guideline in *Ang Bagong Bayani*.

2. Omnibus Resolution[12] dated October 11, 2012, which covers SPP No. 12-161 (PLM), SPP No. 12-187 (PLM), SPP No. 12-188 (PLM) and SPP No. 12-220 (PLM)

The COMELEC cancelled the registration and accreditation of **Atong Paglaum**, **ARAL**, **ARC** and **UNIMAD**.

The COMELEC held that **Atong Paglaum**'s [13] nominees do not belong to the sectors which the party represents, *i.e.*, the urban poor, consumer, women and youth. While these include the women and youth sectors, five of the party's six nominees are all male, and all of its nominees are above 30 years[14] of age. Further, the COMELEC ruled that the personal circumstances of the nominees belie the claim that they belong to the urban poor sector: (1) its first nominee[15] served as vice-president in a multinational corporation; (2) its second

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[11] *Rollo* (G.R. No. 203818), p. 86.

[12] *Rollo* (G.R. No. 203981), pp. 47-70; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim. Commissioner Rene V. Sarmiento also voted in favor. Commissioner Maria Gracia Cielo M. Padaca took no part.

[13] SPP No. 12-161 (PLM).

[14] Section 9 of RA 7941. x x x In case of a nominee of the youth sector, he must be twenty-five (25) but not more than thirty (30) years of age on thed day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term.

[15] Rodolfo P. Pancrudo, Jr.

nominee[16] is the owner of a corporation engaged in the business of pineapple contract growing with Del Monte Philippines; (3) its third nominee[17] is the owner and manager of two business establishments; and (4) its sixth nominee[18] is an electrical engineer and three-term member of the *Sangguniang Panglungsod* of Malaybalay City, Bukidnon. Finally, the COMELEC cited the party's failure to file its Statement of Contributions and Expenditures when it participated in the 2010 Elections, despite having been ordered to do so during the summary evidentiary hearing.

In ruling against **ARAL**,[19] the COMELEC cited the party's "failure to comply, and for violation of election laws, rules and regulations pursuant to Section 6(5) of RA No. 7941, in connection with the fourth, sixth, and seventh guidelines in ***Ang Bagong Bayani***."[20] The Commission explained that while the party seeks to represent the women and youth sectors, only the first of its seven nominees is a woman, and only its second nominee is below 30 years of age. The Commission further took note that: *first*, some of its activities were jointly conducted with religious organizations, and *second*, its fifth nominee is a pastor. "Although these circumstances are not sufficient proof that the organization is itself a religious sect, denomination or association and/or is organized for religious purposes, one nevertheless cannot but hold doubt."[21]

The registration of **ARC**[22] was cancelled for the failure of its nominees to qualify. The party claims to represent landless farmers, agrarian reform beneficiaries, fisherfolk, upland dwellers, indigenous people and *Bangsa Moro* people.[23]

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[16] Pablo Lorenzo III.

[17] Victor G. Noval.

[18] Melchor P. Maramara.

[19] SPP No. 12-187 (PLM).

[20] *Rollo* (G.R. No. 203981), p. 59.

[21] *Id.* at 60.

[22] SPP No. 12-188 (PLM).

[23] *Rollo* (G.R. No. 203981), p. 61.

However, none of its nominees belongs to any of these sectors. In addition, the party failed to prove that a majority of its members belong to the sectors that it seeks to represent. The party's advocacy for the "development of the rural sectors" is also not limited to the cited sectors, as it may even include sectors that are not marginalized and underrepresented.

UNIMAD[24] claims to represent "the marginalized and underrepresented sectors which include young professionals like drug counsellors and lecturers, veterans and the youth, among others."[25] For the COMELEC, however, such sectors are not marginalized and underrepresented. The fight against illegal drugs is an issue that interests the general public, and not just particular sectors of the society. There are also existing laws, such as the Dangerous Drugs Act, and various specialized government agencies, such as the Philippine Drug Enforcement Agency (PDEA) and the Dangerous Drugs Board (DDB), that already address the problem of illegal drugs. In cancelling UNIMAD's registration, the COMELEC also cited the party's failure to establish its track record as an organization. Furthermore, while the party claims to represent the youth and young professionals, none of its nominees is aged below thirty years.

3. Omnibus Resolution[26] **dated October 16, 2012, which covers SPP No. 12-196 (PLM), SPP No. 12-223 (PLM) and SPP No. 12-257 (PLM)**

The main reason for the cancellation of **1BRO-PGBI**'s[27] registration was its failure to define the sector that it seeks to represent. An affidavit executed by its second nominee

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[24] SPP No. 12-220 (PLM).

[25] *Rollo* (G.R. No. 203981), p. 66.

[26] *Rollo* (G.R. No. 204100), pp. 52-67; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christina Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[27] SPP No. 12-196 (PLM).

indicates that the party represents professionals, while its *Manifestation of Intent* indicates that it is multi-sectoral. For the COMELEC, such differing statements from the party reveal that 1BRO-PGBI does not really intend to represent any marginalized and underrepresented sector. Instead, it only seeks to represent its members, and that it is more of a "fraternity/brotherhood composed mostly of military men with esoteric learnings."[28] The party's nominees also did not appear to belong to a marginalized and underrepresented sector, being a *barangay* captain, consultant, guidance counselor, lawyer and retired captain/security consultant.

The registration of **1GANAP/GUARDIANS**[29] was also cancelled, following the COMELEC's finding that it is a military fraternity. The Commission also cited the following grounds: *first*, there is a "glaring similarity between 1GANAP/GUARDIANS and 1BRO-PGBI;"[30] *second*, "it wishes to protect the interests of its members; however, it failed to establish x x x the group's service outside the walls of its 'brotherhood';"[31] *third*, the "community volunteer workers" sector which it seeks to represent is too broad to allow for meaningful representation; and *fourth*, its nominees do not appear to belong to the said sector.

A BLESSED Party-List[32] claims to represent farmers and fishermen in Region XI. The COMELEC resolved to cancel its registration after finding that three of its seven nominees are "not themselves farmers and fishermen, [and] none of its nominees are registered voters of Region XI, the particular region which they seek to represent."[33]

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[28] *Rollo* (G.R. No. 204100), p. 60.

[29] SPP No. 12-223 (PLM).

[30] *Rollo* (G.R. No. 204100), p. 62.

[31] *Id.*

[32] SPP No. 12-257 (PLM).

[33] *Rollo* (G.R. No. 204100), p. 65.

4. Resolution[34] dated October 16, 2012 in SPP No. 12-260

The COMELEC cancelled the registration of **1-CARE**[35] on the following grounds: (1) rural energy consumers, the sector which **1-CARE** intends to represent, is not marginalized and underrepresented; (2) the party's track record and activities are almost exclusively related to electric cooperatives and not to rural energy consumers; and (3) its nominees, all of whom are/were high-level officials of various electric cooperatives in the country, do not belong to the sector of rural energy consumers.

5. Resolution[36] dated October 16, 2012 in SPP Case No. 12-201 (PLM)

The COMELEC cancelled the registration and accreditation of **APEC**[37] on the following grounds: (1) a review of its constitution and by-laws shows that it does not represent a marginalized and underrepresented sector, as it is merely an economic lobby group for the electric power industry; and (2) all of its nominees, being an employee, electrical engineer, sugar planter and retired government employee, do not appear to belong to the sector that the party claims to represent.

6. Resolution[38] dated October 23, 2012 in SPP No. 12-232 (PLM)

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[34] *Rollo* (G.R. No. 203960), pp. 61-68. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim; Commissioners Rene V. Sarmiento and Maria Gracia Cielo M. Padaca, no part.

[35] SPP No. 12-260.

[36] *Rollo* (G.R. No. 203922), pp. 92-101; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[37] SPP No. 12-201 (PLM).

[38] *Rollo* (G.R. No. 204174), pp. 158-164; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco; Commissioner Christian Robert S. Lim concurred; Commissioner Maria Gracia Cielo M. Padaca, no part.

In cancelling **AT**'s[39] registration and accreditation, the COMELEC ruled that: *first,* the party, which represents the sectors of women, elderly, youth, labor and urban poor, does not appear to have a *bona fide* intention to represent all these sectors, as it has, in fact, failed to uplift the welfare of all these sectors through the authorship or sponsorship by its incumbent representative in Congress of house bills that are beneficial to the elderly, youth and urban poor; and *second*, its nominees, being all professionals, do not belong to any of the marginalized sectors that the party seeks to represent.

7. Omnibus Resolution[40] dated October 24, 2012, which covers SPP Case No. 12-288 (PLM)

The COMELEC's resolution to cancel **ARARO**'s[41] registration and accreditation was founded on the following: (1) the separate interests of the peasant and urban poor sectors, which the party both represents, differ and even oftentimes conflict; (2) most of its nominees cannot be considered members of any of these sectors, as they reside "in the gated subdivisions of Metro Manila"[42]; hence, such nominees can be considered more as landowners, and not farmers as they claim themselves to be; (3) the party failed to show that three of its nominees[43] are among its *bona fide* members; (4) Its nominee Quirino De La Torre (De La Torre) appeared to be a farmland owner, rather than an actual farmer; and (5) It failed to present any document to show that its Board had resolved to participate in the May 2013 elections, and that De La Torre was authorized to sign and file with the COMELEC the documents that are required for the said purpose.

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[39] SPP No. 12-232 (PLM).

[40] *Rollo* (G.R. No. 203976), pp. 21-37; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco and Christian Robert S. Lim; Commissioner Elias R. Yusoph, also voted in favor. Commissioner Maria Gracia Cielo M. Padaca, no part.

[41] SPP No. 12-288 (PLM).

[42] *Id.* at 28.

[43] Joel C. Obar, Jose F. Gamos and Alan G. Gonzales.

8. Omnibus Resolution[44] dated October 24, 2012, which covers SPP Case No. 12-279 (PLM), SPP No. 12-248 (PLM), SPP No. 12-263 (PLM), SPP No. 12-180 (PLM), SPP No. 12-229 (PLM), SPP No. 12-217 (PLM), SPP No. 12-277 (PLM) and SPP No. 12-015 (PLM)

The COMELEC cancelled the registration of **AGRI**, **AKMA-PTM**, **KAP**, **AKO BAHAY**, **BANTAY**, **PACYAW, PASANG MASDA** and **KAKUSA**.

In **AGRI**'s[45] case, the COMELEC ruled that: (1) for more than a year immediately after the May 2010 elections, **AGRI** stopped existing as an organization, and this constitutes as a ground to cancel registration under Section 6 of RA 7941; (2) its nominees did not appear to actually belong to the marginalized and underrepresented sectors of peasants and farmers, which the party seeks to represent; (3) it submitted a list of only four nominees, instead of five as mandated by Section 8 of RA 7941; and (4) there is no showing that it undertook meaningful activities for the upliftment of its constituency.

AKMA-PTM's[46] registration as a party to represent the farmers sector was cancelled for its failure to show that majority of its members and officers belonged to the marginalized and underrepresented. There was also no proof that its first to fourth nominees,[47] who were an educator and persons engaged in business, actually belonged to a marginalized and underrepresented sector. Its fifth to ninth nominees, although all farmers, had not been shown to work on uplifting the lives of the members of their sector.

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[44] *Rollo* (G.R. No. 203958), pp. 26-48; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco and Christian Robert S. Lim; Commissioner Elias R. Yusoph, also voted in favor; Commissioner Maria Gracia Cielo M. Padaca, no part.

[45] SPP No. 12-279 (PLM).

[46] SPP No. 12-248 (PLM).

[47] Margarita Delos Reyes Cojuangco, Datu Michael Abas Kida, Catherine Domingo Trinidad, Saidamen Odin Limgas.

The COMELEC cancelled the registration of **KAP**[48] (formerly Ako Agila ng Nagkakaisang Magsasaka, Inc. — Ako Agila) on the following grounds: (1) its *Manifestation of Intent* and *Certificate of Nomination* were not signed by an appropriate officer of the party, as required by Section 3, Rule 2 of Resolution No. 9366; (2) it failed to show that it has continued to work for the betterment of the lives of the members of the sectors it represents, *i.e.* farmers and peasants; and (3) it failed to show that its nominees actually belong to the sectors which the party represents, or that they have undertaken meaningful activities which address the concerns of said sectors.

The COMELEC cancelled the registration of **AKO BAHAY**[49] for its failure to prove that its nominees actually belong to the marginalized and underrepresented sector that the party seeks to represent, *i.e.*, the urban poor, or to have engaged in meaningful activities that tend to uplift and enrich the lives of the members of said sector.

BANTAY[50] claims to represent the "peasants, urban poor, workers and nationalistic individuals who have stakes in promoting security of the country against insurgency, criminality and their roots in economic poverty."[51] The COMELEC held that the party failed to prove that the majority of its members belonged to the marginalized and underrepresented. In addition, there was no proof that its first and third nominees, a dentist and private sector employee/businesswoman, respectively, actually belonged to the marginalized and underrepresented sectors which **BANTAY** seeks to represent.

The registration of **PACYAW**[52] was cancelled on the following grounds: *first*, since the party desired to change the sector to represent, *i.e.*, from the "urban poor youth" sector

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[48] SPP No. 12-263 (PLM).

[49] SPP No. 12-180 (PLM).

[50] SPP No. 12-229 (PLM).

[51] *Rollo* (G.R. No. 203958), p. 39.

[52] SPP No. 12-217 (PLM).

to the "urban poor" sector, it needed to file a new application for registration; *second*, it failed to show a credible track record of working for the interests of the marginalized and underrepresented; *third*, it failed to prove that majority of its officers and members were from the urban poor sector; and *fourth*, its nominees are also not members of the urban poor sector.

PASANG MASDA's[53] registration was cancelled on two grounds. *First*, it represents both drivers and operators, who may have conflicting interests that may adversely affect the party's mandate to represent both sectors. *Second*, its nominees are all operators or former operators, making the COMELEC question the party's capacity to represent the interests of drivers.

The registration of **KAKUSA**,[54] a party "organized to represent persons imprisoned without proof of guilt beyond reasonable doubt,"[55] was cancelled by the COMELEC for lack of proof that majority of its officers and members belong to the marginalized and underrepresented. The Commission also took note of its failure to show that its incumbent representative has been working on any legislation in Congress to uplift the lives of those whom the group allegedly represents. The party showed no credible track record, and its nominees, being persons engaged in business, did not appear to be marginalized and underrepresented.

9. Resolution[56] dated October 30, 2012 in SPP Case No. 12-256 (PLM)

The COMELEC cancelled **AG**'s[57] registration and accreditation on three grounds. *First*, the party failed to appear

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[53] SPP No. 12-277 (PLM).

[54] SPP No. 12-015 (PLM).

[55] *Rollo* (G.R. No. 203958), p. 44.

[56] *Rollo* (G.R. No. 204428), pp. 35-40; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle and Armando C. Velasco; Commissioners Elias R. Yusoph and Christian Robert S. Lim concurred; Commissioner Maria Gracia Cielo M. Padaca, took no part.

[57] SPP No. 12-256 (PLM).

during the summary hearing scheduled by the COMELEC. For the Commission, such failure shows the party's "wanton disregard for the rules and regulations of [the] Commission"[58] and constitutes a sufficient ground to cancel its registration under Rule 2, Section 2 (f)[59] of Resolution No. 9366. *Second*, the party does not intend to represent any marginalized and underrepresented sector, as evidenced by its lack of track record. In addition, nowhere in its constitution, by-laws and platform of government does it state the marginalized and underrepresented sector that it seeks to represent. It is only in its Memorandum later submitted to the COMELEC that it mentions aiding the marginalized sectors of security guards, drivers, vendors, tanods, small-scale businesses and the jobless. *Third*, its nominees do not belong to any of the mentioned sectors.

10. Resolution[60] dated November 7, 2012 in SPP Case No. 12-185 (PLM)

ANAD's[61] registration and accreditation were cancelled by the COMELEC on several grounds. *First*, it does not represent an identifiable marginalized and underrepresented sector, judging from the party's declared "*advocacies to publicly oppose, denounce and counter, communism in all its form in the Filipino society, in industries, in the academe and in the labor sector; to publicly oppose, denounce and counter all acts of terrorism and insurgency; to preserve, protect and promote the democratic principles of good government and governance by peaceful and democratic*

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[58] *Rollo* (G.R. No. 204428), p. 36.

[59] Sec. 2. Grounds for opposition to a petition for registration. The Commission may deny due course to the petition *motu proprio* or upon verified opposition of any interested party, after due notice and hearing, on any of the following grounds: x x x f. It violates or fails to comply with laws, rules or regulations relating to elections; x x x.

[60] *Rollo* (G.R. No. 204094), pp. 30-40; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph and Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[61] SPP No. 12-185 (PLM).

means under a regime of law and order; to generate and provide avenues for the development of skills of its members as aide in providing income opportunities; develop and implement livelihood programs for its members."[62] S*econd*, the party submitted a list of only three nominees, in violation of Section 4, Rule 3 of Resolution No. 9366 that requires the submission of a list of at least five nominees. *Third*, its nominees do not belong to the marginalized and underrepresented. *Fourth*, it failed to submit its Statement of Contributions and Expenditures for the 2007 National and Local Elections.

11. Omnibus Resolution[63] dated November 7, 2012, which covers SPP No. 12-060 (PLM), SPP No. 12-254 (PLM) and SPP 12-269 (PLM)

The COMELEC cancelled the registration and accreditation of **GREENFORCE**, **FIRM 24-K** and **ALIM**.

The ruling against **GREENFORCE**[64] was based on the following grounds: (1) the party is only an advocacy group composed of environmental enthusiasts intending to take care of, protect and save Mother Earth and the country's natural reserves from destruction or degradation; (2) even if a liberal stance is adopted on the meaning of sectoral representation, the accreditation of **GREENFORCE** still merits cancellation for the party's failure to prove its continuing compliance with the track record requirement; (3) based on their certificates of acceptance, the personal circumstances of **GREENFORCE**'s nominees demonstrate that they cannot be classified as marginalized citizens. The first and second nominees are businessmen, the third and fourth nominees are lawyers, leaving only the fifth nominee, a fish farmer, as the only marginalized citizen among the nominees.

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[62] *Rollo* (G.R. No. 204094), p. 34.

[63] *Rollo* (G.R. No. 204239), pp. 25-42; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[64] SPP No. 12-060 (PLM).

The COMELEC cancelled the registration of **FIRM 24-K**[65] after finding that its nominees do not belong to the sectors which the party represents. It pointed out that while **FIRM 24-K** supposedly represents the urban poor and peasants in the National Capital Region, only two of its nominees actually reside therein. Also, the COMELEC held that **FIRM 24-K** failed to prove its track record as an organization; that the photographs it submitted, showing its tree-planting activities, are self-serving and incapable of exhibiting an organized program for the urban poor.

ALIM's[66] registration was cancelled for its failure to establish that its nominees, or at least a majority of them, are members of the indigenous people sector which the party seeks to represent. Only its first nominee submitted a certificate from the National Commission on Indigenous Peoples (NCIP), which confirmed his membership with the Itawes Indigenous Cultural Communities. In addition, the COMELEC explained that while **ALIM**'s president, Fatani Abdul Malik, testified that their party specifically represents the indigenous masses from Mindanao and the Cordilleras, only two of the party's five nominees hailed from those areas. Finally, the party had nominees who did not appear to belong to a "marginalized class," being a businessman, lawyer and real estate developer.

12. Resolution[67] dated November 7, 2012 in SPP No. 12-204 (PLM)

In cancelling the registration of **AAMA**,[68] the COMELEC held that the sectors it represents, namely, employees, either skilled or ordinary labor, professionals directly engaged in mining activities or occupation incidental thereto and non-

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[65] SPP No. 12-254 (PLM).

[66] SPP No. 12-269 (PLM).

[67] *Rollo* (G.R. No. 204358), pp. 140-148. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca; Commissioner Rene V. Sarmiento on official business.

[68] SPP No. 12-204 (PLM).

government groups advocating advancement of responsible mining for national progress, is a *specifically defined group* which may not be allowed registration under the party-list system. In addition, **AAMA** failed to establish that its nominees actually represent and belong to said sectors, that they have actively participated in the activities of **AAMA**, that they truly adhere to its advocacies, and are *bona fide* members of the party.

13. Resolution[69] dated November 7, 2012 in SPP No. 12-272 (PLM)

The COMELEC cancelled the registration of **SMART**[70] after finding that its nominees are disqualified from representing the sectors which the party represents, *i.e.*, workers, peasants, youth, students, women, professionals and those belonging to sectors such as domestic helpers, vendors, drivers and construction workers, since: *first*, the party claims to represent the youth sector, yet four of its five nominees are more than 30 years of age while its fifth nominee would be more than 30 years of age on May 13, 2013; *second*, the party claims to represent the women sector, yet four out of its five nominees are male; and *third*, its nominees are composed of businessmen, a doctor, an executive chef and a computer programmer, who are thus not marginalized. Also, the COMELEC observed that the party's activities do not specifically cater to the interest and needs of the sectors which it represents. Lastly, the lack of restrictions in the class of persons who may join **SMART** casts doubt as to whether a majority its members are indeed marginalized and underrepresented.

14. Resolution[71] dated November 7, 2012 in SPP No. 12-173 (PLM)

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[69] *Rollo*, (G.R. No. 204359), pp. 42-50. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[70] SPP No. 12-272 (PLM).

[71] *Rollo* (G.R. No. 204238), pp. 54-58. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle,

The COMELEC held that the registration and accreditation in 2010 of **ABP**[72] as a party-list group was defective. The party was initially accredited by the COMELEC in 2009 as a regional political party. In November 2009, it only filed a *Manifestation of Intent* to participate in the May 2010 elections, instead of a petition for registration under Section 5 of RA 7941. Acting on the recommendation of its Law Department, the COMELEC accredited **ABP** as a party-list group on January 15, 2010. The COMELEC then ruled that **ABP** could not be accredited for the May 2013 Elections as a party-list group *sans* the filing of a petition for registration. Also, the COMELEC held that **ABP** does not represent any sector. While it claimed during the summary evidentiary hearing that it represents construction workers and professionals, its constitution and by-laws indicate that its membership is composed of men and women in Region V. Lastly, none of **ABP**'s nominees are employed in the construction industry.

15. Resolution[73] **dated November 7, 2012 in SPP Case No. 12-210 (PLM)**

BAYANI[74] claims to represent "the marginalized and underrepresented professional sector [comprised] of millions of jobless and underemployed professionals such as the registered nurses, midwives, engineers, lawyers, [certified public accountants], among others."[75] Its registration and accreditation were cancelled by the COMELEC on the ground of its failure to prove a track record of trying to uplift the marginalized and underrepresented sector of professionals.

Elias R. Yusoph and Christian Robert S. Lim; Commissioners Armando C. Velasco and Maria Gracia Cielo M. Padaca on official business.

[72] SPP No. 12-173 (PLM).

[73] *Rollo* (G.R. No. 204323), pp. 44-48; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca.

[74] SPP No. 12-210 (PLM).

[75] *Rollo* (G.R. No. 204323), pp. 44-45.

In addition, the party's second nominee,[76] being a businessman, was declared unqualified to represent the sector of professionals.

16. Resolution[77] dated November 7, 2012 in SPP Case No. 12-252 (PLM)

The registration and accreditation of **AANI**[78] were cancelled on several grounds. *First,* the party has failed to establish a track record of enhancing the lives of the marginalized and underrepresented farmers which it claims to represent. Its activities that include relief operations and consultative meetings did not appear to primarily benefit the said sector. *Second,* more than majority of the party's nominees are not farmers, contrary to the seventh guideline in *Ang Bagong Bayani* that a party's nominees must belong to the marginalized and underrepresented sector to be represented.

17. Resolution[79] dated November 7, 2012 in SPP Case No. 12-292 (PLM)

The registration and accreditation of **A-IPRA**,[80] which claims to represent and advance the interests of indigenous peoples, were cancelled on the ground of its failure to prove that its five nominees are "indeed indigenous people; have actively participated in the undertakings of **A-IPRA**; truly adhere to its advocacies; and most of all, that the said nominees are its *bona fide* members."[81]

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[76] Alvin V. Abejuela.

[77] *Rollo* (G.R. No. 204321), pp. 43-51; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca.

[78] SPP No. 12-252 (PLM).

[79] *Rollo* (G.R. No. 204125), pp. 44-48; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph and Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[80] SPP No. 12-292 (PLM).

[81] *Rollo* (G.R. No. 204125), p. 47.

18. Resolution[82] dated November 7, 2012 in SPP Case No. 12-202 (PLM)

The COMELEC cancelled the registration and accreditation of **COCOFED**[83] on several grounds. *First*, the party is already affiliated with a number of coconut agencies, both private and government. **COCOFED** admits that it sits in the board of the United Coconut Association of the Philippines (UCAP), the Philippine Coconut Research and Development Foundation (PCRDF), Coconut Investment Co. (CIC), Cocofed Marketing Corporation (CMC) and the Quezon Coconut Planters Savings and Loan Bank (QCPSLB). Such circumstance negates the claim that it is still marginalized. *Second*, a party-list group must not be an adjunct of, or a project organized or an entity funded by the government. Contrary to this guideline, **COCOFED** openly admits that it is assisted by the Philippine Coconut Authority (PCA) in various farmer-oriented projects. *Third*, **COCOFED**'s nominees are not members of the marginalized sector of coconut farmers and producers, which the party claims to represent.

19. Resolution[84] dated November 7, 2012 in SPP No. 12-238 (PLM)

ABANG LINGKOD's[85] registration was cancelled for its failure to establish a track record of continuously representing marginalized and underrepresented peasant farmers. Further, the party failed to show that its members actually belong to the sector which it claims to represent. As regards the qualification of **ABANG LINGKOD**'s nominees,

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[82] *Rollo* (G.R. No. 204216), pp. 23-28; Signed by Chairman Sixto S. Brillantes, Jr., Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca.

[83] SPP No. 12-202 (PLM).

[84] *Rollo* (G.R. No. 204220), pp. 39-44; Signed by Chairman Sixto S. Brillantes, Jr., Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph and Christian Robert S. Lim.

[85] SPP No. 12-238 (PLM).

there was a failure to show that they are themselves marginalized and underrepresented, that they have actively participated in programs for the advancement of peasant farmers, and that they truly adhere to the advocacies of **ABANG LINGKOD**.

20. Resolution[86] dated November 14, 2012 in SPP Case No. 12-158 (PLM)

The registration and accreditation of **ABROAD**[87] were cancelled on several grounds. *First*, the party was accredited as a regional multi-sectoral party to represent the sectors of labor, overseas workers, professionals, urban poor and peasants. However, the documents submitted by the party indicate that it only advances the welfare of the labor, overseas workers and professionals sectors, and fails to champion the causes of the urban poor and peasants sectors. In addition, while the party was registered way back in September 2009, the documents presented to prove its track record only show its activities beginning January 15, 2011. The COMELEC held, "(w)hat transpired from September 4, 2009 to December 2010 is a puzzle to us. **ABROAD** could have already carried out its purposes and platform of government in this period of time to promote the interests of its members, but it did not."[88] *Third*, **ABROAD**'s nominees do not fall under any of the sectors which the party seeks to represent.

21. Resolution[89] dated November 28, 2012 in SPP Case No. 12-228 (PLM)

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[86] *Rollo* (G.R. No. 204158), pp. 59-64; Signed by Chairman Sixto S. Brillantes, Jr., Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[87] SPP No. 12-158 (PLM).

[88] *Rollo* (G.R. No. 204158), p. 62.

[89] *Rollo* (G.R. No. 204374), pp. 36-41; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

The COMELEC cancelled the registration and accreditation of **BINHI**[90] on the following grounds: (1) the party's component organization, the Cabanatuan City Seed Growers Multi-Purpose Cooperative (CCSGMPC), being a cooperative duly registered with the Cooperative Development Authority (CDA), cannot be considered as a marginalized or underrepresented sectoral organization as it already receives ample assistance, attention and protection from the State through the CDA; (2) being a cooperative, the party receives assistance from the government through the Department of Agriculture, in violation of the fifth guideline in *Ang Bagong Bayani*; and (3) while it may appear from the documents submitted during the summary evidentiary hearing that **BINHI**/CCSGMPC indeed promotes the interests and concerns of peasants, farmers and farm tillers, there is no proof, however, that the group, as a whole, is marginalized and underrepresented.

22. Resolution[91] **dated November 28, 2012 in SPP Case No. 12-136 (PLM)**

The registration and accreditation of **BUTIL**[92] were cancelled on two grounds. *First*, in the Judicial Affidavit submitted by its Secretary General to the Comelec, it is stated that the party represents "members of the agriculture and cooperative sector." For the COMELEC, **BUTIL** failed to establish that the "agricultural and cooperative sectors" are marginalized and underrepresented. *Second*, the party's nominees neither appear to belong to the sectors which they seek to represent, nor to have actively participated in the undertakings of the party.

23. Resolution[93] **dated December 3, 2012 in SPP No. 12-194 (PLM)**

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[90] SPP No. 12-238 (PLM).

[91] *Rollo* (G.R. No. 204356), pp. 56-64; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim, with MariaGracia Cielo M. Padaca taking no part.

[92] SPP No. 12-136 (PLM).

[93] *Rollo* (G.R. 204486), pp. 42-47; Signed by Chairman Sixto S. Brillantes, Jr., Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R,

1st KABAGIS[94] was found by the COMELEC to have ceased to exist after the 2010 elections. The documents which it submitted to prove its continued existence were substantially the same as those it presented to support its petition for registration in 2009. Furthermore, **1st KABAGIS** appeared to have "recycled the documentation of its activities in 2009 to deliberately mislead the Commission to believe that it has existed continuously."[95] For the COMELEC, these circumstances constitute sufficient grounds for the cancellation of the party's registration, as provided in Section 6 (6) and (7) of RA 7941 on a party's declaration of untruthful statements in the petition and failure to exist for at least one year. Finally, the COMELEC took note that while **1st KABAGIS** intends to represent the labor, fisherfolks and the urban poor indigenous cultural communities sectors, none of its five nominees belong to any of these sectors.

24. Resolution[96] dated December 4, 2012 in SPP No. 12-198 (PLM)

The COMELEC cancelled **1-UTAK**'s[97] accreditation, holding that: *First*, the party does not factually and truly represent a marginalized sector considering that drivers and operators, which **1-UTAK** seeks to both represent, have diametrically opposing interests. The advocacy of drivers pertains to wages and benefits while operators are mainly concerned with their profits. *Second*, the party's nominees do not belong to any marginalized and underrepresented sector. The party did not

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Yusoph and Christian Robert S. Lim; Maria Gracia Cielo M. Padaca, no part.

[94] SPP No. 12-194 (PLM).

[95] *Rollo* (G.R. 204486), p. 46.

[96] *Rollo* (G.R. No. 204410), pp. 63-67; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Armando C. Velasco and Christian Robert S. Lim, with Commisioners Lucenito N. Tagle and Elias R. Yusoph dissenting, and Commissioner Maria Gracia Cielo M. Padaca taking no part.

[97] SPP No. 12-198 (PLM).

even include among its nominees a representative from the drivers' sector.

25. Resolution[98] dated December 4, 2012 in SPP No. 12-157 (PLM) and SPP No. 12-191 (PLM)

In cancelling the registration of **SENIOR CITIZENS**,[99] the COMELEC explained that, *first*, its nominees during the May 2010 elections had agreed on a term-sharing agreement, which circumvented Section 7, Article VI of the 1987 Constitution that mandates a three-year term for members of the House of Representatives. The term-sharing agreement was also declared contrary to public policy since a given term of public office cannot be made subject to any agreement of the parties; it is not a commodity that can be shared, apportioned or be made subject of any private agreement. The Commission further cited Section 7, Rule 4 of COMELEC Resolution No. 9366, and emphasized that a violation or failure to comply with laws, rules and regulations relating to elections is, pursuant to Section 6 (5) of RA 7941, a ground for the cancellation of a party's registration.

26. Resolution[100] dated December 5, 2012 in SPP No. 11-002

The COMELEC *En Banc* affirmed the COMELEC Second Division's resolution to grant the registration and accreditation of **PBB**[101] as an NCR Political Party, but prohibited it from participating in the 2013 party-list elections based on the following grounds: (1) the party does not represent any

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[98] *Rollo* (G.R. No. 204421), pp. 43-50; Signed by Chairman Sixto S. Brillantes, Commissioners Rene V. Sarmiento, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca, with Commisioners Lucenito N. Tagle, Armando C. Velasco, and Elias R. Yusoph dissenting.

[99] SPP No. 12-157 (PLM) and SPP No. 12-191 (PLM).

[100] *Rollo* (G.R. No. 204484), pp. 42-45; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca.

[101] SPP No. 11-002.

marginalized and underrepresented sector, as it is composed of businessmen, civil society groups, politicians and ordinary citizens advocating genuine people empowerment, social justice, and environmental protection and utilization for sustainable development; (2) it failed to apply for registration as a party-list group; and (3) it failed to establish its track record as an organization that seeks to uplift the lives of the marginalized and underrepresented.

The COMELEC *En Banc*'s authority under Resolution No. 9513 to conduct an **automatic review** of the COMELEC divisions' resolutions favoring new registrants also resulted in the COMELEC *En Banc*'s issuance of several resolutions. It reversed the rulings of the Commission's divisions through the issuance of the following:

1. Resolution[102] **dated November 23, 2012 in SPP No. 12-099 (PLM)**

ASIN's[103] petition for registration was denied by the COMELEC *En Banc* on the following grounds: *first*, the "artists" sector, which is among the sectors which **ASIN** seeks to represent, is not considered marginalized and underrepresented under RA 7941 and relevant jurisprudence; *second*, **ASIN** failed to prove its track record as an organization, there being no sufficient evidence to show that it had performed acts that tend to advance the interest of the sectors which it seeks to represent; and *third*, **ASIN** failed to show that its nominees are qualified under the provisions of RA 7941 and the guidelines laid down in *Ang Bagong Bayani*.

2. Omnibus Resolution[104] **dated November 27, 2012, which covers SPP No. 12-041 (PLM) and SPP No. 12-011 (PLM)**

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[102] *Rollo* (G.R. No. 204379), pp. 26-35; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph, dissenting.

[103] SPP No. 12-099 (PLM).

[104] *Rollo* (G.R. No. 204426), pp. 127-144; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco

The COMELEC *En Banc* denied the registration of **Manila Teachers** and **ALA-EH**.

In denying **Manila Teachers**'[105] petition, the COMELEC *En Banc* reasoned that a non-stock savings and loan association cannot be considered a marginalized and underrepresented sector under the party-list system of representation, for being neither a part of the "working class," "service class," "economically deprived," social outcasts," "vulnerable" and "work impaired."[106] Furthermore, the COMELEC held that a non-stock savings and loan association is mandated to engage, *exclusively*, in the legitimate business of a non-stock savings and loan association; thus, the very foundation of its organization would be forfeited should it pursue its party-list campaign.[107] Even granting that **Manila Teachers** may seek registration under the party-list system as a group representing public school teachers, the fact that its first and second nominees are not teachers by profession adversely affects the party's application.

The denial of **ALA-EH**'s[108] petition was based on its failure to show that its members, particularly businessmen, sports enthusiasts, donors and hobbyists, belong to an identifiable group of persons which the law considers as marginalized. Further, the COMELEC *En Banc* ruled that the group's nominees did not appear to be qualified, as they were individuals doing financially well in their respective businesses that do not contribute to the welfare of Filipino athletes and sports enthusiasts.[109]

(concurred except for SPP No. 12-011 ALA-EH), Christian Robert S. Lim (concurred with reservation on issue of jurisdiction) and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph, dissenting.

[105] SPP No. 12-238 (PLM).

[106] *Rollo* (G.R. No. 204426), p. 143.

[107] *Id*. at 133.

[108] SPP No. 12-011 (PLM).

[109] *Rollo* (G.R. No. 204426), pp. 134-135.

3. Resolution[110] **dated November 27, 2012 in SPP No. 12-057 (PLM)**

The COMELEC *En Banc* denied **1AAAP**'s[111] petition on the ground of the failure of the party's nominees to qualify. While the group seeks registration as a regional political party under Region XI, its third and fourth nominees[112] are not residents of the said region. For the COMELEC *En Banc*, such circumstance disqualifies them as nominees, for "it would be difficult for the said nominees to represent the interest of **1AAAP**'s supposed constituency who are residents and voters of Region XI."[113] In addition, the group failed to satisfy the second guideline in *Ang Bagong Bayani*, with the Comelec *En Banc* taking note that four[114] of its five nominees do not belong to any marginalized and underrepresented sector.

4. Resolution[115] **dated November 27, 2012 in SPP No. 12-104 (PL)**

AKIN[116] claims to be an organization of health workers and social workers from urban poor communities. The denial of its petition is founded on the group's failure to show that its nominees belong to the urban poor sector. Its first and

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[110] *Rollo* (G.R. No. 204435), pp. 47-55; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph, dissenting.

[111] SPP No. 12-057 (PLM).

[112] Atty. Eddie U. Tamondong and Herculano C. Co, Jr.

[113] *Rollo* (G.R. No. 204435), p. 53.

[114] 1st Nominee, Atty. Pantaleon D. Alvarez, is a lawyer, business, former DOTC Secretary and Congressman; 2nd Nominee, Emmanuel D. Cifra, is a general manager/president; 3rd Nominee, Atty. Eddie U. Tamondong, is a lawyer; 4th Nominee, Herculano C. Co., Jr., is a businessman.

[115] *Rollo* (G.R. No. 204367), pp. 30-35; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph, dissenting.

[116] SPP No. 12-104 (PL).

second nominees[117] are lawyers, its second nominee[118] is a retired government employee, its fourth nominee[119] is an accountant/social volunteer worker, and its fifth nominee[120] is a secretary.

5. Resolution[121] dated November 29, 2012 in SPP No. 12-011 (PP)

AAB[122] applied for registration as a regional political party in Region VIII, allegedly with "constituencies [composed of] the men and women (registered voters) of Region VIII, its provinces, cities, municipalities and all other Bisayans from the other parts of the Philippines whose roots can be traced to the Bisayan Regions of Region VIII x x x."[123] In denying **AAB**'s petition, the COMELEC *En Banc* cited the following grounds: *first*, the records do not show that the group represents a marginalized sector of the society, other than by its claim to have formed a sectoral wing, the Association of Bisayan Farmers-R8 (ABF-R8), registered with the Securities and Exchange Commission (SEC) on May 4, 2012 and aiming to pursue legislation and programs for the benefit of the Bisayan farmers in Region VIII; *second*, AAB's alleged constituencies in Region VIII are not underrepresented because they already have their district representatives in Congress; *third*, granting that ABF-R8 is a legitimate sectoral group of **AAB**, it has been in existence only since May 4, 2012, putting into question its track record of representing peasants and farmers; and

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[117] Camelita P. Crisologo and Benjamin A. Moraleda, Jr.

[118] Corazon Alma G. De Leon.

[119] Imelda S. Quirante.

[120] Flordeliza P. Penalosa.

[121] *Rollo* (G.R. No. 204370), pp. 37-50; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph, dissenting.

[122] SPP No. 12-011 (PLM).

[123] *Rollo* (G.R. No. 204370), p. 44, citing AAB's Petition dated February 8, 2012.

fourth, its nominees are neither farmers nor peasants – three are lawyers, and the two others are company employees.

6. Resolution[124] dated December 4, 2012 in SPP Case Nos. 12-009 (PP) and 12-165 (PLM)

Although the COMELEC *En Banc* affirmed **AI**'s[125] registration as a regional political party in Region VI, it denied the party's registration under the party-list system on several grounds. *First*, the party failed to show that it represents a marginalized and underrepresented sector, considering that the Province of Iloilo already has "no less than five (5) incumbent district representatives in Congress."[126] *Second*, the party made untruthful statements in the Memorandum it filed with the COMELEC, when it claimed that some of its nominees are members of its sectoral wings Patlad-Cayos Farmers' Association (Patlad-Cayos) and Alyansa ng Industriya ng Bigas (ANIB), composed of farmers and NFA-accredited retailers, respectively. The COMELEC *En Banc* took note that none of its nominees are farmers and food retailers, judging from their occupations or professions as declared in the certificates of acceptance to their nominations. *Third*, **AI**'s fourth nominee[127] has withdrawn his acceptance to his nomination, while its first[128] and fifth[129] nominees have filed their certificates of candidacy for local elective positions in Iloilo.

7. Resolution[130] dated December 4, 2012 in SPP No. 12-175 (PL)

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[124] *Rollo* (G.R. No. 204379), pp. 45-57; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca, with Commissioners Lucenito N. Tagle and Elias R. Yusoph, dissenting.

[125] SPP No. 12-009 (PP).

[126] *Rollo* (G.R. No. 204379), p. 53.

[127] Lyndeen John D. Deloria

[128] Rolex T. Suplico.

[129] Francis G. Lavilla.

[130] *Rollo* (G.R. No. 204485), pp. 42-49; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco,

ALONA[131] claims to be an aggrupation of citizen groups composed of homeowners' associations, urban poor, elderly organizations, young professionals, overseas Filipino workers, women, entrepreneurs, cooperatives, fisherfolk, farmers, labor, transport, vendors and youth groups. In ruling against the party's petition, the COMELEC *En Banc* cited: *first*, the group's failure to establish how it can represent all these fourteen (14) sectors which have different, even conflicting, causes and needs; *second*, the sectors of homeowners associations, entrepreneurs and cooperatives are not marginalized and underrepresented; and *third*, three of the party's nominees, a businessman and two lawyers, do not belong to any marginalized and underrepresented sector.

Among the petitioners, only the petitions for registration of **ALAM**, **KALIKASAN**, **PPP** and **GUARDJAN** were denied by a division of the COMELEC in the first instance. The divisions' rulings were elevated to the COMELEC *En Banc* by virtue of **motions for reconsideration**, which were resolved *via* the following Resolutions:

1. Resolution[132] **dated November 7, 2012 in SPP 12-127 (PL)**

The COMELEC *En Banc* affirmed the COMELEC Second Division's finding that **ALAM**[133] failed to sufficiently prove its track record as an organization, and to show that it actually represents and seeks to uplift the marginalized and the underrepresented. Further, the COMELEC *En Banc* ruled that the myriad of sectors which **ALAM** seeks to represent,

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and Christian Robert S. Lim; with Commissioners Lucenito N. Tagle and Elias R. Yusoph, dissenting; Commissioner Maria Gracia Cielo M. Padaca, no part.

[131] SPP No. 12-175 (PL).

[132] *Rollo* (G.R. No. 204139), pp. 505-512; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle and Armando C. Velasco; Commissioners Elias R. Yusoph and Christian Robert S. Lim voted in favor, but were on official business at the time of signing; Commissioner Maria Gracia Cielo M. Padaca, no part.

[133] SPP No. 12-127 (PL).

i.e., community print journalists, news dealers, news sellers, newsboys, tribesmen who learned to love the liberty of the press, *B'laan* tribesmen who cry for ancestral lands, urban poor or informal settlers, drivers and small-time operators of transport units, poor residents in urban barangays, and labor and jury system advocates, is too broad and unrelated to one another. Although there is no prohibition against multi-sectoral representation in the party-list system, a party, organization or coalition which seeks registration must be capable of serving fully all the sectors which it seeks to represent.

2. Resolution[134] dated November 7, 2012 in SPP Case No. 12-061 (PP)

KALIKASAN,[135] a group which claims to be a pro-environment political party representing the sectors of workers, informal settlers, women, youth, elderly, fisherfolks, handicapped, overseas workers and ordinary professionals who are most vulnerable to the effects of climate change and environmental degradation,[136] was denied registration, on the following grounds: (1) the principles and objectives stated in its constitution and by-laws reflect an advocacy for the protection of the environment rather than for the causes of the marginalized and underrepresented sectors it seeks to represent; (2) there is no proof that majority of its membership belong to the marginalized and underrepresented; (3) it seeks to represent sectors with conflicting interests; and (4) its nominees do not belong to any of the sectors which the party claims to represent.

3. Resolution[137] dated November 14, 2012 in SPP No. 12-145 (PL)

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[134] *Rollo* (G.R. No. 204402), pp. 22-33; Signed by Chairman Sixto S. Brillantes, Jr., Rene V. Sarmiento, Lucenito N. Tagle, Elias R. Yusoph and Christian Robert S. Lim.

[135] SPP No. 12-061 (PP).

[136] *Rollo* (G.R. No. 204402), p. 35.

[137] *Rollo* (G.R. No. 204394); Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C.

GUARDJAN's[138] petition for registration was denied on the ground of its failure to prove its membership base and solid track record. The group failed to present the activities that sufficiently benefited its intended constituency of guards, utility helpers, aiders, riders, drivers, domestic helpers, janitors, agents and nannies. Its nominees were also found to be unqualified, as they do not belong to any of the sectors which **GUARDJAN** seeks to represent; rather, they are the owner, consultant or manager of agencies which employ security guards. For the COMELEC *En Banc*, such circumstance will only result in a conflict of interest between the owners or managers of security agencies on one hand, and the security guards on the other.

4. Resolution[139] dated December 5, 2012 in SPP No. 12-073 (PLM)

The COMELEC *En Banc* affirmed the findings of the COMELEC First Division, which cited in its Resolution[140] the failure of **PPP**[141] to show a constituency of marginalized and underrepresented sectors. The group claims to represent the entire four provinces and five cities of Region XII, all already belonging to eight congressional districts, and already represented by eight district congressmen. Furthermore, the group has failed to show a track record of undertaking programs that are aimed at promoting the welfare of the group or any sector that it claims to represent.

The issuance by the COMELEC *En Banc* of the foregoing resolutions prompted the filing of the present petitions, which delve primarily on the following contentions:

Velasco, Elias R. Yusoph and Christian Robert S. Lim; Commissioner Maria Gracia Cielo M. Padaca, no part.

[138] SPP No. 12-145 (PL).

[139] *Rollo* (G.R. No. 204490), pp. 71-78; Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph and Christian Robert S. Lim; Maria Gracia Cielo M. Padaca, no part.

[140] *Id.* at. 61-70.

[141] SPP No. 12-073 (PLM).

First, the COMELEC *En Banc* committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing Resolution No. 9513. The petitioners challenge the COMELEC *En Banc*'s authority under the Resolution to conduct an automatic review of its division's resolutions notwithstanding the absence of a motion for reconsideration. For the petitioners, the COMELEC *En Banc* cannot dismiss with the procedural requirement on the filing of motions for reconsideration under Rule 19 of the 1993 COMELEC Rules of Procedure before it can review a decision or resolution rendered by any of its divisions in quasi-judicial proceedings.

As regards the COMELEC's resolve to determine, after summary evidentiary hearings, the continuing compliance of previously-registered and accredited party-list groups, the COMELEC *En Banc* denied the parties of their right to due process and has violated the principle of *res judicata* that should have otherwise worked in the petitioners' favor. Further, the COMELEC's exercise of its quasi-judicial powers, which they claim to include the cancellation of existing registration and accreditation, could not have been exercised at the first instance by the COMELEC *En Banc*, but should have been first decided by a division of the Commission.

Second, the COMELEC *En Banc* committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in refusing or cancelling the petitioners' registration and accreditation under the party-list system. The petitioners assail the COMELEC *En Banc*'s appreciation of facts and application of pertinent laws and jurisprudence, especially the eight-point guidelines in *Ang Bagong Bayani,* in determining their sectors', groups' and nominees' respective qualifications.

Given the common questions and the similarity in the issues that are raised in the 53 subject petitions, the Court has resolved, through its Resolutions of November 13, 2012, November 20, 2012, November 27, 2012, December 4, 2012, December 11, 2012 and February 19, 2013 to consolidate the petitions, and require the COMELEC to comment thereon.

With the petitioners' inclusion in their respective petitions of prayers for the issuance of temporary restraining order and/

or writ of preliminary injunction, the Court also ordered, *via* the afore-mentioned resolutions, the issuance of *Status Quo Ante* Orders (SQAOs) in all the petitions.

The Office of the Solicitor General (OSG), as counsel for the respondent COMELEC, filed its Consolidated Comments on the petitions. In refuting the petitioners' claim of grave abuse of discretion against the COMELEC, the OSG submitted the following arguments:[142]

First, the COMELEC has the power to review existing party-list groups' or organizations' compliance with the requirements provided by law and the guidelines set by jurisprudence on the party-list system. The OSG cites Section 2, Article IX-C of the 1987 Constitution which enumerates the powers and functions of the COMELEC, giving emphasis on paragraph 1 thereof that gives the Commission the power to enforce and administer all laws and regulations relative to the conduct of an election, and paragraph 5 that cites the Commission's power to register political parties, organizations or coalitions.

Second, the COMELEC's review of the parties' qualifications was a valid exercise by the COMELEC of its administrative powers; hence, the COMELEC *En Banc* could have, even at the first instance, ruled on it.

Third, the requirements of due process were satisfied because the petitioners were given a fair and reasonable opportunity to be heard. The COMELEC's resolve to suspend its own rules was sanctioned by law, as it was aimed for a speedy disposition of matters before the Commission. Furthermore, no petitioner had previously questioned the procedure that was adopted by the COMELEC on the review of the parties' registration; instead, the groups voluntarily submitted to the Commission's jurisdiction and actively participated in its proceedings.

Fourth, the COMELEC faithfully applied the grounds for denial and cancellation of a group's registration, as provided by statute and prevailing jurisprudence. The OSG specifically

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[142] Comment dated December 26, 2012, pp. 35-36.

cites Sections 5 to 9 of RA 7941 and the eight-point guidelines in *Ang Bagong Bayani*.

Fifth, the COMELEC's findings of fact in each petitioner's case are supported by substantial evidence; thus, are final and non-reviewable as provided in Section 5, Rule 64 of the 1997 Rules of Civil Procedure.

In précis, the fifty-three (53) consolidated petitions concern two main issues: *the procedural issue* as to the COMELEC *En Banc*'s power to automatically review a decision of its division without the requisite filing of a motion for reconsideration, and *the substantive issue* as to the COMELEC's alleged grave abuse of discretion in denying or cancelling the registration and/or accreditation under the party-list system of the petitioners.

I signify my assent to the *ponencia*'s rulings on the procedural issue; however, consistent with afore-quoted pronouncement of the Court in *Ang Bagong Bayani*,[143] I signify my strong dissent on major points in the *ponencia*'s resolution of the substantive issue, including its discussions on the nature of the party-list system and its disposition on the qualifications of political parties which seek to participate under the party-list system of representation. Furthermore, notwithstanding the new standards that the *ponencia* now provides for party-list groups, the remand of all 53 petitions to the COMELEC is unnecessary.

Procedural Aspect

The Powers and Functions of the COMELEC

Under the present Constitution, the COMELEC is recognized as the sole authority in the enforcement and administration of election laws. This grant of power retraces its history in the 1935 Constitution. From then, the powers and functions of the COMELEC had continuously been expounded to respond to the call of contemporary times. In *Mendoza v. Commission on Elections*,[144] the Court briefly noted:

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[143] *Supra* note 1.

[144] G.R. No. 188308, October 15, 2009, 603 SCRA 692.

Historically, the COMELEC has always been an administrative agency whose powers have been increased from the 1935 Constitution to the present one, to reflect the country's awareness of the need to provide greater regulation and protection to our electoral processes to ensure their integrity. In the 1935 Constitution, the powers and functions of the COMELEC were defined as follows:

> SECTION 2. The Commission on Elections shall have exclusive charge of the *enforcement and administration of all laws relative to the conduct of elections* and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest election. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court. x x x

These evolved into the following powers and functions under the 1973 Constitution:

> (1) *Enforce and administer all laws relative to the conduct of elections.*
>
> (2) Be the sole judge of all contests relating to the elections, returns, and qualifications of all members of the National Assembly and elective provincial and city officials.
>
> (3) Decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of voters.

These powers have been enhanced in scope and details under the 1987 Constitution, x x x[145]

Under the 1987 Constitution, the intent to reinforce the authority of the COMELEC is evident in the grant of several other powers upon the Commission, specifically under Section 2, Article IX-C thereof which reads:

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[145] *Id.* at 709-710.

Section 2. The Commission on Elections shall exercise the following powers and functions:

1. Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and *barangay* offices shall be final, executory, and not appealable.

3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

4. Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

5. Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

> 6. File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.
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> 7. Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.
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> 8. Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision.
>
> 9. Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Essentially, the COMELEC has general and specific powers. Section 2(1) of Article IX-C partakes of the general grant of the power to the COMELEC to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." The authority given to the COMELEC under this provision encapsulates all the other powers granted to it under the Constitution. The intention in providing this general grant of power is to give the COMELEC a wide latitude in dealing with matters under its jurisdiction so as not to unduly delimit the performance of its functions. Undoubtedly, the text and intent of this constitutional provision is to give COMELEC all the *necessary* and *incidental* powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.[146] The rest of the enumeration in the mentioned provision constitutes the COMELEC's specific powers.

As to the nature of the power exercised, the COMELEC's powers can further be classified into administrative, quasi-legislative, quasi-judicial, and, in limited instances, judicial.

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[146] *Pangandaman v. COMELEC*, 377 Phil. 297, 312 (1999).

The *quasi-judicial power* of the Commission embraces the power to resolve controversies arising in the enforcement of election laws and to be the sole judge of all pre-proclamation controversies and of all contests relating to the elections, returns, and qualifications. Its *quasi-legislative power* refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress. Its *administrative function* refers to the enforcement and administration of election laws.[147]

In *Baytan v. COMELEC*,[148] the Court had the occasion to pass upon the classification of the powers being exercised by the COMELEC, thus:

> The COMELEC's **administrative powers** are found in Section 2 (1), (3), (4), (5), (6), (7), (8), and (9) of Article IX-C. The 1987 Constitution does not prescribe how the COMELEC should exercise its administrative powers, whether *en banc* or in division. The Constitution merely vests the COMELEC's administrative powers in the "Commission on Elections," while providing that the COMELEC "may sit *en banc* or in two divisions." Clearly, the COMELEC *en banc* can act directly on matters falling within its administrative powers. Indeed, this has been the practice of the COMELEC both under the 1973 and 1987 Constitutions.
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> On the other hand, the COMELEC's **quasi-judicial powers** are found in Section 2 (2) of Article IX-C, to wit:
>
> "Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> x x x x x x x x x
>
> (2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective

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[147] Dissenting Opinion of J. Pardo, *Akbayan-Youth v. COMELEC*, 407 Phil. 618, 669, citing *Digman v. COMELEC*, 120 SCRA 650 (1983).

[148] 444 Phil. 812 (2003).

barangay officials decided by trial courts of limited jurisdiction.[149] (Emphasis supplied)

The distinction on the nature of the power being exercised by the COMELEC is crucial to the procedure which has to be observed so as to stamp an official action with validity. In the exercise of its adjudicatory or quasi-judicial powers, the Constitution mandates the COMELEC to hear and decide cases first by division and upon motion for reconsideration, by the COMELEC *En Banc*.[150] Section 3 of Article IX-C states:

Section 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

On the other hand, matters within the administrative jurisdiction of the COMELEC may be acted upon directly by the COMELEC *En Banc* without having to pass through any of its divisions.[151]

The Issuance of Resolution No. 9513 as an Implement of the Power to Register Political Parties, Organizations and Coalitions

One of the specific powers granted to the COMELEC is the power to register political parties, organizations and coalitions articulated in Section 2(5) of Article IX-C of the Constitution, thus:

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements,

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[149] *Id.* at 824-825, citing *Commission on Elections v. Silva, Jr.*, 286 SCRA 177 (1998); *Pimentel vs. Commission on Elections*, 289 SCRA 586 (1998*); Commission on Elections vs. Noynay*, 292 SCRA 254 (1998); *Domalanta vs. Commission on Elections*, 334 SCRA 555 (2000).

[150] *Bautista v. COMELEC*, 460 Phil. 459, 476 (2003), citing *Canicosa v. COMELEC*, 347 Phil. 189 (1997).

[151] *Canicosa v. COMELEC*, 347 Phil. 189, 201 (1997).

must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

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The essence of registration cannot be overemphasized. Registration and the formal recognition that accompanies it are required because of the Constitution's concern about the character of the organizations officially participating in the elections.[152] Specifically, the process of registration serves to filter the applicants for electoral seats and segregate the qualified from the ineligible. The purity of this exercise is crucial to the achievement of orderly, honest and peaceful elections which the Constitution envisions.

The power to register political parties, however, is not a mere clerical exercise. The COMELEC does not simply register every party, organization or coalition that comes to its office and manifests its intent to participate in the elections. Registration entails the possession of qualifications. The party seeking registration must first present its qualifications before registration will follow as a matter of course.

Similar with all the specific powers of the COMELEC, the power to register political parties, organizations and coalitions must be understood as an implement by which its general power to enforce and administer election laws is being realized. The exercise of this power must thus be construed in a manner that will aid the COMELEC in fulfilling its duty of ensuring that the electoral exercise is held exclusive to those who possess the qualifications set by the law.

It is pursuant to this duty that the COMELEC found it imperative to promulgate Resolution No. 9513. The said Resolution seeks to manage the registration of party-list groups,

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[152] *Liberal Party v. Commission on Elections*, 620 SCRA 393, 431 (2010).

organizations and coalitions that are aspiring to participate in the 2013 National and Local Elections, with the objective of ensuring that only those parties, groups or organizations with the requisite character consistent with the purpose of the party-list system are registered and accredited to participate in the party-list system of representation.

Plainly, the resolution authorized the COMELEC *En Banc* to automatically review all pending registration of party-list groups, organizations and coalitions and to set for summary evidentiary hearings all those that were previously registered to determine continuing compliance. To effectively carry out the purpose of the Resolution, the COMELEC suspended Rule 19 of the 1993 COMELEC Rules of Procedure, specifically the requirement for a motion for reconsideration.

In the implementation of Resolution No. 9513, a number of applicants for registration as party-list group, organization or coalition were denied registration by the COMELEC *En Banc*, while several others that were previously registered and/or accredited were stripped of their status as registered and/or accredited party-list groups, organizations or coalitions.

Given the circumstances, I agree with the majority that the action of the COMELEC *En Banc* was well-within its authority.

The arguments of the petitioners proceed from a feeble understanding of the nature of the powers being exercised by the COMELEC in which the procedure to be observed depends. Indeed, in a quasi-judicial proceeding, the COMELEC *En Banc* does not have the authority to assume jurisdiction without the filing of a motion for reconsideration. The filing of a motion for reconsideration presupposes that the case had been heard, passed upon and disposed by the COMELEC Division before the same is subjected to review of the COMELEC *En Banc*.

In *Dole Philippines Inc. v. Esteva*,[153] the Court defined quasi-judicial power, to wit:

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[153] G.R. No. 161115, November 30, 2006, 509 SCRA 332.

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature. Since rights of specific persons are affected, it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings.[154]

To be clear, the COMELEC exercises quasi-judicial powers in deciding election contests where, in the course of the exercise of its jurisdiction, it holds hearings and exercises discretion of a judicial nature; it receives evidence, ascertains the facts from the parties' submissions, determines the law and the legal rights of the parties, and on the basis of all these, decides on the merits of the case and renders judgment.[155]

However, the registration of political parties, organizations and coalitions stated in Section 2(5) of Article IX-C of the Constitution involves the exercise of administrative power. The Court has earlier declared in *Baytan* that Sections 2 (1), (3), (4), (5), (6), (7), (8) and (9) of Article IX-C pertain to the administrative powers of the COMELEC.[156] It reiterated this pronouncement

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[154] *Id.* at 369-370.

[155] *Mendoza v. COMELEC*, G.R. No. 188308, October 15, 2009, 603 SCRA 692, 710, citing *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, G.R. No. 83578, March 16, 1989, 171 SCRA 348; *Midland Insurance Corporation v. IAC*, No. 71905, August 13, 1986, 143 SCRA 458; *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991, 204 SCRA 483, on the activities encompassed by the exercise of quasi-judicial power.

[156] *Supra* note 155, at 824.

in *Bautista v. COMELEC*[157] where it further deliberated on the distinctions between the administrative and quasi-judicial powers of the COMELEC. And recently, in *Magdalo v. COMELEC*,[158] it made a categorical pronouncement that the power of the COMELEC to register political parties and ascertain the eligibility of groups to participate in the elections is purely administrative in character.[159]

Distinguishing the nature of the power being exercised by the COMELEC is relevant because of the different set of rules that applies to each. For instance, in *Canicosa v. COMELEC*,[160] the Court stressed that matters falling under the administrative jurisdiction of the COMELEC may be acted upon directly by the COMELEC *En Banc*. On the other hand, Section 3, Article IX-C of the Constitution underscores the requirement for a motion for reconsideration before the COMELEC *En Banc* may take action in quasi-judicial proceedings.

The COMELEC's determination as to whether a party is a political party entitled to registration is an exercise of its constitutional power of administering the laws relative to the conduct of elections.[161] The same principle applies in the registration of party-list groups, organizations and coalitions. In the process of registration, the COMELEC determines whether the applicant possesses all the qualifications required under the law. There are no contending parties or actual controversy. It is merely the applicant proving his qualifications to participate in the elections.

The foregoing ratiocination, however, does not suggest that the COMELEC *En Banc* can forthwith act on pending petitions for registration and subject previously-registered party list groups, organizations and coalitions to summary evidentiary hearings

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[157] *Supra* note 157.

[158] G.R. No. 190793, June 19, 2012.

[159] *Id.*, citing *Cipriano v. COMELEC*, 479 Phil. 677 (2004).

[160] 347 Phil. 189 (1997).

[161] *Santos v. COMELEC*, 191 Phil. 212, 219 (1981).

to determine continuing compliance simply because it is administrative in nature. Indeed, it may do so, but only with respect to the latter group.

I distinguish between (1) new or pending petitions for registration (referred to as the *first group*), and; (2) previously registered and/or accredited party-list groups, organizations and coalitions (referred to as the *second group*).

As regards the *first group*, the COMELEC *En Banc* cannot directly act on new petitions for registration as there is a specific procedure governing the performance of this function. It bears noting that pursuant to the authority vested in the COMELEC to promulgate rules of procedure in order to expedite the disposition of cases,[162] it drafted the 1993 COMELEC Rules of Procedure which will govern pleadings, practice and procedure before the Commission. Under Section 32 of the said Rules, the registration of political parties or organizations is classified under *Special Proceedings*, together with annulment of permanent list of voters and accreditation of citizen's arms of the Commission. In relation to this, Section 3 of Rule 3 states:

> Section 3. **The Commission Sitting in Divisions** — The Commission shall sit in two (2) Divisions to hear and decide protests or petitions in ordinary actions, special actions, special cases, provisional remedies, contempt, and **special proceedings** except in accreditation of citizens' arm of the Commission. (Emphasis ours)

The same rule applies to the registration of party-list groups, organizations or coalitions. Thus, petitions for registration of party-list groups, organizations and coalitions are first heard by the COMELEC Division before they are elevated to the *En Banc* on motion for reconsideration. It is this requirement for a motion for reconsideration of the resolutions of the COMELEC Division granting new petitions for registration that the COMELEC suspended in Resolution No. 9513. In doing so, the COMELEC resorted to Section 4, Rule 1 of the 1993 COMELEC Rules of Procedure which reads:

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[162] Section 3, Article IX-C of the 1987 Constitution.

Section 4. Suspension of the Rules. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

Surely, the suspension of the rule will serve the greater interest of justice and public good since the objective is to purge the list of registrants of those who are not qualified to participate in the elections of party-list representatives in Congress. Ultimately, it will help secure the electoral seats to the intended beneficiaries of RA 7941 and, at the same time, guard against fly-by-night groups and organizations that are seeking for the opportune time to snatch a chance. By virtue of the suspension of the requirement for motion for reconsideration, the COMELEC *En Banc* may then automatically review pending petitions for registration and determine if the qualifications under the law are truly met. It is a measure that was pursued in order that the COMELEC may fulfill its duty to ensure the purity of elections. And, as the rules of procedure are designed to facilitate the COMELEC's performance of its duties, it must never be a stumbling block in achieving the very purpose of its creation.

With respect to the *second group*, the COMELEC *En Banc* may directly order the conduct of summary evidentiary hearings to determine continuing compliance considering that there is no specific procedure on this matter. The petitioners cannot invoke Section 3, Rule 3 of the 1993 COMELEC Rules of Procedure since this provision relates only to new petitions for registration. Absent a special rule or procedure, the COMELEC *En Banc* may directly act or perform an otherwise administrative function, consistent with our pronouncement in *Canicosa*.

The authority of the COMELEC *En Banc* to subject previously-registered and/or accredited party-list groups, organizations and coalitions to summary evidentiary hearing emanates from its general power to enforce and administer all laws and regulations relative to the conduct of an election[163] and duty to ensure "free,

[163] Section 2(1), Article IX-C of the 1987 Constitution.

orderly, honest, peaceful and credible elections."[164] Part and parcel of this duty is the maintenance of a list of qualified candidates. Correlative to this duty of the COMELEC is the duty of the candidate or, in this case, the registered party-list groups, organizations or coalitions to maintain their qualifications.

Consistent with the principle that the right to hold public office is a privilege, it is incumbent upon aspiring participants in the party-list system of representation to satisfactorily show that they have the required qualifications stated in the law and prevailing jurisprudence. Specifically, a party-list group or organization applying for registration in the first instance must present sufficient evidence to establish its qualifications. It is only upon proof of possession of qualifications that registration follows.

The process, however, does not end with registration. Party-list groups and organizations that are previously allowed registration and/or accreditation are duty-bound to maintain their qualifications.

In *Amores v. House of Representatives Electoral Tribunal*,[165] the Court emphasized:

> Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged.[166]

It can be gathered from the foregoing that the fact that a candidate who was allowed to participate in the elections and hold office does not give him a vested right to retain his position notwithstanding loss of qualification. The elective official must maintain his qualifications lest he loses the right to the office he is holding.

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[164] Section 2(3), Article IX-C of the 1987 Constitution.

[165] G.R. No. 189600, June 29, 2010, 622 SCRA 593.

[166] *Id.*, citing *Frivaldo v. COMELEC*, G.R. No. 87193, June 23, 1989, 174 SCRA 245, 255.

Further, the fact that a candidate was previously allowed to run or hold public office does not exempt him from establishing his qualifications once again in case he bids for reelection. He must maintain and attest to his qualifications every time he is minded to join the electoral race. Thus, he is required to file a certificate of candidacy even if he is an incumbent elective official or previously a candidate in the immediately preceding elections.

Similar to individual candidates, registered party-list groups, organizations and coalitions must also establish their continuing compliance with the requirements of the law which are specific to those running under the party-list system of representation. Registration does not vest them the perpetual right to participate in the election. The basis of the right to participate in the elections remains to be the possession of qualifications. Resolution No. 9513 is a formal recognition of the COMELEC's duty to ensure that only those who are qualified must be allowed to run as party-list representative. It cannot be defeated by a claim of previous registration.

Therefore, it is my view that the COMELEC cannot be estopped from cancelling existing registration and/or accreditation in case the concerned party-list group or organization failed to maintain its qualifications. Being the authority which permits registration and/or accreditation, it also has the power to cancel the same in the event that the basis of the grant no longer exists.

Inapplicability of the Doctrine of Res Judicata

Similarly, the COMELEC cannot be precluded from reviewing pending registration and existing registration and/or accreditation of party-list groups, organizations and coalitions on the ground of *res judicata*. It has been repeatedly cited in a long line of jurisprudence that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers.[167]

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[167] *Montemayor v. Bundalian*, 453 Phil. 158, 169 (2003), citing *Dinsay vs. Cioco*, 264 SCRA 703 (1996)

Moreover, the application of the doctrine of *res judicata* requires the concurrence of four (4) elements, *viz.*: (1) the former judgment or order must be final; (2) it must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties during the trial of the case; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and second actions, identity of parties, subject matter and causes of action.[168]

Here, the resolutions of the COMELEC Division, allowing the registration of the applicant party-list groups and organizations do not partake of a final judgment or order. A *final judgment or order* is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.* an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is right. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned.[169]

The resolutions of the COMELEC Division cannot be considered an adjudication on the merits since they do not involve a determination of the rights and liabilities of the parties based on the ultimate facts disclosed in the pleadings or in the issues presented during the trial.[170] They are simply recognition by the COMELEC that the applicant party-list or organization possesses the qualifications for registration. They do not involve the settlement of conflicting claims; it is merely an initiatory procedure for the conduct of elections. On the other hand, previous registration and/or accreditation only attests to the fact that

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[168] *Baricuatro v. Caballero*, G.R. No. 158643, June 19, 2007, 525 SCRA 70, 76.

[169] *Philippine Business Bank v. Chua*, G.R. No. 178899, November 15, 2010, 634 SCRA 635, 648, citing *Denso (Phils.) Inc. v. Intermediate Appellate Court*, G.R. No. 75000, February 27, 1987, 148 SCRA 280.

[170] *Supra* note 175.

the concerned party-list group, organization or coalition satisfactorily proved its qualifications to run as party-list representative in the immediately preceding elections. It does not, however, create a vested right in favor of the registered party-list group, organization or coalition to participate in the succeeding elections.

The resolutions of the COMELEC Division cannot also become *final* as to exempt the party-list group or organization from proving his qualifications in the succeeding elections. As in individual candidate, a party-list group, organization or coalition desiring to participate in the elections must possess the required qualifications every time it manifests its intent to participate in the elections. It must prove and attest to its possession of the required qualifications every time it bids for election.

The inapplicability of the doctrine of *res judicata* is even made more apparent by the fact that the group, organization or coalition which was denied registration may still apply for registration in succeeding elections and even be allowed registration provided that the qualifications are met. The same holds true with previously registered and/or accredited party-list group, organization or coalition which was stripped of its registration and/or accreditation.

Procedural due process was properly observed.

There is even no merit in the petitioners' claim that their right to procedural due process was violated by the COMELEC's automatic review and conduct of summary evidentiary hearings under Resolution No. 9513.

As regards the *first group*, I have explained why I deem the COMELEC's suspension of its own rules on motions for reconsideration justified, given its duty to ensure that votes cast by the electorate in the party-list elections will only count for qualified party-list groups, in the end that the system's ideals will be realized.

Equally important, the settled rule in administrative proceedings is that a fair and reasonable opportunity to explain one's side

satisfies the requirements of due process. Its essence is embodied in the basic requirements of notice and the real opportunity to be heard.[171]

Consistent with the foregoing, Section 6 of RA 7941 only commands the minimum requirements of due notice and hearing to satisfy procedural due process in the refusal and/or cancellation of a party, organization or coalition's registration under the party-list system. It reads:

> Section 6. *Refusal and/or Cancellation of Registration.* The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, **after due notice and hearing**, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:
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> x x x (Emphasis ours)

The petitioners then cannot validly claim that they were denied of their right to procedural process. We shall not disregard the proceedings that ensued before the COMELEC's divisions, before whom the groups were given due notice and the ample opportunity to present and substantiate their plea for registration. The COMELEC *En Banc*'s resolution to later review the resolutions of its divisions did not render insignificant such due process already accorded to the groups, especially as we consider that the *En Banc* decided on the basis of the evidence submitted by the groups before the divisions, only that it arrived at factual findings and conclusions that differed from those of the latter.

The *second group*'s right to procedural process was also unimpaired, notwithstanding the COMELEC's conduct of the summary evidentiary hearings for the purpose of determining the parties' continuing compliance with rules on party-list groups. The notice requirement was satisfied by the COMELEC through its issuance of the Order dated August 2, 2012,[172] which notified the party-list groups of the Commission's resolve to conduct

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[171] See *Philippine Guardians Brotherhood, Inc. (PGBI) v. COMELEC,* G.R. No. 190529, April 29, 2010.

[172] *Rollo* (G.R. No. 204323), pp. 16-19.

summary evidentiary hearings, the dates thereof, and the purpose for which the hearings shall be conducted. The specific matters that are expected from them by the Commission are also identified in the Order, as it provides:

> To simplify the proceedings[,] the party-list groups or organizations thru counsel/s shall submit the following:
>
> 1. The names of witness/es who shall be the Chairperson, President or Secretary General of the party-list groups, organization or coalition;
>
> 2. Judicial Affidavit/s of the witness/es to be submitted at prior to the scheduled hearing; and
>
> 3. Other documents **to prove their continuing compliance with the requirements of R.A. No. 7941 and the guidelines in the Ang Bagong Bayani case.**[173] (Emphasis supplied)

There is then no merit in most petitioners' claim that they were not informed of the grounds for which their existing registration and/or accreditation shall be tested, considering that the parameters by which the parties' qualifications were to be assessed by the COMELEC were explained in the Order.

That the parties were duly notified is further supported by their actual participation in the scheduled hearings and their submission of evidence they deemed sufficient which, in turn, satisfied the requirement on the opportunity to be heard.

Substantive Aspect

The common contention raised in the consolidated petitions is that the COMELEC erred in assessing their qualifications which eventually led to the denial of their petitions for registration and cancellation of their registration and/or accreditation.

A deliberation on the purpose and contemplation of the relevant laws and prevailing jurisprudence is imperative.

The Party-List System of Representation

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[173] *Id.* at 19.

Contrary to the view of the majority, it is my staunch position that the party-list system, being a complement of the social justice provisions in the Constitution, is primarily intended to benefit the marginalized and underrepresented; the ideals of social justice permeates every provision in the Constitution, including Section 5(2), Article VI on the party-list system.

The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them.[174] **It is not simply a mechanism for electoral reform.** To simply regard it as a mere procedure for reforming the already working and existing electoral system is a superficial reading of RA 7941 and the Constitution, from which the law breathed life. The idea is that by promoting the advancement of the underprivileged and allowing them an opportunity to grow, they can rise to become partners of the State in pursuing greater causes.

The ideals of social justice cannot be more emphatically underscored in the 1987 Constitution. The strong desire to incorporate and utilize social justice as one of the pillars of the present Constitution was brought forth by the intent to perpetually safeguard democracy against social injustices, desecration of human rights and disrespect of the laws which characterized the dark pages of our history. It is reminiscent of the unified and selfless movement of the people in EDSA who, minuscule in power and resources, braved the streets and reclaimed their freedom from the leash of dictatorship.The gallantry and patriotism of the masses and their non-negotiable demand to reclaim democracy are the inspirations in the drafting of our Constitution.

The ambition of the framers of the Constitution for a state which recognizes social justice at the forefront of its policies brought them to propose a separate article on social justice and

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[174] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, *supra* note 1.

human rights. Initially, the proposed provision defined social justice as follows:

SOCIAL JUSTICE

SECTION 1. **Social Justice, as a social, economic, political, moral imperative, shall be the primary consideration of the State in the pursuit of national development. To this end, Congress shall give the highest priority to the formulation and implementation of measures designed to reduce economic and political inequalities found among citizens**, and to promote the material structural conditions which promote and enhance human dignity, protect the inalienable rights of persons and sectors to health, welfare and security, and put the material wealth and power of the community at the disposal of the common good.

SECTION 2. Towards these ends, the State shall regulate the acquisition, ownership, use and disposition of property and its fruits, promote the establishment of self-reliant, socio-political and economic structures determined by the people themselves, protect labor, rationalize the use and disposition of land, and ensure the satisfaction of the basic material needs of all.[175] (Emphasis supplied)

In her sponsorship speech, Commissioner Nieva delved into the primacy of the promotion of social justice in the ideals that the Constitution will carry. She explained:

Our Committee hopes that social justice will be the centerpiece of the 1986 Constitution. The rationale for this is that social justice provides the material and social infrastructure for the realization of basic human rights the enhancement of human dignity and effective participation in democratic processes. Rights, dignity and participation remain illusory without social justice.

Our February 1986 Revolution was not merely against the dictatorship nor was it merely a fight for the restoration of human rights; rather, this popular revolution was also a clamor for a more equitable share of the nation's resources and power, a clamor which reverberated in the many public hearings which the Constitutional Commission conducted throughout the country.

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[175] Record of the Constitutional Commission No. 46, August 2, 1986.

If our 1986 Constitution would enshrine the people's aspirations as dramatically expressed in the revolution and ensure the stability, peace and progress of our nation, it must provide for social justice in a stronger and more comprehensive manner than did the previous Constitutions.

x x x x x x x x x

In Sections 1 and 2, the provisions mandate the State to give social justice the highest priority to promote equality in the social, economic and political life of the nation through the redistribution of our resources, wealth and power for the greater good.[176]

Further in the deliberations, Commissioner Bennagen remarked on the aspects of social justice, *viz*:

MR. BENNAGEN: x x x

We did not fail to incorporate aspects of attitudinal change, as well as structural change, and these are fairly evident in the first two sections. **As indicated in Section 1, we did emphasize that social justice should be a social, economic, political and moral imperative. The moral component is important because we feel that a justice provision should be on the side of the poor, the disadvantaged, the so-called deprived and the oppressed.** This is a point that has been raised a number of times especially by social scientists. **Specifically, I would like to mention Dr. Mahar Mangahas who, in his extensive studies on social justice, feels that the State itself has been a major source of injustice and that, therefore, the State should be able to correct that and must assume a moral stance in relation to the poor, the deprived and the oppressed, a moral stance that we feel should also permeate the bureaucracy, the technocracy and eventually, with the changes in structures, also the whole of our Philippine society**.[177] (Emphasis ours)

Pursuant to the ends discussed by the framers of the Constitution, they came up with Article XIII which specifically deals with Social Justice and Human Rights. Section 1, Article

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[176] Record of the Constitutional Commission No. 46, August 2, 1986.

[177] *Ibid.*

XIII of the Constitution carries the positive command to the Congress to uphold social justice. It reads:

> Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequities by equitably diffusing wealth and political power for the common good.
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> x x x x x x x x x

One of the modes by which the Constitution seeks to achieve social justice is through the introduction of the party-list system. Sections 5(1) and (2), Article VI thereof provide:

> Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, *as provided by law*, **shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.**
>
> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, *as provided by law*, by selection or election from **the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors** *as may be provided by law*, except the religious sector. (Emphasis ours)

Considering that the provisions on party-list system of representation are not self-executing, the Congress enacted RA 7941. The said law defined the parameters of the party-list system, the procedural guidelines and the qualifications of those intending to participate in the exercise. In enacting RA 7941, the legislature did not mean to depart from the impetus which impelled the members of the Constitutional Commission to provide for this scheme of representation — social justice. The underlying principle remains to be the reduction of political inequality by equitably diffusing wealth and political power. Certainly, there could be no other intended beneficiaries for this provision than

the powerless and underprivileged. It could not have been intended for those who already have the power and resources who may be lesser in number but are in command of the machinery of the government.

As so fervently declared in the case of *Ang Bagong Bayani*, the party-list system of is a social justice mechanism, designed to distribute political power. In the said case, the Court held:

> The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy.[178]

The objective to hold the party-list system for the benefit of the marginalized and underrepresented is expressed in clear language of Section 2 of RA 7941. It reads:

> Section 2. *Declaration of policy*. The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, **which will enable Filipino citizens belonging to marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole**, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible. (Emphasis ours)

A reading of Section 2 shows that the participation of registered national, regional and sectoral parties, organizations and coalitions

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[178] *Supra* note 1 at 322.

in the party-list elections are qualified by three (3) limiting characteristics: (1) they must consist of Filipino citizens belonging to the marginalized and underrepresented sectors, organizations or coalitions; (2) who lack well-defined political constituencies, (3) but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. **The term "marginalized and underrepresented" effectively limits the party-list system to sectors which directly need support and representation.** The law could not have deemed to benefit even those who are already represented in the House of Representatives lest it results to a wider gap between the powerful and the underprivileged. In empowering the powerless, the law must necessarily tilt its partiality in favor of the marginalized and underrepresented if genuine social justice must be achieved.

The favor of the law towards the marginalized and underrepresented, which was first articulated by former Chief Justice Artemio Panganiban in *Ang Bagong Bayani*, was later affirmed and reiterated by no less than another former Chief Justice of this Court, Reynato S. Puno, in his erudite separate opinion in *BANAT v. COMELEC*.[179] He forcefully articulated:

> History has borne witness to the struggle of the faceless masses to find their voice, even as they are relegated to the sidelines as genuine functional representation systemically evades them. **It is by reason of this underlying premise that the party-list system was espoused and embedded in the Constitution**, and it is within this context that I register my dissent to the entry of major political parties to the party-list system.
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> x x x x x x x x x
>
> x x x With all due respect, I cannot join this submission. **We stand on solid grounds when we interpret the Constitution to give utmost deference to the democratic sympathies, ideals and aspirations of the people. More than the deliberations in the Constitutional Commission, these are expressed in the text of the Constitution which the people ratified. Indeed, it is the intent of the sovereign people that matters in interpreting the Constitution**. x x x

[179] 586 Phil. 210.

x x x x x x x x x

Everybody agrees that the best way to interpret the Constitution is to harmonize the whole instrument, its every section and clause. We should strive to make every word of the fundamental law operative and avoid rendering some words idle and nugatory. **The harmonization of Article VI, Section 5 with related constitutional provisions will better reveal the intent of the people as regards the party-list system.** Thus, under Section 7 of the Transitory Provisions, the President was permitted to fill by appointment the seats reserved for sectoral representation under the party-list system from a list of nominees submitted by the respective sectors. This was the result of historical precedents that saw how the elected Members of the interim Batasang Pambansa and the regular Batasang Pambansa tried to torpedo sectoral representation and delay the seating of sectoral representatives on the ground that they could not rise to the same levelled status of dignity as those elected by the people. To avoid this bias against sectoral representatives, the President was given all the leeway to "break new ground and precisely plant the seeds for sectoral representation so that the sectoral representatives will take roots and be part and parcel exactly of the process of drafting the law which will stipulate and provide for the concept of sectoral representation." **Similarly, *limiting* the party-list system to the marginalized and excluding the major political parties from participating in the election of their representatives is aligned with the constitutional mandate to "reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good**"; the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making; the right of women to opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation; the right of labor to participate in policy and decision-making processes affecting their rights and benefits in keeping with its role as a primary social economic force; the right of teachers to professional advancement; the rights of indigenous cultural communities to the consideration of their cultures, traditions and institutions in the formulation of national plans and policies, and the indispensable role of the private sector in the national economy.

x x x x x x x x x

In sum, the evils that faced our marginalized and underrepresented people at the time of the framing of the 1987

Constitution still haunt them today. It is through the party-list system that the Constitution sought to address this systemic dilemma. In ratifying the Constitution, our people recognized how the interests of our poor and powerless sectoral groups can be frustrated by the traditional political parties who have the machinery and chicanery to dominate our political institutions. If we allow major political parties to participate in the party-list system electoral process, we will surely suffocate the voice of the marginalized, frustrate their sovereignty and betray the democratic spirit of the Constitution. That opinion will serve as the graveyard of the party-list system.

The intent of the Constitution to keep the party-list system exclusive to the marginalized and underrepresented sectors is then crystal clear. **To hold otherwise is to frustrate the spirit of the law and the sacred intention to hold inviolable the safeguards of social justice embedded in the Constitution.**

In the same line**, RA 7941 must not be interpreted as merely a mode for electoral reform. It could not have been that too simplistic.** Far from being merely an electoral reform, the party-list system is one concrete expression of the primacy of social justice in the Constitution. It is well to remember that RA 7941 was only implementing the specific mandate of the Constitution in Section 5, Article VI. It should not be disengaged from the purpose of its enactment. The purpose of the mentioned provision was not simply to reform the electoral system but to initiate the equitable distribution of political power. It aims to empower the larger portion of the populace who sulk in poverty and injustice by giving them a chance to participate in legislation and advance their causes.

The parameters under RA 7941 were also further elaborated by the Court in *Ang Bagong Bayani,* which outlined the eight-point guidelines for screening party-list participants. Succinctly, the guidelines pertain to the qualifications of the (1) sector, (2) party-list group, organization or coalition, and (3) nominee. These key considerations determine the eligibility of the party-list group, organization or coalition to participate in the party-list system of representation. Thus, for purposes of registration and continuing compliance, three (3) basic questions must be addressed:

(1) Is the sector sought to be represented marginalized and underrepresented?

(2) Is the party, organization or coalition qualified to represent the marginalized and underrepresented sector?

(3) Are the nominees qualified to represent the marginalized and underrepresented party, organization or coalition?

In *seriatim*, I shall expound on what I deem should be the key considerations for qualifying as a party-list group, organization or coalition.

The sector must be marginalized and underrepresented.

Section 2 of RA 7941 underscored the policy of the State in enacting the law. Tersely, the state aims to promote proportional representation by means of a Filipino-style party-list system, which will enable the election to the House of Representatives of Filipino citizens,

1) who belong to the marginalized and underrepresented sectors, organizations and parties; and

2) who lack well-defined constituencies; but

3) who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole.[180]

RA 7941 gives emphasis on the requirement that the party, organization or coalition must represent a marginalized and underrepresented sector. A marginalized and underrepresented sector is a group of individuals who, by reason of status or condition, are drawn towards the bottom of the social strata. Remote from the core of institutional power, their necessities are often neglected and relegated to the least of the government's priorities. They endure inadequacies in provisions and social services and are oftentimes victims of economic, social and political inequalities.

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[180] *Id.* at 333.

Section 5 of RA 7941 enumerates the sectors that are subsumed under the term "marginalized and underrepresented" and may register as a party-list group, organization or coalition. It states:

> SEC. 5. Registration. Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, bylaws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: *Provided,* That the sectors shall include **labor peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.** (Emphasis ours)

Based on the provision, there are at least twelve (12) sectors that are considered marginalized and underrepresented: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. The enumeration is, however, not exclusive. During the drafting of our Constitution, the members of the Commission expressed reluctance to provide an enumeration of the marginalized and underrepresented sectors because of their apprehension that the longer the enumeration, the more limiting the law becomes.[181] Instead of an enumeration, then Commissioner Jaime Tadeo suggested the criteria by which the determination of which sectors are marginalized can be based, *viz*:

1. The number of people belonging to the sector;
2. The extent of marginalization, exploitation and deprivation of social and economic rights suffered by the sector;
3. The absence of representation in the government, particularly in the legislature, through the years;

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[181] Record of the 1986 Constitutional Commission, Vol. 2, July 22, 1986, RCC No. 36, p. 85.

4. The sector's decisive role in production and in bringing about the basic social services needed by the people.[182]

The Constitutional Commission saw it fit to provide a set of standards which will approximate the sectors that the Constitution regards as marginalized and underrepresented and evaded a definite enumeration. The reason is that a specific enumeration is antithetical to the purpose of the party-list system. The party-list system of representation endeavors to empower the underprivileged sectors, tap their innate potentials and hone them to become productive and self-sustaining segments of the society. Sooner, they are expected to graduate from their status as marginalized and underrepresented. During the process, some formerly self-sufficient sectors may drift to the bottom and regress to become the new marginalized sectors. The resilience in the enumeration of the sectors accommodates this eventuality.

Qualifications of the Party-List Group, Organization or Coalition

Among the eight (8) points mentioned in the guidelines for screening party-list participants in *Ang Bagong Bayani*, five (5) pertain to the qualifications of the party-list group, organization or coalition. The first point in the enumeration reads:

> ***First***, the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. In other words, it must show — through its constitution, articles of incorporation, by laws, history, platform of government and track record — that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, majority of its membership should belong to the marginalized and underrepresented. And it must demonstrate that in a conflict of interests, it has chosen or is likely to choose the interest of such sectors.[183]

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[182] Record of the 1986 Constitutional Commission, Vol. 2, July 25, 1986, RCC No. 39, p. 255.

[183] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, *supra* note 1 at 342.

Certainly, it takes more than a mere claim or desire to represent the marginalized and underrepresented to qualify as a party-list group. There must be proof, credible and convincing, to demonstrate the group's advocacy to alleviate the condition of the sector.

The rigid requirement for the presentation of evidence showing the party's relation to the causes of the sector goes to the uniqueness of the party-list system of representation. In the party-list system of representation, the candidates are parties, organizations and coalitions and not individuals. And while an individual candidate seeks to represent a district or particular constituency, a party-list group vying for seats in the House of Representatives must aim to represent a sector. It is thus important to ascertain that the party-list group, organization or coalition reflects the ideals of the sector in its constitution and by-laws. It must have an outline of concrete measures it wishes to undertake in its platform of government. Moreover, its track record must speak of its firm advocacy towards uplifting the marginalized and underrepresented by undertaking activities or projects directly addressing the concerns of the sector.

It is likewise imperative for the party-list group to show that it **effectively represents** the marginalized and underrepresented. While a party-list group is allowed to represent various sectors, it must prove, however, that it is able to address the multifarious interests and concerns of all the sectors it represents. That a multi-sectoral party-list group undertakes projects and activities that only address the interests of some of the sectors, neglecting the concerns of the other marginalized and underrepresented sectors it supposedly represents, is nugatory to the objective of giving a meaningful and effective representation to the marginalized and underrepresented.

Equally important is that the majority of the membership of the party-list group, organization or coalition belong to the marginalized and underrepresented sector. This means that a majority of the members of the sector must actually possess the attribute which makes the sector marginalized. This is so because the primary reason why party-list groups are even allowed

to participate in the elections of the members of the House of Representatives, who are normally elected by district, is to give a collective voice to the members of the sectors who are oftentimes unheard or neglected. This intention is put to naught if at least the majority of the members of the party-list do not belong to the same class or sector. Thus, it is incumbent upon the party-list applicant to present all the evidence necessary to establish this fact. Without a convincing proof of legitimate membership of a majority of the marginalized, the COMELEC has no reason to believe otherwise and may thus deny a petition for registration or cancel an existing registration.

The second guideline in *Ang Bagong Bayani* underscores the policy of the state to hold the party-list system of representation exclusive to the marginalized and underrepresented, a distinguishing feature which sets our system apart from systems of party-list representation in other jurisdictions. The guideline states:

> ***Second***, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling "Filipino citizens belonging to marginalized and underrepresented sectors . . . to be elected to the House of Representatives." x x x[184]

The second guideline was an offshoot of the declaration of policy in RA 7941. Specifically, Section 2 of the statute emphasized the state's policy of promoting proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, x x x to become members of the House of Representatives. As it is exclusively for the marginalized and underrepresented, it is an inflexible requirement that the group applying for registration must represent a sector. The rationale behind this qualification was highlighted in *Ang Bagong Bayani,* thus:

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[184] *Ibid.*

It is ironic, therefore, that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted — to give them not only genuine hope, but genuine power; to give them the opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct voice in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, it invites those marginalized and underrepresented in the past — the farm hands, the fisher folk, the urban poor, even those in the underground movement — to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling and desecrating this social justice vehicle.[185]

RA 7941 also provides that a party desiring to register and participate in the party-list elections must represent a marginalized and underrepresented sector. While the law did not restrict the sectors that may be subsumed under the term "marginalized and underrepresented", it must be construed in relation to the sectors enumerated in RA 7941, the enabling law of Section 5, Article VI of the Constitution, to wit: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. **Based on the foregoing, a mere association of individuals espousing shared "beliefs" and "advocacies" cannot qualify as a marginalized and underrepresented sector.**

The term "marginalized and underrepresented" is descriptive of the sector that may join the party-list elections. A sector pertains to a "sociological, economic or political subdivision of the society"[186] which consists of individuals identified by the activity, status or condition, or attribute that specifically pertains to them. It is identified by a common characteristic pertaining to the individuals composing the same.

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[185] *Id.* at 336-337.

[186] *Webster's Third New International Dictionary (*1986), p. 2053.

On the other hand, an association of individuals espousing a common belief or advocacy is aptly called a *group*, not a sector. Specifically, advocacy groups consist of individuals engaged in the "act of pleading for, supporting, or recommending active espousal"[187] of a cause. Contrary to a sector which is identified by a common characteristic of the members, advocacy groups are identified by the *causes* that they promote. The members coalesced to pursue causes or fulfil patriotic ends that do not specifically pertain to them, but even to those who are not part of their circle.

Certainly, it takes far more than beliefs and advocacies before a group of individuals can constitute a sector. There are underlying sociological and economic considerations in the enumeration of the sectors in the Constitution and RA 7941. These considerations must be strictly observed lest we deviate from the objectives of RA 7941 of providing a meaningful and effective representation to the marginalized and underrepresented. To relegate the contemplation of the law of what is a "marginalized and underrepresented sector" to a mere association of individuals espousing a shared belief or advocacy, is to disregard the essence of the party-list system of representation and the intent of the law to hold the system exclusive for the marginalized and underrepresented.

Consistent with the purpose of the law, political parties may apply for registration and/or accreditation as a party-list provided that they are organized along sectoral lines.[188] This pronouncement in *Ang Bagong Bayani* was expounded in *BANAT* by referring to the exchange between the members of the Constitutional Commission, thus:

MR. MONSOD. Madam President, I just want to say that we suggested or proposed the party list system because we wanted to open up the political system to a pluralistic society through a multiparty system. x x x **We are for opening up the system, and we would**

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[187] Words and Phrases, Permanent Ed., Vol. 2A, p. 294.

[188] Record of the 1986 Constitutional Commission, Volume 2, 7-25-1986, RCC No. 39, p. 257.

like very much for the sectors to be there. That is why one of the ways to do that is to put a ceiling on the number of representatives from any single party that can sit within the 50 allocated under the party list system. x x x.

x x x x x x x x x

MR. MONSOD. Madam President, the candidacy for the 198 seats is not limited to political parties. My question is this: Are we going to classify for example Christian Democrats and Social Democrats as political parties? Can they run under the party list concept or must they be under the district legislation side of it only?

MR. VILLACORTA. In reply to that query, I think these parties that the Commissioner mentioned can field candidates for the Senate as well as for the House of Representatives. **Likewise, they can also field sectoral candidates for the 20 percent or 30 percent, whichever is adopted, of the seats that we are allocating under the party list system**.

MR. MONSOD. In other words, the Christian Democrats can field district candidates and can also participate in the party list system?

MR. VILLACORTA. **Why not? When they come to the party list system, they will be fielding only sectoral candidates.**

MR. MONSOD. May I be clarified on that? Can UNIDO participate in the party list system?

MR. VILLACORTA. Yes, why not? **For as long as they field candidates who come from the different marginalized sectors that we shall designate in this Constitution.**

MR. MONSOD. Suppose Senator Tañada wants to run under BAYAN group and says that he represents the farmers, would he qualify?

MR. VILLACORTA. No, Senator Tañada would not qualify.

MR. MONSOD. But UNIDO can field candidates under the party list system and say Juan dela Cruz is a farmer. Who would pass on whether he is a farmer or not?

MR. TADEO. *Kay* Commissioner Monsod, *gusto ko lamang linawin ito.* **Political parties, particularly minority political parties,**

are not prohibited to participate in the party list election if they can prove that they are also organized along sectoral lines.

MR. MONSOD. What the Commissioner is saying is that all political parties can participate because it is precisely the contention of political parties that they represent the broad base of citizens and that all sectors are represented in them. Would the Commissioner agree?

MR. TADEO. *Ang punto lamang namin, pag pinayagan mo ang* UNIDO *na isang* political party, it will dominate the party list at *mawawalang saysay din yung* sector. *Lalamunin mismo ng* political parties *ang* party list system. *Gusto ko lamang bigyan ng diin ang* "reserve." *Hindi ito* reserve seat *sa* marginalized sectors. *Kung titingnan natin itong* 198 seats, reserved din *ito sa* political parties.

MR. MONSOD. *Hindi po* reserved *iyon kasi* anybody can run there. But my question to Commissioner Villacorta and probably also to Commissioner Tadeo is that under this system, would UNIDO be banned from running under the party list system?

MR. VILLACORTA. No, as I said, **UNIDO may field sectoral candidates. On that condition alone, UNIDO may be allowed to register for the party list system.**

MR. MONSOD. May I inquire from Commissioner Tadeo if he shares that answer?

MR. TADEO. The same.

MR. VILLACORTA. **Puwede po ang UNIDO, pero sa sectoral lines.**[189] (Emphasis supplied)

In his erudite separate opinion in *BANAT*, former Chief Justice Reynato S. Puno expressed his approval of keeping the party-list system of representation exclusive to the marginalized and underrepresented sectors. To further safeguard the sanctity of the purpose of the law, he conveyed his vehement objection to the participation of major political parties in the party-list system of representation because of the likelihood that they will easily trump the organizations of the marginalized. He opined:

Similarly, limiting the party-list system to the marginalized and excluding the major political parties from participating in the election

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[189] *Id.* at 247-248.

of their representatives is aligned with the constitutional mandate to "reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good"; the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making; the right of women to opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation; the right of labor to participate in policy and decision-making processes affecting their rights and benefits in keeping with its role as a primary social economic force; the right of teachers to professional advancement; the rights of indigenous cultural communities to the consideration of their cultures, traditions and institutions in the formulation of national plans and policies, and the indispensable role of the private sector in the national economy.

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There is no gainsaying the fact that the party-list parties are no match to our traditional political parties in the political arena. This is borne out in the party-list elections held in 2001 where major political parties were initially allowed to campaign and be voted for. The results confirmed the fear expressed by some commissioners in the Constitutional Commission that major political parties would figure in the disproportionate distribution of votes: of the 162 parties which participated, the seven major political parties made it to the top 50.[190] (Citations omitted)

By a vote of 8-7, the Court decided in *BANAT* to revert to its ruling in the 2000 case *Veterans Federation Party v. Comelec*[191] that **major** political parties are barred from participating in the party-list elections, directly or indirectly.

Consistent with our pronouncement in *BANAT*, I maintain that major political parties have advantages over minority political parties and sectoral parties in the party-list elections. By their broad constituency and full resources, it is easier for these major political parties to obtain the required percentage of votes for

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[190] Concurring and Dissenting Opinion of J. Puno, *BANAT v. Comelec*, *supra* note 186 at 258-259.

[191] 396 Phil. 419 (2000).

party-list seats, a circumstance which, in turn, only weakens the minority parties' chance to be elected.

I, however, agree with the view of the majority that it is unjustified to absolutely disqualify from the party-list system the major political parties solely by reason of their classification as such. Nonetheless, the privilege to be accorded to them shall not be without reasonable restrictions. Political parties shall only be allowed to participate in the party-list system if they do not field candidates in the election of legislative district representatives. The justification therefor is reasonable. The party-list system was adopted by the state purposely to enable parties which, by their limited resources and citizens base per district, find difficulty in placing representatives in Congress. Major political parties that field candidates for district representatives can do so with ease, given that they satisfy the standards set by Republic Act No. 7166, as amended by Republic Act No. 9369, for their classification, to wit: (a) the established record of the said parties, coalition of groups that now compose them, taking into account, among other things, their showing in past elections; (b) the number of incumbent elective officials belonging to them ninety (90) days before the election; (c) their identifiable political organizations and strengths as evidenced by their organized chapters; (d) the ability to fill a complete slate of candidates from the municipal level to the position of the President; and (e) other analogous circumstances that may determine their relative organizations and strengths. As the Court explained in *Ang Bagong Bayani:*

> (T)he purpose of the party-list provision is to open up the system, in order to enhance chance of sectoral groups and organizations to gain representation in the House of Representatives through the simplest scheme possible. Logic shows that the system has been opened to those who have never gotten a foothold within it — those who cannot otherwise win in regular elections and who therefore need the "simplest scheme possible" to do so. Conversely, it would be illogical to open the system to those who have long been within it – those privileged sectors that have long dominated the congressional district elections.

The import of the open party-list system may be more vividly understood when compared to a student dormitory "open house," which by its nature allows outsiders to enter the facilities. Obviously, the "open house" is for the benefit of outsiders only, not the dormers themselves who can enter the dormitory even without such special privilege. In the same vein, the open party-list system is only for the "outsiders" who cannot get elected through regular elections otherwise; it is not for the non-marginalized or overrepresented who already fill the ranks of Congress.[192]

The contemplated limitation against the major political parties who wish to participate may then allay the fear contemplated by the justification given in *BANAT* for the disqualification.

Nonetheless, a guiding principle remains the same: the party-list system must be held exclusive for the marginalized and underrepresented. Regardless of the structure or organization of the group, it is imperative that it represents a marginalized and underrepresented sector. Thus, it is my submission that political parties which seek to participate in the party-list system **must observe two rules: (1) they must be organized along sectoral lines; and (2) they must not field in candidates for district representatives.**

The importance of the requirement for representation of marginalized and underrepresented sector cannot be overemphasized. The very essence of the party-list system of representation is to give representation to the voiceless sectors of the society. It is the characteristic which distinguishes party-list representatives from the regular district representatives in Congress.

That a party-list group must represent a marginalized and underrepresented sector is the only hurdle which keeps all other organizations from joining the party-list elections. If this lone filter we have against fly-by-night organizations will be junked, then the COMELEC will be flocked with petitions for registration from organizations created to pursue selfish ends and not to the benefit of the voiceless and neglected sectors of the society.

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[192] *Supra* note 1 at 337-338.

The move to open the party-list system free-for-all will create a dangerous precedent as it will open the doors even to illegitimate organizations. Organizations aspiring to join the party-list election can simply skirt the law and organize themselves as a political party to take advantage of the more lenient entrance. The organization need only to register as a political party to dispense with the stringent requirement of representing a sector. It will automatically be off the hook from the danger of being disqualified on the ground that it is not representing a marginalized and underrepresented sector. Other organizations, even those organized as sectoral parties, may follow through and may even disrobe themselves as sectoral parties and opt to become political parties instead because it is the easier way to be allowed participation in the party-list elections. Thus, once again, the causes of the marginalized and underrepresented are lagged behind.

The second requirement for political parties is that they must not field in candidates for district representatives. The reason is that the party-list system is solely for the marginalized and underrepresented. Certainly, political parties which are able to field in candidates for the regular seats in the House of Representatives cannot be classified as such.

The third guideline in *Ang Bagong Bayani* expresses the proscription against the registration of religious groups as party-list groups. The idea is that the government acts for secular purposes and in ways that have primarily secular effects.[193] Despite the prohibition, members of a religious group may be nominated as representative of a marginalized and underrepresented sector. The prohibition is directed only against religious sectors registering as a political party[194] because the government cannot have a partner in legislation who may be driven by the dictates of faith which may not be capable of rational evaluation.

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[193] *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 32, 59.

[194] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, *supra* note 1 at 343.

The fourth and fifth guidelines in *Ang Bagong Bayani* pertain to disqualifying circumstances which can justify the denial of the petition for registration of party, organization or coalition, thus:

> ***Fourth***, a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification as follows:
>
> "(1) It is a religious sect or denomination, organization or association organized for religious purposes;
>
> (2) It advocates violence or unlawful means to seek its goal;
>
> (3) It is a foreign party or organization;
>
> (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
>
> (5) It violates or fails to comply with laws, rules or regulations relating to elections;
>
> (6) It declares untruthful statements in its petition;
>
> (7) It has ceased to exist for at least one (1) year; or
>
> (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered."
>
> x x x x x x x x x
>
> ***Fifth***, the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government. By the very nature of the party-list system, the party or organization must be a group of citizens, organized by citizens and operated by citizens. x x x[195]

To be eligible for registration, the party, organization or coalition must prove that it possesses all the qualifications and none of the disqualifications stated in the law. The grounds for

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[195] *Id.* at 343-344.

disqualification stated in Section 6 of RA 7941 pertain to acts, status or conditions which render the applicant group an unsuitable partner of the state in alleviating the conditions of the marginalized and underrepresented. These disqualifying circumstances are drawn to further implement the state policy of preserving the party-list system exclusively for the intended beneficiaries of RA 7941.

On the other hand, the disqualification mentioned in the fifth guideline connotes that the party-list group must maintain its independence from the government so that it may be able to pursue its causes without undue interference or any other extraneous considerations. Verily, the group is expected to organize and operate on its own. It must derive its life from its own resources and must not owe any part of its creation to the government or any of its instrumentalities. By maintaining its independence, the group creates a shield that no influence or semblance of influence can penetrate and obstruct the group from achieving its purposes. In the end, the party-list group is able to effectively represent the causes of the marginalized and underrepresented, particularly in the formulation of legislation intended for the benefit of the sectors.

Qualifications of the Nominees

The sixth, seventh and eighth guidelines in *Ang Bagong Bayani* bear on the qualifications of the nominees, *viz*:

> ***Sixth***, the party must not only comply with the requirements of the law; its nominees must likewise do so. Section 9 of RA 7941 reads as follows:
>
> > SEC. 9. Qualifications of Party-List Nominees. — No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

> In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term."

Seventh, not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees. To repeat, under Section 2 of RA 7941, the nominees must be Filipino citizens "who belong to marginalized and underrepresented sectors, organizations and parties." Surely, the interests of the youth cannot be fully represented by a retiree; neither can those of the urban poor or the working class, by an industrialist. To allow otherwise is to betray the State policy to give genuine representation to the marginalized and underrepresented.

Eighth, as previously discussed, while lacking a well-defined political constituency, the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. x x x [196]

Except for a few, the basic qualifications of the nominee are practically the same as those required of individual candidates for election to the House of Representatives. He must be: (a) a natural-born citizen; (b) a registered voter; (c) a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election; (d) able to read and write; (e) *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days before the day of election; (f) at least twenty five (25) years of age on the day of election; (g) in case of a nominee for the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of election. Owing to the peculiarity of the party-list system of representation, it is not required that the nominee be a resident or a registered voter of a particular district since it is the party-list group that is voted for and not the appointed nominees. He must, however, be a *bona fide* member of the party-list group at least ninety (90) days before the elections.

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[196] *Id.* at 345.

The nominee must be a bona fide member of the marginalized and underrepresented sector

In some of the petitions, the COMELEC denied registration to the party, organization or coalition on the ground that the nominee does not belong to the sector he wishes to represent. The quandary stems from the interpretation of who are considered as one "belonging to the marginalized and underrepresented." The COMELEC supposed that before a person may be considered as one "belonging to the marginalized and underrepresented sector," he must actually share with the rest of the membership that common characteristic or attribute which makes the sector marginalized and underrepresented.

The construction seemed logical but to be consistent with the letter of the law, it must be harmonized with Section 9 of RA 7941, the specific provision dealing with the qualifications of the nominee. In the mentioned provision, aside from the qualifications similarly required of candidates seeking to represent their respective districts, the nominee is required to be a *bona fide* member of the party, a status he acquires when he enters into the membership of the organization for at least ninety (90) days before the election. From the point in time when the person acquires the status of being a *bona fide* member, he becomes one "belonging to the marginalized and underrepresented sector."

It is my view that the foregoing interpretation accommodates two (2) types of nominees:

1. One who actually shares the attribute or characteristic which makes the sector marginalized or underrepresented (the *first type*);

2. An advocate or one who is genuinely and actively promoting the causes of the sector he wishes to represent (the *second type*).

The *first type* of nominee is one who shares a common physical attribute or status with the rest of the membership. That he possesses this common characteristic of marginalization is what entitles him to nomination as representative of the group. This

is because of the reasonable presumption that those who have experienced the inadequacies in the sector are the ones who can truly represent the same. However, there are instances when this strict construction becomes impracticable, if not altogether impossible. For instance, a representation from the organization of skilled workers working abroad is difficult to comply with without the nominee being excluded from the literal definition of who belongs to the sector. The strict interpretation also discourages growth, as in the nominee from the urban sector, since the moment he rises from his status as such, he becomes disqualified to represent the party.

The *second type* of nominee addresses the gap. An advocate or one who is publicly known to be pursuing the causes of the sector is equally capable of fulfilling the objective of providing a genuine and effective representation for the marginalized and underrepresented. He is one who, notwithstanding social status, has always shown genuine concern for those who have less in life. Unlike the first type of nominee who shares a common characteristic with the members of the group, the advocate shares with them a common aspiration and leads them towards achieving that end. He serves as a catalyst that stirs movement so that the members of the sector may be encouraged to pursue their welfare. And though not bound with the group by something physical, he is one with them in spirit and heart. He is known for his genuine commitment and selfless dedication to the causes of the sector and his track record boldly speaks of his advocacy.

At the outset, it may seem that the foregoing ratiocination translates to a more lenient entry for those aspiring to become a nominee. However, the standard of scrutiny should not change and nominees shall still be subject to the evaluation by the COMELEC of their qualifications. They bear the burden of proof to establish by concrete and credible evidence that they are truly representative of the causes of the sector. They must present proof of the history of their advocacy and the activities they undertook for the promotion of the welfare of the sector. They must be able to demonstrate, through their track record, their vigorous involvement to the causes of the sector.

The law puts a heavy burden on the nominee to prove his advocacy through his track record. To be clear, the track record is not a mere recital of his visions for the organization and the trivial activities he conducted under the guise of promoting the causes of the sector. He must actually and actively be espousing the interests of the sector by undertaking activities directly addressing its concerns.

In *Lokin, Jr. v. COMELEC*,[197] the Court enumerated the list of evidence which the party-list group and its nominees may present to establish their qualifications, to wit:

> The party-list group and the nominees must submit documentary evidence in consonance with the Constitution, R.A. 7941 and other laws to duly prove that the nominees truly belong to the marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition they seek to represent, which may include but not limited to the following:
>
> a. Track record of the party-list group/organization showing active participation of the nominee/s in the undertakings of the party-list group/organization for the advancement of the marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition they seek to represent;
>
> b. Proofs that the nominee/s truly adheres to the advocacies of the party-list group/organizations (prior declarations, speeches, written articles, and such other positive actions on the part of the nominee/s showing his/her adherence to the advocacies of the party-list group/organizations);
>
> c. Certification that the nominee/s is/are a bona fide member of the party-list group/ organization for at least ninety (90) days prior to the election; and
>
> d. In case of a party-list group/organization seeking representation of the marginalized and underrepresented sector/s, proof that the nominee/s is not only an advocate of the party-list/organization but is/are also a bona fide member/s of said marginalized and underrepresented sector.[198]

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[197] G.R. No. 193808, June 26, 2012.

[198] *Ibid.*

Regardless of whether the nominee falls under the first or second type, proof of his track record is required. The requirement is even more stringent for the second type of nominee as he must convincingly show, through past activities and undertakings, his sincere regard for the causes of the sector. The history of his advocacy and the reputation he earned for the same will be considered in the determination of his qualification.

Admittedly, the foregoing clarification partakes of a new guideline which the COMELEC failed to take into consideration when it conducted automatic review of the petitions for registration and summary evidentiary hearings pursuant to Resolution No. 9513.

Disqualification of the nominee and its effects

In a number of resolutions, the COMELEC disqualified some party-list groups on the ground that one or some of its nominees are disqualified. Apparently, the COMELEC is of the impression that the group, upon filing their petition for registration, must submit names of at least five (5) nominees who must all be *qualified*. In the instances when some of the nominees were found to be suffering from any disqualification, the COMELEC deemed the party to have committed a violation of election laws, rules and regulations and denied its petition for registration.

I agree with the majority that the construction made by the COMELEC is misplaced.

It is the COMELEC's supposition that when the party-list group included a disqualified nominee in the list of names submitted to the COMELEC, it is deemed to have committed the violation stated in Section 6 (5)[199] of RA 7941. This feeble

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[199] Section 6. Refusal and/or Cancellation of Registration. – The COMELEC may *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

x x x x x x x x x

5. It violates or fails to comply with laws, rules and regulations relating to elections;

x x x x x x x x x

deduction, however, is not within the contemplation of the law. The mentioned provision does not suggest that all kinds of violations can be subsumed under Section 6 (5) and justify the disqualification of the group. To warrant such a serious penalty, the violation must be demonstrative of gross and willful disregard of the laws or public policy. It must be taken to refer to election offenses enumerated under Sections 261 and 262, Article XXII of the Omnibus Election Code or any other acts or omissions that are inconsistent with the ideals of fair and orderly elections. It does not intend to cover even innocuous mistakes or incomplete compliance with procedural requirements.

Accordingly, it is a mistake on the part of the COMELEC to suppose that failure to comply with Section 8 of RA 7941 is within the contemplation of Section 6 (5) thereof. Section 8 reads:

> Section 8. *Nomination of Party-List Representatives*. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.
>
> x x x x x x x x x

The language of the law is clear and unambiguous; it must be given its plain and literal meaning. A reading of the provision will show that it is simply a procedural requirement relating to the registration of groups, organizations and coalitions under the party-list system of representation. Plainly, it requires the applicant under the party-list system to submit a list of nominees, not less than five, at least forty-five (45) days before the election. The group's compliance with this requirement is determinative of the action of the COMELEC. In case of failure to comply, the COMELEC may refuse to act on the petition for registration. If the applicant, on the other hand, tendered an incomplete compliance, as in submitting a list of less than five (5) nominees, the COMELEC may ask it to comply or simply regard the same as a waiver. In no way can the mere submission of the list be construed as a guarantee or attestation on the part of the group

that all of the nominees shall be qualified especially that the assessment of qualifications is a duty pertaining solely to the COMELEC. In the same way, the provision did not intend to hold the group liable for violation of election laws for such a shortcoming and to mete out the same with the penalty of disqualification. Such an absurd conclusion could not have been the intention of the law.

Indeed, there are instances when one or some of the nominees are disqualified to represent the group but this should not automatically result to the disqualification of the latter. To hold otherwise is to accord the nominees the same significance which the law holds for the party-list groups of the marginalized and underrepresented. It is worthy to emphasize that the formation of party-list groups organized by the marginalized and underrepresented and their participation in the process of legislation is the essence of the party-list system of representation. Consistent with the purpose of the law, it is still the fact that the party-list group satisfied the qualifications of the law that is material to consider. That one or some of its chosen agents failed to satisfy the qualifications for the position should not unreasonably upset the existence of an otherwise legitimate party-list group. The disqualification of the nominees must simply be regarded as failure to qualify for an office or position. It should not, in any way, blemish the qualifications of the party-list group itself with defect.

The point is that the party-list group must thus be treated separate and distinct from its nominees such that qualifications of the latter must not be considered part and parcel of the qualifications of the former. The features of the party-list system of representation are reflective of the intention of the law to treat them severally.

To begin with, the electorate votes for the party-list group or organization itself, not for the individual nominees.[200] The nominees do not file a certificate of candidacy nor do they launch

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[200] *Lokin, Jr. v. Commission on Elections*, G.R. Nos. 179431-32 and 180443, June 22, 2010, 621 SCRA 385, 409.

a personal campaign for themselves.[201] It is the party-list group that runs as candidate and it is the name of the group that is indicated in the ballot. The list of nominees submitted to the COMELEC becomes relevant only when the party-list group garners the required percentage of votes that will entitle it to a seat in Congress. At any rate, the party-list group does not cease in existence even when it loses the electoral race. And, should it decide to make another electoral bid, it is not required to keep its previous list of nominees and can submit an entirely new set of names.

Further, there are separate principles and provisions of law pertaining to the qualifications and disqualifications of the party-list group and the nominees. The qualifications of the party-list group are outlined in *Ang Bagong Bayani* while the grounds for the removal/cancellation of registration are enumerated in Section 6 of RA 7941.

On the other hand, Section 9 of the law governs the qualifications of the nominees. As to their disqualification, it can be premised on the ground that they are not considered as one "belonging to the marginalized and underrepresented sector" or that they lack one or some of the qualifications. They may also be disqualified under Section 15[202] and Section 8[203] of RA 7941, particularly under the second paragraph thereof. Even after the COMELEC's determination, interested parties may

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[201] Record of the Senate, Third Regular Session, October 3, 1994 to December 5, 1994, Volume II, Nos. 23-45, p. 143.

[202] Section 15. Change of Affiliation; Effect. Any elected party-list representative who changes his political party or sectoral affiliation during his term of office shall forfeit his seat; Provided, that if he changes his political party or sectoral affiliation within six (6) months before an election, he shall not be eligible for nomination as party-list representative under his new party or organization.

[203] Section 8. Nomination of Party-list Representatives. x x x

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. x x x

still question the qualifications of the nominees through a petition to cancel or deny due course to the nomination or petition for disqualification under Sections 1[204] and 2,[205] Rule 5 of the COMELEC Resolution No. 9366, respectively.

It is worth emphasizing that the selection of nominees depends upon the choice of the members of the party-list group. It is a matter which cannot be legislated and is solely dependent upon the will of the party.[206] More often than not, the choice of nominees is grounded on trust and confidence, not on the vague or abstract concepts of qualifications under the law. The method or process by which the members of the party-list group choose their nominees is a matter internal to them. No set of rules or guidelines can be imposed upon them by the Court or the COMELEC in selecting their representatives lest we be charged of unnecessarily disrupting a democratic process.

Regrettably, the COMELEC did intrude in the party-list groups' freedom to choose their nominees when it disqualified some of them on the ground that their nominees are disqualified.

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[204] *SEC. 1. Petition to deny due course and/or cancellation; Grounds.* A verified petition seeking to deny due course the nomination of nominees of party-list groups may be filed by any person exclusively on the ground that a material misrepresentation has been committed in the qualification of the nominees.

[205] *SEC. 2. Petition for disqualification, Ground.* – A verified petition seeking the disqualification of nominees of party-list groups may be filed by any person when the nominee has been 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 the campaign an amount in excess of that allowed by law;

d. Solicited, received or made any contribution prohibited under Section 89, 95, 96, 97 and 104 of the Omnibus Election Code; or

e. Violated any of Sections 83, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6 of the Omnibus Election Code.

[206] Record of the Senate, Third Regular Session, October 3, 1994 to December 5, 1994, Volume II, Nos. 23-45, p. 157

While the COMELEC has the authority to determine the qualifications of the nominees, the disqualification of the group itself due to the failure to qualify of one or some of the nominees is too harsh a penalty. The nexus between the COMELEC's outright disqualification of the group due to the disqualification of the nominees and the avowed objective of RA 7941 of encouraging the development of a "full, free and open party-list system" is extremely hard to decipher.

In other words, the Court cannot countenance the action of the COMELEC in disqualifying the party-list group due to the disqualification of one or some of the nominees. There is simply no justifiable ground to support this action. It is unthinkable how the COMELEC could have conceived the thought that the fate of the party-list group depends on the qualifications of the nominees, who are mere agents of the group, especially that the agency between them is still subject to the condition that the group obtains the required percentage of votes to be entitled to a seat in the House of Representatives. Until this condition is realized, what the nominees have is a mere expectancy.

It may also be helpful to mention that in *Veterans Federation Party v. Commission on Elections*,[207] the Court emphasized the *three-seat limit rule*, which holds that each qualified party, regardless of the number of votes it actually obtained, is entitled only to a maximum of three (3) seats.[208] The rule is a reiteration of Section 11(b)[209] of RA 7941. Relating the principle to Section 8, it becomes more apparent that the action of the COMELEC was made with grave abuse of discretion. It bears noting that

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[207] 396 Phil. 419 (2000).

[208] *Id.* at 424.

[209] Section 11. Number of Party-List Representatives.

a. x x x

b. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party list system shall be entitled to one set each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their number of votes; *Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.*

while Section 8 requires the submission of the names of at least five (5) nominees, Section 11 states that only three (3) of them can actually occupy seats in the House of Representatives should the votes they gather suffice to meet the required percentage. The two (2) other nominees in the list are not really expecting to get a seat in Congress even when the party-list group of which they are members prevailed in the elections. If at all, they can only substitute incumbent representatives, if for any reason, they vacate the office. Therefore, if the right to office of three (3) of the nominees is based on a mere expectancy while with the other two (2) the nomination is dependent on the occurrence of at least two (2) future and uncertain events, it is with more reason that the disqualification of one or some of the nominees should not affect the qualifications of the party-list group.

I have also observed that in some of the consolidated petitions, the party-list group submitted a list of nominees, with less than five (5) names stated in Section 8 of RA 7941. In some other petitions, only some out of the number of nominees submitted by the party-list group qualified. Again, Section 8 must be construed as a procedural requirement relative to registration of groups aspiring to participate in the party-list system of representation. In case of failure to comply, as in non-submission of a list of nominees, the COMELEC may deny due course to the petition. In case of incomplete compliance, as when the party-list group submitted less than 5 names, it is my view that the COMELEC must ask the group to comply with the admonition that failure to do so will amount to the waiver to submit 5 names. The implication is that if the party-list group submitted only one qualified nominee and it garners a number of votes sufficient to give it two (2) seats, it forfeits the right to have a second representative in Congress. Therefore, for as long as the party-list group has one (1) qualified nominee, it must be allowed registration and participation in the election. The situation is different when the party-list group submitted a list of nominees but none qualified and, upon being asked to submit a new list of names, still failed to appoint at least one (1) qualified nominee. In this case, the party can now reasonably be denied registration

as it cannot, without at least one qualified nominee, fulfill the objective of the law for genuine and effective representation for the marginalized and underrepresented, a task which the law imposes on the qualified nominee by participating in the "formulation and enactment of appropriate legislation that will benefit the nation as a whole."[210] More importantly, the party-list group's inability to field in qualified nominees casts doubt on whether the group is truly representative of the marginalized and underrepresented. Considering that the majority of the group must belong to the marginalized and underrepresented, it should not have any trouble appointing a qualified nominee.

Ruling on each of the petitions

As opposed to the vote of the majority, **I deem it unnecessary to remand ALL the petitions to the COMELEC**, completely disregarding the ground/s for the cancellation or denial of the party-list groups' registration, and even on the supposition that the *ponencia* had substantially modified the guidelines that are set forth in the *Ang Bagong Bayani*.

I vote, instead, to REMAND only the petitions of the party-list groups whose remaining ground for denial or cancellation of registration involves the new guideline on the qualifications of a party's nominees. While I agree on modifying the qualifications of major political parties, no remand is justified on this ground since none of the 52[211] petitioners is a major political party. On all other issues, the standard of grave abuse of discretion shall already be applied by the Court.

For an extraordinary writ of *certiorari* to be justified, the tribunal or administrative body must have issued the assailed decision, order or resolution with grave abuse of discretion.[212] In *Mitra v. Commission on Elections*,[213] the Court recognized

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[210] Section 2, RA 7941.

[211] The 53 consolidated petitions include 2 petitions filed by SENIOR CITIZENS.

[212] *Malinias v. Commission on Elections*, 439 Phil. 319 (2002).

[213] G.R. No. 191938, June 2, 2010, 622 SCRA 744.

that along with the limited focus that attends petitions for *certiorari* is the condition, under Section 5, Rule 64 of the Rules of Court, that findings of fact of the COMELEC, when supported by substantial evidence, shall be final and non-reviewable. Substantial evidence is that degree of evidence that a *reasonable mind* might accept as sufficient to support a conclusion.[214]

Guided by the foregoing principles, I vote to **DISMISS** the petitions for failure to substantiate grave abuse of discretion, and to **AFFIRM THE COMELEC's DENIAL OR CANCELLATION OF REGISTRATION**, of the following party-list groups: **GREENFORCE**, **KALIKASAN**, **UNIMAD**, **AAMA**, **APEC**, **1-CARE**, **ALA-EH**, **1BRO-PGBI**, **1GANAP/ GUARDIANS**, **ASIN**, **Manila Teachers**, **KAKUSA**, **BANTAY**, **GUARDJAN**, **PACYAW**, **ARC**, **SMART**, **ALAM**, **ABANG LINGKOD**, **AKMA-PTM**, **BAYANI**, **FIRM 24-K**, **KAP**, **COCOFED**, **AANI**, **ABROAD**, **AG**, **ALONA**, **AGRI**, **1ST KABAGIS**, **ARAL**, **BINHI**, **SENIOR CITIZENS**, **Atong Paglaum**, **ANAD**, **PBB**, **PPP**, **1AAAP**, **ABP**, **AAB**, **AKB** and **AI**.

The COMELEC's conclusion on the said groups' failure to qualify, insofar as the grounds pertained to the sectors which they seek to represent and/or their capacity to represent their intended sector finds support in established facts, law and jurisprudence.

ON THE OTHER HAND, I find grave abuse of discretion on the part of the COMELEC in ruling on the disqualification of **1-UTAK**, **PASANG MASDA**, **BUTIL**, **AT** and **ARARO** on the supposed failure of these parties to substantiate their eligibility as a group, specifically on questions pertaining to their track record and the sectors which they seek to represent.

Although as a general rule, the Court does not review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence presented to it, in exceptional cases, as when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the

[214] *Id.* at 766-767.

constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse mutate from error of judgment to one of jurisdiction.[215] To this exception falls the COMELEC's disqualification of **1-UTAK**, **PASANG MASDA**, **BUTIL**, **AT** and **ARARO**.

1-UTAK and PASANG MASDA

1-UTAK is a sectoral organization composed of various transport drivers and operators associations nationwide with a common goal of promoting the interest and welfare of public utility drivers and operators.[216] On the other hand, **PASANG MASDA** is a sectoral political party that mainly represents the marginalized and underrepresented sectors of jeepney and tricycle drivers and operators across the National Capital Region.[217] Contrary to the conclusion that was inferred by the COMELEC from the common circumstance that **1- UTAK** and **PASANG MASDA** represent the sectors of both public utility drivers and operators, it is not a sufficient ground to cancel their respective registration as party-list group.

To a great extent, the supposed conflict in the respective interests of public utility drivers and operators is more apparent than real. It is true that there is a variance in the economic interests of public utility drivers and operators; the former is concerned with wages while the latter is concerned with profits. However, what the COMELEC failed to consider is that the two sectors have substantial congruent concerns and interests.

To my mind, the interests of public utility drivers and operators are aligned with each other in several instances. To name a few: *first*, the effects of fluctuation in the prices of petroleum products; *second*, their benefit from petitions for fare increase/ reduction; and *third*, the implications of government policies affecting the transportation sector such as traffic rules and public

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[215] *Id.* at 767.

[216] *Rollo* (G.R. No. 204410), p. 79.

[217] *Rollo* (G.R. No. 204153), p. 5.

transport regulation. In these instances, it is mutually beneficial for drivers and operators of public utility vehicles to work together in order to effectively lobby their interests. Certainly, the interrelated concerns and interests of public utility drivers and operators far outweigh the supposed variance in their respective economic interests.

Accordingly, my view is that the COMELEC *En Banc* gravely abused its discretion in cancelling the registration of **1-UTAK** and **PASANG MASDA** as party-list groups on the ground of the sectors which they aim to represent.

BUTIL

Similarly, the COMELEC gravely abused its discetion when it cancelled the registration of BUTIL on the alleged ground that the party failed to prove that the "agriculture and cooperative sectors," which the party represents, are marginalized and underrepresented[218]

In arriving at the said conclusion, the COMELEC noted that the Secretary-General of **BUTIL**, Wilfredo A. Antimano affirmed in his judicial affidavit that **BUTIL** is an organization "representing members of the agriculture and cooperative sectors." From this declaration, the COMELEC ruled that since the agriculture and cooperative sectors are not enumerated in RA 7941, it is incumbent upon **BUTIL** to establish the fact that the sectors it is representing are marginalized and underrepresented. Since the party failed to discharge this burden, the COMELEC cancelled the party's registration.

I stress, however, that in determining whether the group represents a marginalized and underrepresented sector, *all* of the evidence submitted by the party should be duly considered by the Commission. Thus, Antimano's statement in his judicial affidavit that **BUTIL** represents the "agriculture and cooperative sectors" should be read in conjunction with the other documents submitted by the party, including the oral testimony that was given by the party's witness. Significantly, during the clarificatory

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[218] *Rollo* (G.R. No. 204356), p. 61.

hearing conducted by the Commission *En Banc* on August 23, 2012, Antimano explained:

CHAIRMAN BRILLANTES:

Isa lang. Gusto ko lang malaman, sino ho ang mga myembro nyo?

MR. ANTIMANO:

Ang myembro po ng aming partido ay mga magsasaka, maliliit na magsasaka at maliliit na mangigingsda sa kanayunan.

x x x x x x x x x

CHAIRMAN BRILLANTES:

Ang tanong ko ho eh, gusto ko lang malaman, small farmers *ang inyong nire-represent*?

MR. ANTIMANO:

Opo.

CHAIRMAN BRILLANTES:

Small fishermen, *kasama ho ba yun*?

MR. ANTIMANO:

Opo.

CHAIRMAN BRILLANTES:

Pati maliliit na mangingisda?

MR. ANTIMANO:

Opo, sa kanayunan. Meron po kasing maliliit na mangingisda sa karagatan pero yung sa amin, yun pong maliliit na mangingisda na nag-aalaga ng maliliit na…[219]

It can be reasonably gathered from the foregoing that Antimano's reference to the "agriculture and cooperative sector" pertains to small farmers and fishermen. Likewise, on the basis of the evidence on record, the term "cooperative" in Antimano's affidavit should be taken to refer to agricultural cooperatives which, by their nature, are still comprised of agricultural workers.

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

Time and again, the Court has recognized small agricultural workers as marginalized and underrepresented. Based on the records, **BUTIL** appears to fully adhere to and work towards their cause. I also give due consideration to the fact that since the party-list system was first implemented in 1998, the party had been able to obtain the necessary votes for at least one seat in the House of Representatives. This affirms the party's constituency that may deserve a continued representation in Congress.

AT

AT is an incumbent party-list group that claims to represent six (6) marginalized sectors – labor, urban poor, elderly, women, youth and overseas Filipino workers (OFWs).[220] In disqualifying **AT**, the COMELEC found that its incumbent representative, Congresswoman Daryl Grace J. Abayon, failed to author house measures that will uplift the welfare of all the sectors it claims to represent.[221]

In so ruling, however, the COMELEC gravely abused its discretion in failing to appreciate that effective representation of sectors is not confined to the passage of bills that directly identify or name all of the sectors it seeks to represent. In the case of **AT**, there is evidence that it adopted and co-sponsored House Bills that advanced the interests, not only of the sectors it represents, but even other marginalized and underrepresented sectors.[222] **AT** also established with sufficiency an exceptional track record that demonstrates its genuine desire to uplift the welfare of all of the sectors it represents.[223] It is broad enough to cover legislation which, while directly identifying only some of the sectors as main beneficiaries, also benefits the rest of the sectors it seeks to represent.

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[220] *Rollo* (G.R. No. 204174), p. 173.

[221] *Id.* at 160.

[222] *Id.* at 544-613.

[223] *Id.* at 839-1494.

ARARO

ARARO is a party-list group that seeks to represent peasants and the urban poor. It was disqualified by the COMELEC on the ground that these two sectors involve conflicting interests, for instance, in the matter of land use.

However, I do not see, and the COMELEC failed to show, how the issue of land use can be conflicting between these sectors. Peasants generally belong to the class of marginal farmers, fisherfolk and laborers in the rural areas. On the other hand, the urban poor, as the term connotes, are those in the urban areas. While they may have different interests and concerns, these are not necessarily divergent.

I also do not adhere to the COMELEC's conclusion that **ARARO**'s alliances with other sectoral organizations "muddle" the sectors it represents.[224] These are mere alliances, *i.e.*, ties. It does not necessarily follow that **ARARO**, because of these ties, will also represent the interests of these sectors. As long as **ARARO**'s platform continually focuses on the enhancement of the welfare of the peasants and the urban poor, there can be an effective representation in their behalf.

On the ground of grave abuse of discretion, I then vote to nullify the COMELEC's cancellation of the registration of **1-UTAK**, **PASANG MASDA**, **BUTIL**, **AT** and **ARARO** on the ground of these parties' supposed failure to prove their eligibility to represent their intended sectors.

The COMELEC also committed grave abuse of discretion in ruling on the outright cancellation of the five parties' registration on the ground of the supposed failure of their nominees to qualify. I have fully explained that the qualification of a party-list group shall be treated separate and distinct, and shall not necessarily result from the qualification of its nominees.

In any case, my vote to nullify the aforementioned actions of the COMELEC shall not be construed to automatically restore

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[224] *Rollo* (G.R. No. 203976), p. 28.

the five parties' registration and accreditation, which would otherwise allow their participation in the May 2013 elections. As has been discussed, each party must still be able to field in qualified nominees, as it is only through them that the party may perform its legislative function in the event that it garners the required percentage of votes for a seat in the House of Representatives. With this circumstance, and considering a new guideline on nominees' qualifications, I then find the necessity of remanding their petitions to the COMELEC.

ALIM, A-IPRA, AKIN, A BLESSED Party-List and AKO-BAHAY

The denial of the registration of **AKIN**, and the cancellation of the registration of **ALIM**, **A-IPRA**, **A BLESSED Party-List** and **AKO-BAHAY** were based solely on the alleged failure of their respective nominees to prove that they factually belong to the marginalized and underrepresented sector that their parties seek to represent. I reiterate that a party-list group must be treated separate and distinct from its nominees; the outright disqualification of the groups on the said ground is not warranted. The COMELEC's ruling to the contrary is an act exhibitive of grave abuse of discretion.

Accordingly, I deem it appropriate to nullify the COMELEC's resolve to deny **AKIN**'s registration and cancel the registration of **ALIM**, **A-IPRA**, **A BLESSED Party-List** and **AKO-BAHAY**. Nonetheless, as in the case of **1-UTAK**, **PASANG MASDA**, **BUTIL**, **AT** and **ARARO,** this does not necessarily restore or grant their registration under the party-list system.

I submit that in view of my stand regarding the qualifications of nominees, specifically on the two types of qualified nominees, it is only proper that the petitions that involve the ground of disqualification of the nominees be remanded to the COMELEC to afford it the opportunity to revisit its rulings. In so doing, the COMELEC may be able to assess the facts and the records, while being guided by the clarification on the matter. It must be emphasized, however, that not all of the petitions necessitates a remand considering that from the records, only ten (10) out

of the fifty-three (53) consolidated petitions solely involved the disqualification of the party's nominees. The bulk of the petitions consist of cancellation or denial of registration on the ground (1) that the party-list group does not represent a marginalized and underrepresented sector, *or*; (2) that the group itself, on the basis of the pertinent guidelines enumerated in *Ang Bagong Bayani*, failed to qualify. If the ground for the denial or cancellation of registration is disqualification on the basis of sector or group, it is a futile exercise to delve into the qualifications of the nominees since notwithstanding the outcome therein, the party-list group remains disqualified. It is well to remember that the law provides for different sets of qualifications for the party-list group and the nominees. The law, while requiring that the party-list group must have qualified nominees to represent it, treats the former as separate and distinct from the latter, not to treat them as equals but to give a higher regard to the party-list group itself. Thus, in the event that the nominees of the party-list group fail to qualify, the party-list group may still be afforded the chance to fill in qualified nominees to represent it. The reverse, however, is not true. The lack of qualifications, or the possession of disqualifying circumstances by the group, impinges on the legitimacy or the existence of the party-list group itself. Absent a qualified party-list group, the fact that the nominees that are supposed to represent it are qualified does not hold any significance.

Even though the *ponencia* modifies the qualifications for all national or regional parties/organizations, **IT STILL IS NOT NECESSARY TO REMAND ALL THE PETITIONS**. It bears stressing that of the 52 petitioners, **only eleven are national or regional parties/organizations**. The rest of the petitioners, as indicated in their respective *Manifestations of Intent* and/or petitions, are organized as sectoral parties or organizations.

The party-list groups that are organized as national parties/ organizations are:

1. Alliance for Nationalism and Democracy (ANAD)[225]

[225] *Rollo* (G.R. No. 204094), p. 146.

2. Bantay Party-List (BANTAY)[226]
3. Alliance of Bicolnon Party (ABP)[227]

On the other hand, the following are regional parties/ organizations:

1. Ako Bicol Political Party (AKB)[228]
2. Aksyon Magsasaka – Partido Tinig ng Masa (AKMA-PTM)[229]
3. Ako an Bisaya (AAB)[230]
4. Kalikasan Party-List (KALIKASAN)[231]
5. 1 Alliance Advocating Autonomy Party (1AAAP)[232]
6. Abyan Ilonggo Party (AI)[233]
7. Partido ng Bayan and Bida (PBB)[234]
8. Pilipinas Para sa Pinoy (PPP)[235]

Accordingly, even granting credence to the *ponencia's* ratiocination, it does not follow that a remand of all the cases is justified; as we have pointed out the *ponencia* has been able to explain the necessity of a remand of only eleven petitions for further proceedings in the COMELEC, in addition to the ten petitions that I have recommended for remand.

WHEREFORE, in light of the foregoing disquisitions, I vote to:

1. **PARTLY GRANT** the petitions in **G.R. No. 204410, G.R. No. 204153, G.R. No. 204356, G.R. No. 204174, G.R. No. 204367, G.R. No. 204341, G.R. No. 204125, G.R. No.**

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[226] *Rollo* (G.R. No. 204141), p. 74.

[227] *Rollo* (G.R. No. 204238), p. 170.

[228] *Rollo* (G.R. Nos. 203818-19), p. 119.

[229] *Rollo* (G.R. No. 203936), p. 73.

[230] *Rollo* (G.R. No. 204370), p. 92.

[231] *Rollo* (G.R. No. 204402), p. 72.

[232] *Rollo* (G.R. No. 204435), p. 91.

[233] *Rollo* (G.R. No. 204436), p. 186.

[234] *Rollo* (G.R. No. 204484), p. 60.

[235] *Rollo* (G.R. No. 204490), p. 79.

203976, G.R. No. 204263 and **G.R. No. 204364**. The assailed Resolutions of the Commission on Elections (COMELEC) *En Banc* in SPP No. 12-198 (PLM), SPP No. 12-277 (PLM), SPP No. 12-136 (PLM), SPP No. 12-232 (PLM), SPP No. 12-104 (PL), SPP No. 12-269 (PLM), SPP No. 12-292 (PLM), SPP No. 12-288 (PLM), SPP No. 12-257 (PLM) and SPP No. 12-180 (PLM) shall be **NULLIFIED** insofar as these declared the outright disqualification of the parties **1-UTAK, PASANG MASDA, BUTIL, AT, AKIN, ALIM, A-IPRA, ARARO, A Blessed Party List and AKO-BAHAY**, respectively, and their cases shall be **REMANDED** to the COMELEC, which shall be DIRECTED to: (a) allow the party-list groups to present further proof that their nominees are actually qualified in light of the new guideline on the qualification of nominees, (b) evaluate whether the nominees are qualified to represent the group, and (c) grant or deny registration depending on its determination;

2. **DISMISS** the petitions in **G.R. No. 204139, G.R. 204370**, **G.R. No. 204379**, **G.R. No. 204394**, **G.R. No. 204402**, **G.R. No. 204426**, **G.R. No. 204435**, **G.R. No. 204455**, **G.R. No. 204485**, **G.R. No. 204490**, **G.R. No. 204436**, **G.R. No. 204484**, **G.R. No. 203766**, **G.R. Nos. 203818-19**, **G.R. No. 203922**, **G.R. No. 203936**, **G.R. No. 203958**, **G.R. No. 203960**, **G.R. No. 203981**, **G.R. No. 204002**, **G.R. No. 204094**, **G.R. No. 204100**, **G.R. No. 204122**, **G.R. No. 204126**, **G.R. No. 204141**, **G.R. No. 204158**, **G.R. No. 204216**, **G.R. No. 204220**, **G.R. No. 204236**, **G.R. No. 204238**, **G.R. No. 204239**, **G.R. No. 204240**, **G.R. No. 204318**, **G.R. No. 204321**, **G.R. No. 204323**, **G.R. No. 204358**, **G.R. No. 204359**, **G.R. No. 204374**, **G.R. No. 204408**, **G.R. No. 204421, G.R. No. 204425**, **G.R. No. 204428** and **G.R. No. 204486**.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.:*

I agree with the *ponencia* in substance, but dissent in so far as there is no finding of grave abuse of discretion on the part of the COMELEC.

National political parties may participate in party list elections, provided that they have no candidate for legislative districts. The constitution disqualifies political parties, which have candidates for legislative districts, from the party list system.[1] I also agree that they need not be organized sectorally and/or represent the "marginalized and underrepresented."

We take this opportunity to take a harder look at Article VI, Section 5(1) and (2) in the light of Article II, Section 1 of the Constitution. We now benefit from hindsight as we are all witness to the aftermath of the doctrines enunciated in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[2] as qualified by *Veterans Federation Party v COMELEC*[3] and *Barangay Association for National Advancement and Transparency v COMELEC.*[4]

In my view, the Constitutional provisions have always created space for "national, regional and sectoral parties and organizations" to join the party list system. It is textually clear that national political parties or regional organizations do not need to be organized on sectoral lines. Sectoral parties or organizations belong to a different category of participants in the party list system.

Moreover, there is no constitutional requirement that all those who participate in the party list system "must represent the marginalized and underrepresented groups" as mentioned in Republic Act No. 7941.[5] This law is unconstitutional in so far as it makes a requirement that is not supported by the plain text of the Constitution.

There is also a constitutional difference between the political parties that support those who are candidates for legislative

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[1] Constitution, Art. VI, Sec. 5, par. (1).

[2] G.R. No. 147589, June 26, 2001, 359 SCRA 698.

[3] G.R. No. 136781, October 6, 2000, 342 SCRA 244.

[4] G.R. No. 179271, April 21, 2009. 586 SCRA 211. But, by a vote of 8 joining the opinion of Puno, *C.J.*, the court upheld Veterans disallowing political parties from participating in the party list elections.

[5] Republic Act. No. 7941 (1995).

districts and those that participate in the party list system. It is inconsistent for national political parties who have candidates for legislative districts to also run for party list. This, too, is the clear implication from the text of Article VI, Section 5(1) of the Constitution.

The insistence on the criteria of "marginalized and underrepresented"[6] has caused so much chaos to the point of absurdity in our party list system. It is too ambiguous so as to invite invidious intervention on the part of COMELEC, endangering the fundamental rights to suffrage of our people. Hewing more closely with the text of the Constitution makes more sense under the present circumstances.

Besides, there was no clear majority in support of the *ratio decidendi* relevant to our present cases in the case of *Ang Bagong Bayani, et al. v. COMELEC*[7] and *BANAT v. COMELEC*.[8]

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[6] *Supra* note 2, *see* first, second and sixth and seventh requirements:

"First, the political party, sector, organization or coalitions must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. In other words, it must show—through its constitution, articles of incorporation, by laws, history, platform of government and track record—that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, majority of its membership should belong to the marginalized and underrepresented . . .

"Second, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party list system, they must comply with the declared statutory policy of enabling 'Filipino citizens belonging to marginalized and underrepresented sectors...to be elected to the House of Representatives.' In other words, while they are not disqualified merely on the ground that they are political parties, they must show, however, that they represent the interests of the marginalized and underrepresented. . ."

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"Sixth, the party or organization must not only comply with the requirements of the law; its nominees must likewise do so ..."

"Seventh, not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees..."

[7] *Supra* note 2.

[8] *Supra* note 4; *Infra* note 29.

I vote for the grant of the Petitions and the nullification of COMELEC Resolution No. 9513, s. August 2, 2012. This will have the effect of reinstating the registration of thirty nine (39) existing party list groups that have already registered for the 2010 elections especially those that have won seats in the current Congress. This will also automatically remand the thirteen (13) cases of new party list registrants for proper processing and evaluation by the Commission on Elections.

Textual analysis
of the relevant provisions

Different kind of political party in the party list system

The core principle that defines the relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state."[9] A democratic and republican state is founded on effective representation. It is also founded on the idea that it is the electorate's choices that must be given full consideration.[10] We must always be sensitive in our crafting of doctrines lest the guardians of our electoral system be empowered to silence those who wish to offer their representation. We cannot replace the needed experience of our people to mature as citizens in our electorate.

We should read article VI, section 5 (1) and (2) in the light of these overarching consideration.

Article VI, section 5(1) provides:

"(1) The House of Representative shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, ***and those who, as provided by law, shall be elected through a party list system of registered national, regional and sectoral parties or organizations.***" (emphasis provided)

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[9] Constitution, Art. II, Sec. 1.

[10] *See Moya v. Del Fiero,* G.R. No. L-46863, November 18, 1939.

There are two types of representatives in the House of Representatives. Those in the first group are "elected from legislative districts". Those in the second group are "elected through a party list system of registered national, regional and sectoral parties and organizations."

The differences in terms of representation are clear.

Those who are elected from legislative districts will have their name in the ballot. They present their persons as the potential agent of their electorate. It is their individual qualifications that will be assessed by COMELEC on the basis of the Constitution and relevant statutes. Should there be disqualification it would be their personal circumstances, which will be reviewed, in the proper case, by the House of Representatives Electoral Tribunal (HRET). The individual representative can lose subsequent elections for various reasons, including dissatisfaction from those that initially elected him/her into office.

Incidentally, those who present themselves for election by legislative districts may or may not be supported by a registered political party. This may give them added political advantages in the electoral exercise, which includes the goodwill, reputation and resources of the major political party they affiliate with. However, it is not the nature of the political party that endorses them that is critical in assessing the qualifications or disqualifications of the candidate.

The elected district representative in the House of Representative is directly accountable to his/her electorate. The political party s/he affiliates with only shares that political accountability; but, only to a certain extent. Good performance is usually rewarded with subsequent election to another term. It is the elected representative, not the political party that will get re-elected. We can even take judicial notice that party affiliation may change in subsequent elections for various reasons, without any effect on the qualification of the elected representative.

The political party that affiliates those who participate in elections in legislative districts organize primarily to have their candidates win. These political parties have avowed principles

and platforms of government.[11] But, they will be known more through the personalities and popularity of their candidates.[12] Often, compromises occur in the political party's philosophies in order to accommodate a viable candidate.

This has been the usual role of political parties even before the 1987 Constitution.

The party list system is an attempt to introduce a new system of politics in our country, one where voters choose platforms and principles primarily and candidate-nominees secondarily. As provided in the Constitution, the party list system's intentions are broader than simply to "ensure that those who are marginalized and represented become lawmakers themselves".[13]

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs.[14] Political parties were convenient amalgamation of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshall the resources to supplement the electoral campaigns of their members.[15] Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues.[16] The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the concrete political programs that the candidate

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[11] *See for instance,* Lande, Carl H., *Parties and Politics in the Philippines, Asian Survey*, Vol. 8, No. 9 (Sep 1968) pp 725-747 or Teehankee, Julio, *Electoral Politics in the Philippines, in Electoral Politics in Southeast Asia*, Aurel Croissant, ed.,Friedrich Ebert Stiftung, 2002.

[12] *Id.*; Lo, Barnaby, Fame, Family Dominate Key Philippines Election, CBS News, May 10, 2010, <http://www.cbsnews.com/8301-503543_162-20004523-503543.html> (visited March 7, 2013).

[13] *See* Constitution, Art. IX(C), Sec. 6.

[14] *Supra* note 11.

[15] *Id.*

[16] *Supra* note 12.

will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle.[17] In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the status quo. It could not have been intended to enhance and further entrench the same system. It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently with the avowed principles and platforms of governance of their organization. In short, the party list system assists genuine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a "democratic and republican state".

Today, we are witness to the possibility of some party list groups that have maintained organizational integrity to pose candidates for higher offices, *i.e*. the Senate. We can take judicial notice that two of the candidates for the 2013 senatorial elections—who used to represent party list groups in the House of Representatives—do not have the resources nor the pedigree and, therefore, are not of the same mould as many of the usual politicians who view for that position. It is no accident that the party list system is only confined to the House of Representatives. It is the nurturing ground to mature genuine political parties and give them the experience and the ability to build constituencies for other elective public offices.

In a sense, challenging the politics of personality by constitutionally entrenching the ability of political parties and organizations to instill party discipline can redound to the benefit of those who have been marginalized and underrepresented in the past. It makes it possible for nominees to be chosen on the basis of their loyalty to principle and platform rather than their family affiliation. It encourages more collective action by the

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[17] *Supra* note 11.

membership of the party and hence will reduce the possibility that the party be controlled only by a select few.

Thus, it is not only "for the marginalized and underrepresented in our midst… who wallow in poverty, destitution and infirmity"[18] that the party list system was enacted. Rather, it was for everyone in so far as attempting a reform in our politics.

But, based on our recent experiences, requiring "national, regional and sectoral parties and organizations" that participate in the party list system to be representatives of the "marginalized and underrepresented sector" and be "marginalized and underrepresented themselves" is to engage in an ambiguous and dangerous fiction that undermines the possibility for vibrant party politics in our country. This requirement, in fact, was the very requirement that "gut the substance of the party list system".[19]

Worse, contrary to the text of the constitution, it fails to appreciate the true context of the party list system.

No requirement that the party or organization be "marginalized and underrepresented"

The disqualification of two "green" or ecological parties[20] and two "right wing" ideological groups[21] (currently part of the party list sector in the present Congress) is based on the assessment of the COMELEC *en banc* that they do not represent a "marginalized" sector and that the nominee themselves do not appear to be marginalized.

It is inconceivable that the party list system framed in our Constitution make it impossible to accommodate green or ecological parties of various political persuasions.

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[18] *Supra* note 2.

[19] *See Supra* note 2. (This was the ostensible justification for not allowing all "national, regional and sectoral parties and organizations" as provided in the Constitution to participate).

[20] GREENFORCE in G.R. No. 204239 and KALIKASAN in G.R. No. 204402.

[21] ANAD in G.R. No. 204094 and BANTAY in G.R. No. 204141.

Environmental causes do not have as their constituency only those who are marginalized or underrepresented. Neither do they only have for their constituency those "who wallow in poverty, destitution and infirmity".[22] In truth, all of us, regardless of economic class, are constituents of ecological advocacies.

Also, political parties organized along ideological lines—the socialist or even right wing political parties—are groups motivated by a their own narratives of our history, a vision of what society can be and how it can get there. There is no limit to the economic class that can be gripped by the cogency of their philosophies and the resulting political platforms. Allowing them space in the House of Representatives if they have the constituency that can win them a seat will enrich the deliberations in that legislative chamber. Having them voice out opinions—whether true or false—should make the choices of our representatives richer. It will make the choices of our representatives more democratic.

Ideologically oriented parties work for the benefit of those who are marginalized and underrepresented, but they do not necessarily come mainly from that economic class. Just a glance at the history of strong political parties in different jurisdictions will show that it will be the public intellectuals within these parties who will provide their rationale and continually guide their membership in the interpretation of events and, thus, inform their movement forward.

Political ideologies have people with kindred ideas as their constituents. They may care for the marginalized and underrepresented, but they are not themselves—nor for their effectivity in the House of Representatives should we require that they can only come from that class.

Highlighting these groups in this opinion should not be mistaken as an endorsement of their platforms. Rather, it should be seen as clear examples where interests and advocacies, which may not be within the main focus of those who represent legislative

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[22] *Supra* notes 2 & 4.

districts, cry out for representation. Surely, it should be the electorate, not the COMELEC, which should decide whether their groups should participate in our legislative deliberations. That these groups could be excluded even before the vote is not what the party list system is all about.

These two instances arising from the consolidated petitions we are considering clearly show why the text of article VI, section 5 (2) provides:

"(2) The party-list representative shall constitute twenty per centum of the total number of representatives including those under the party list. ***For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth and such other sectors as may be provided by law, except the religious sectors."*** (emphasis provided)

What is plain from a reading of the text is that the qualification as to reserved seats is applicable only for the "three consecutive terms after the ratification" of the Constitution. Only one-half of the seats within that period is reserved to the "sectors" that were enumerated, ***clearly implying that there are other kinds of party list groups other than those who are sectoral***.

To require that all the seats for party list representatives remain sectoral in one form or the other is clearly and patently unconstitutional. It is not supported by the text. Its rationale and its actual effect is not in accord with the spirit of these provisions.

Revisiting Ang Bagong Bayani, et al. v. COMELEC

We are aware of the case of *Ang Bagong Bayani v. Comelec*.[23] In that case, the Court *en banc* declared that political parties may participate in the party list system but that these political parties must be organized sectorally to represent the "marginalized and underrepresented."

The reasoning of the *ponencia* of that case derived from his fundamental principle that:

[23] *Supra* note 2.

". . . The requisite character of these parties or organizations must be consistent with the purpose of the party list system, as laid down in the Constitution and RA 7941."[24]

The *ponencia* then proceeded ***to put the interpretation of a statute at par with the text of article VI, section 5 (1) and (2) the Constitution***, thus:

"The foregoing provision on the party list system is not self-executory. It is, in fact, interspersed with phrases like 'in accordance with law' or 'as may be provided by law'; it was thus up to Congress to sculpt in granite the lofty objective of the Constitution."[25]

The 1987 Constitution is a complete document. Every provision should be read in the context of all the other provisions so that contours of constitutional policy are made clear.[26] To claim that the framers of the Constitution left it to Congress to complete the very framework of the party list system is to question the fundamental character of our constitution. The phrases "in accordance with law" and "as may be provided by law" is not an invitation to the members of Congress to continue the work of the constituent assembly that crafted the Constitution. Constitutional policy is to be derived from the text of the constitution in the light of its context in the document and considering the contemporary impact of relevant precedents.

From constitutional policy, Congress then details the workings of the policy through law. The Constitution remains the fundamental and basic law with a more dominant interpretative position *vis-a-vis* statute. It has no equal within our normative system.

Article VI, sections 5 (1) and (2) already imply a complete Constitutional framework for the party list system.

Congress cannot add the concept of "proportional representation." Congress cannot pass a law so that we read in

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[24] *Id.*, 359 SCRA 698, 717.

[25] *Id.*, 359 SCRA 698, 718.

[26] *Chavez v. JBC*, G.R. No. 202242, July 17, 2012.

the text of the Constitution the requirement that ***even national and regional parties or organizations should likewise be sectoral. Certainly Congress cannot pass a law so that even the one-half that was not reserved for sectoral representatives even during the first three consecutive terms after the ratification of the Constitution should now only be composed of sectoral representatives.***

There were strong cogent dissenting opinions coming from Justices Mendoza and Vitug when *Ang Bagong Bayani v. COMELEC* was decided in 2001.[27] Only six (6) justices concurred with the reasoning of the *ponencia*. Two justices voted only in the result. Five (5) justices dissented. Four (4) of them joining the dissenting opinion of Justice Vicente Mendoza. There was no majority therefore in upholding the reasoning and *ratio decidendi* proposed by the *ponencia* in that case. It was a divided court, one where there was a majority to sustain the result but not enough to establish doctrine.

It was even a more divided court when the same issues were tackled in the case of *BANAT v. COMELEC* in 2009.[28]

Ostensibly, the rationale of the majority in BANAT was to prevent major political parties from dominating organizations of the marginalized. Citing the concurring and dissenting opinion of then Chief Justice Puno:

"....There is no gainsaying the fact that the party-list parties are no match to our traditional political parties in the political arena. This is borne out in the party list elections held in 2001 where major political parties were initially allowed to campaign and be voted for. The results confirmed the fear expressed by some commissioners in the Constitutional Commission that major political parties would

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[27] *See supra* note 2 at 733-761.

[28] *See supra* note 4. (Voting to disallow major political parties from participating directly or indirectly in the party list system were eight justices, namely: Puno, Quisumbing Ynares-Santiago, Austria-Martinez, Corona, Chico-Nazario, Velasco, and Leonardo-de Castro. Voting to allow major political parties in the party list system were seven justices, namely: Carpio, Carpio Morales, Tinga, Nachura, Brion, Peralta, and Bersamin).

figure in the disproportionate distribution of votes: of the 162 parties which participated, the seven major political parties made it to the top 50."[29]

The premise of course was the argument that major political parties that support candidates for legislative districts were to be allowed to participate in the party-list system. This is not the reading proposed today of the Constitution. Furthermore, the opinion failed to foresee that even parties and organizations that claim to represent the "marginalized" could crowd out each other further weakening the system.

Not only do we vote today without a precedent having a clear vote, we also do so with the benefit of hindsight.

"Marginalized and underrepresented" is ambiguous

There is another reason why we cannot fully subscribe to the concept of "marginalized and underrepresented". It is too ambiguous. There can be no consistent judicially discernible standard for the COMELEC to apply. It thus invites invidious intervention from COMELEC to undermine the right of suffrage of the groups that want to vie for representation. Indirectly, it also violates the right of suffrage of the electorate. COMELEC substituted its judgment for that of the electorate. It thus acted arbitrarily and beyond its jurisdiction.

In none of the Orders of the COMELEC in question was there a definition of what it is to be socially marginalized. No empirical studies have informed COMELEC's determination as to which groups are "underrepresented" in government. In fact, there is no indication as to what the characteristics of an individual's or group's identity would lead the COMELEC *en banc* to consider that they were a "sector".

To the COMELEC *en banc*, for instance, the following are not marginalized or underrepresented sectors: "Bicolanos",[30]

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[29] *Id.*, per Puno Concurring and Dissenting opinion at 258-259.

[30] COMELEC Resolution dated October 20, 2012, SPP No. 12-154 (PLM) and SPP No. 12-177 (PLM), G.R. No. 203818 (Ako Bikol Political Party, AKB).

"young professionals like drug counselors and lecturers",[31] rural energy consumers,[32] "peasants, urban poor, workers and nationalistic individuals who have stakes in promoting security of the country against insurgency criminality and their roots in economic poverty",[33] "persons imprisoned without proof of guilt beyond reasonable doubt",[34] those who advocate "to publicly oppose, denounce and counter, communism in all its form in the Filipino society";[35] "environmental enthusiasts intending to take are of, protect and save Mother Earth",[36] "agricultural and cooperative sectors";[37] "businessmen, civil society groups, politicians and ordinary citizens advocating genuine people empowerment, social justice, and environmental protection and utilization for sustainable development";[38] "artists";[39] "Bisayans";[40] Ilonggos.[41]

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[31] COMELEC Omnibus Resolution dated October 11, 2012, SPP 12-220 (PLM), G.R. No. 203981 (UNIMAD).

[32] COMELEC Resolution dated October 16, 2012, SPP 12-260 (PLM), G.R. No. 203960 (1-CARE).

[33] COMELEC Resolution dated October 24, 2012, SPP 12-229 (PLM), G.R. No. 203958 (BANTAY).

[34] COMELEC Resolution dated October 24, 2012, SPP 12-015 (PLM), G.R. No. 203958 (KAKUSA).

[35] COMELEC Resolution dated November 7, 2012, SPP 12-185 (PLM), G.R. No. 204094 (ANAD).

[36] COMELEC Resolution dated November 7, 2012, SPP 12-060 (PLM), G.R. No. 204239 (GREENFORCE).

[37] COMELEC Resolution dated November 28, 2012, SPP 12-136 (PLM), G.R. No. 204356 (BUTIL).

[38] COMELEC Resolution dated December 5, 2012, SPP 11-002, G.R. No. 204484 (PBB).

[39] COMELEC Resolution dated November 23, 2012, SPP 12-099, G.R. No. 204379 (ASIN).

[40] COMELEC Resolution dated November 29, 2012, SPP 12-011 (PP), G.R. No. 204370 (AAB).

[41] COMELEC Resolution dated December 4, 2012, SPP 12-009 (PP), G.R. No. 204379 (AI).

What is plain is that the COMELEC declared ex cathedra sans any standard what were the "marginalized and underrepresented sectors." This, in my opinion, constitutes grave abuse of discretion on the part of the COMELEC. We are now asked to confirm their actions. We are asked to affirm that COMELEC knew what a "marginalized and underrepresented sector" was when they saw one.

COMELEC's process was a modern day inquisition reminiscent of the medieval hunt for heretics and witches, a spectacle which may in a few cases weed out the sham organization. But it was a spectacle nonetheless fraught with too many vulnerabilities that cannot be constitutionally valid. It constitutes grave abuse of discretion.

As guardians of the text and values congealed in our Constitution, we should not lend our imprimatur to both the basis and the procedure deployed by COMELEC in this case.

After all, we have a due process clause still in place.[42] Regardless of the nature of the power that COMELEC deployed—whether it was administrative or quasi-judicial—the parties were entitled to have a standard that they could apply in their situation so that they could properly discern whether their factual situation deserved registration or disqualification.

Neither was it possible for COMELEC to come up with a standard. Even Rep. Act No. 7941 was ambiguously worded.[43] There was no workable definition of "marginalized," "underrepresented" and "sector."[44]

Neither would it have been possible for Congress to define these concepts. In the first place, our decisions have not given them guidance. In the second place, we could not give guidance because it is not in the Constitution and could not be derived from its provisions. This is also apart from the reality that

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[42] *See* Constitution, Art. III, Sec. 1.

[43] *See* Republic Act No. 7941 (1995), Secs. 2-3.

[44] *See* Republic Act No. 7941 (1995), Sec. 3.

"identity," "sector," "marginalized" and "underrepresented" are heavily contested concepts in the fields of social science and philosophy.[45]

The fallacy of representation by "marginalized and underrepresented" groups

It is possible under our system for a party list group representing indigenous peoples to be elected by peoples who do not belong to their sector but from a vote-rich legislative district. The same is true with a party list group allegedly of security guards.[46] They, too, can get elected without the consent of majority of all the security guards in this country but simply from the required number allowed by our formula in *BANAT v COMELEC*.[47] In practice, we have seen the possibility for these "marginalized and underrepresented" party list groups being elected simply by the required vote in some legislative districts.

This sham produces the failure in representation. It undermines the spirit of the party list system, violates the principle of representation inherent in a democratic and republican state, and weakens—rather than strengthen—the abilities of the "marginalized and underrepresented" to become lawmakers themselves. Constitutional construction cannot lose sight of how doctrines can cause realities that will undermine the very spirit of the text of our Constitution.[48]

Allowing the existence of strong national and regional parties or organizations in the party list system have better chances of representing the voices of the "marginalized and underrepresented.

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[45] *See for instance,* Iris Marion Young, *Justice and the Politics of Difference*, (2011).

[46] ANG GALING PINOY (AG) in G.R. No. 204428.

[47] *Supra* note 4.

[48] *See for instance Association of Small Landowners v. DAR*, G.R. No. 78742, July 14, 1989 [per Cruz J.] on allowing payment of just compensation in cash and bonds: "...We do not mind admitting that a certain degree of pragmatism has influenced our decision on this issue, but after all this Court is not a cloistered institution removed from the realities and demands of society or oblivious to the need for its enhancement."

It will also allow views, standpoints and ideologies sidelined by the pragmatic politics required for political parties participating in legislative districts to be represented in the House of Representatives. It will also encourage the concept of being multi-sectoral and therefore the strengthening of political platforms.

To allow this to happen only requires that we maintain full fealty to the textual content of our Constitution. It is "a party-list system of registered national, regional, and sectoral parties or organizations."[49] Nothing more, nothing less.

Requirements for Party List Groups

Preferably, party list groups should represent the marginalized and underrepresented in our society. Preferably, they may not be marginalized themselves but that they may also subscribe to political platforms that have the improvement of those who are politically marginalized and economically destitute as their catapulting passion. But, this cannot be the constitutional requirements that will guide legislation and actions on the part of the Commission on Election.

I propose instead the following benchmarks:

First, the party list system includes national, regional and sectoral parties and organizations;

Second, there is no need to show that they represent the "marginalized and underrepresented". However, they will have to clearly show how their plans will impact on the "marginalized and underrepresented". Should the party list group prefer to represent a sector, then our rulings in *Ang Bagong Bayani*[50] and *BANAT*[51] will apply to them;

Third, the parties or organizations that participate in the party list system must not also be a participant in the election of

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[49] Constitution, Art. VI, Sec. 5, par. 1.

[50] *Supra* note 2.

[51] *Supra* note 4.

representatives for the legislative districts. In other words, political parties that field candidates for legislative districts cannot also participate in the party list system;

Fourth, the parties or organizations must have political platforms guided by a vision of society, an understanding of history, a statement of their philosophies and how this translates into realistic political platforms;

Fifth, the parties or organizations—not only the nominees—must have concrete and verifiable track record of political participation showing their translation of their political platforms into action;

Sixth, the parties or organizations that apply for registration must be organized solely for the purpose of participating in electoral exercises;

Seventh, they must have existed for a considerable period, such as three (3) years, prior to their registration. Within that period they should be able to show concrete activities that are in line with their political platforms;

Eighth, they must have such numbers in their actual active membership roster so as to be able to mount a credible campaign for purpose of enticing their audience (national, regional or sectoral) for their election;

Ninth, a substantial number of these members must have participated in the political activities of the organization;

Tenth, the party list group must have a governing structure that is not only democratically elected but also one which is not dominated by the nominees themselves;

Eleventh, the nominees of the political party must be selected through a transparent and democratic process;

Twelfth, the source of the funding and other resources used by the party or organization must be clear and should not point to a few dominant contributors specifically of individuals with families that are or have participated in the elections for representatives of legislative districts;

Thirteenth, the political party or party list organization must be able to win within the two elections subsequent to their registration;

Fourteenth, they must not espouse violence; and

Fifteenth, the party list group is not a religious organization.

Disqualification of existing registered party list groups Jurisdiction of the COMELEC

With respect to existing registered party list groups, jurisdiction to disqualify is clearly reposed on the House of Representatives Electoral Tribunal (HRET). The Constitution in Article VI, Section 17 clearly provides:

"Sec. 17. The Senate and the House of Representatives shall each have a Electoral Tribunal which ***shall be the sole judge*** of all contests relating to the election, returns, and ***qualifications of their respective Members***..."

A more specific provision in the Constitution with respect to disqualifying registered political party list groups should prevail over the more general powers of the COMELEC to enforce and administer election laws. Besides, that the HRET is the "sole judge" clearly shows that the constitutional intention is to exclude all the rest.[52]

WHEREFORE, in view of the foregoing, I vote to:

(1) **GRANT** the Petitions and **NULLIFY** COMELEC Resolution No. 9135 and all the COMELEC Resolutions raised in these consolidated cases; and

(2) **REMAND** the cases to COMELEC for proper proceedings in line with our decision.

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[52] *See Angara v. Electoral Commission,* G.R. No. L-45081, July 15, 1936.

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— Court has allowed the liberal application of rules of procedure for perfecting appeals in exceptional circumstances to better serve the interest of justice. (Salva *vs.* Valle, G.R. No. 193773, April 02, 2013) p. 402

Rules on appeal — A petition for review on certiorari shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment; no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained; since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by certiorari; perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. (Sps. Martires *vs*. Chua, G.R. No.174240, March 20, 2013) p. 34

— Allegation of grave abuse of discretion no more warrants the granting of due course to the petition as one for certiorari if appeal was available as a proper and adequate remedy; even if treated as one brought under Rule 45 of the Rules of Court, the petition would still be defective due to its being filed beyond the period provided by law; Section 2 of Rule 45 requires the filing of the petition within 15 days from the notice of judgment to be appealed. (Bongalon *vs*. People of the Phils., G.R. No. 169533, March 20, 2013) p. 11

ATTORNEYS

Code of Professional Responsibility — A lawyer shall not delegate to any unqualified person the performance of a task which may only be performed by a lawyer; violation of Rule 9.01 of Canon 9 of the Code of Professional Responsibility when counsel filed a complaint which was signed in his name by the secretary of his law office; the preparation and signing of a pleading constitute legal work involving the practice of law which is reserved exclusively for members of the legal profession; under the

Concept — The essence of due process is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of; a formal or trial-type hearing is not at all times and in all instances essential; the requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand; there is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings. (CSC *vs*. Almojuela, G.R. No. 194368, April 02, 2013) p. 420

Denial of — The dismissal order issued in disregard of the right to due process is void for lack of jurisdiction. (Salva *vs*. Valle, G.R. No. 193773, April 02, 2013) p. 402

EMPLOYMENT, TERMINATION OF

Abandonment of work as a ground — For abandonment to exist, two factors must be present: (1) the failure to report for work of absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts; mere absence of an employee is not sufficient to constitute abandonment; the employer has the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning. (Bañares *vs.* Tabaco Women's Transport Service Cooperative [TAWTRASCO], G.R. No. 197353, April 01, 2013) p. 294

Backwages — An employee is entitled to backwages and other emoluments due him plus 12% interest from the finality of decision, with attorney's fees in the amount equivalent to 10% of the monetary award. (Bañares *vs*. Tabaco Women's Transport Service Cooperative [TAWTRASCO], G.R. No. 197353, April 01, 2013) p. 294

proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (CSC *vs*. Almojuela, G.R. No. 194368, April 02, 2013) p. 420

— To be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the respondents are probably guilty thereof; sufficient if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (Callo-Claridad *vs*. Esteban, G.R. No. 191567, March 20, 2013) p. 172

Corpus delicti — Refers to the fact of the commission of the crime charged or to the body or substance of the crime; in its legal sense, it does not refer to the ransom money in the crime of kidnapping for ransom or to the body of the person murdered; even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor; *corpus delicti* may be established by circumstantial evidence; in theft, *corpus delicti* has two elements: 1) that the property was lost by the owner, and 2) that it was lost by felonious taking. (Engr. Zapanta *vs*. People of the Phils., G.R. No. 170863, March 20, 2013) p. 23

Documentary evidence — Notarized documents carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity; a defective notarization will strip the document of its public character and reduce it to a private instrument; consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document

MOOT AND ACADEMIC CASES

Concept — One that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value; as a rule, courts decline jurisdiction over such case, or dismiss it on the ground of mootness. (Dumarpa *vs*. Commission on Elections, G.R. No.192249, April 02, 2013) p. 382

MORTGAGES

Equitable mortgage — Defined as one which, although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent; presumed where it can be inferred that the real intention of the transaction is that the transaction shall serve as security to secure the payment of debt. (Sps. Martires *vs*. Chua, G.R. No.174240, March 20, 2013) p. 34

MOTIONS

Notice of hearing — Rule 13, Section 3 of the Rules of Court states that the date of the mailing of motions through registered mail shall be considered the date of their filing in court; requirement under Rule 15, Section 5 of the Rules of Court that the time and date of the hearing must not be later than ten days after the filing of the motion. (Rep. of the Phils. *vs*. Diaz-Enriquez, G.R. No. 181458, March 20, 2013) p. 94

— Rule 15, Section 4 of the Rules of Court requires the moving party to serve motions in such a manner as to ensure the receipt thereof by the other party at least three days before the date of the hearing; the purpose of the rule is to prevent a surprise and to afford the adverse party a chance to be heard before the motion is resolved by the trial court; the rule does not require that the court receive the notice three days prior to the hearing date. *(Id.)*

PRELIMINARY INVESTIGATION

Conduct of — A public prosecutor alone determines the sufficiency of evidence that establishes the probable cause justifying the filing of a criminal information against the respondent; he is afforded a wide latitude of discretion in the conduct of a preliminary investigation; courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law; the trial court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation. (Callo-Claridad *vs.* Esteban, G.R. No. 191567, March 20, 2013) p. 172

Probable cause — A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial; the investigation is advisedly called preliminary because it is yet to be followed by the trial proper in a court of law; the occasion is not for the full and exhaustive display of the parties' evidence; role and object of preliminary investigation. (Callo-Claridad *vs*. Esteban, G.R. No. 191567, March 20, 2013) p. 172

— Courts could intervene in the Secretary of Justice's determination of probable cause only through a special civil action for certiorari; that happens when the Secretary of Justice acts in a limited sense like a quasi-judicial officer of the executive department exercising powers akin to those of a court of law. *(Id.)*

— For purposes of filing a criminal information, it is defined as those facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof; a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was

rather than expose her defilement to the cruelty of public scrutiny; only when the delay is unreasonable or unexplained may it work to discredit the complainant. (People of the Phils. *vs*. Penilla *y* Francia, G.R.189324, March 20, 2013) p. 130

— In rape cases, the moral character of the victim is immaterial; rape may be committed not only against single women and children but also against those who are married, middle-aged, separated, or pregnant, or even a prostitute. *(Id.)*

Elements — Physical resistance need not be established in rape when threats and intimidation are employed, and the victim submits herself to her attacker because of fear; failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust; physical resistance is not an essential element of rape. (People of the Phils. *vs*. Penilla *y* Francia, G.R.189324, March 20, 2013) p. 130

Prosecution for — A medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime; a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape. (People of the Phils. *vs*. Penilla *y* Francia, G.R. 189324, March 20, 2013) p. 130

— In reviewing rape convictions, the Court has been guided by three principles, namely: (a) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime of rape as involving only two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the Prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. *(Id.)*

— The person obliged to reserve the property should be an ascendant (also known as the reservor/*reservista*) of the descendant/*prepositus*; in determining the collateral line of relationship, ascent is made to the common ancestor and then descent to the relative from whom the computation is made. *(Id.)*

— Three (3) lines of transmission: the first transmission is by gratuitous title, whether by inheritance or donation, from an ascendant/brother/sister to a descendant called the *prepositus*; the second transmission is by operation of law from the *prepositus* to the other ascendant or reservor, also called the *reservista*; the third and last transmission is from the reservista to the reservees or *reservatarios* who must be relatives within the third degree from which the property came. *(Id.)*

Persons involved — 1) The ascendant or brother or sister from whom the property was received by the descendant by lucrative or gratuitous title; 2) The descendant or *prepositus* (*propositus*) who received the property; 3) The reservor (*reservista*), the other ascendant who obtained the property from the *prepositus* by operation of law; and 4) The reservee (*reservatario*) who is within the third degree from the *prepositus* and who belongs to the linea o tronco from which the property came and for whom the property should be reserved by the reservor. (Mendoza *vs*. Policarpio Delos Santos, G.R. No.176422, March 20, 2013) p. 69

— In *reserva troncal*, the *reservista* who inherits from a *prepositus*, whether by the latter's wish or by operation of law, acquires the inheritance by virtue of a title perfectly transferring absolute ownership; it is when the reservation takes place or is extinguished, that a *reservatario* becomes, by operation of law, the owner of the reservable property. *(Id.)*

— The person from whom the degree should be reckoned is the descendant/*prepositus* – the one at the end of the line from which the property came and upon whom the property

recourse as an appeal timely brought, consonant with the basic rule in criminal procedure that an appeal opens the whole case for review. (Bongalon *vs*. People of the Phils., G.R. No. 169533, March 20, 2013) p. 11

SEAFARERS, CONTRACT OF EMPLOYMENT

Award of sickness allowance — Seafarer was awarded his 120-day sickness allowance as required by the POEA-SEC from the time he was repatriated; at the time of his repatriation, his illness was not yet medically declared as not work-related; thus, the presumption under Sec. 20(B)(4) of the POEA-SEC applies; he is entitled to sickness allowance pending assessment and declaration by the company-designated physician on the work-relatedness of his ailment. (Transocean Ship Management (Phils.), Inc. *vs*. Vedad, G.R. Nos. 194490-91, March 20, 2013) p. 194

— The POEA formulated the standard employment contract for seafarers pursuant to its mandate under E.O. No. 247, Series of 1995, to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith and to promote and protect the well-being of Filipino workers overseas; where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to laborers, the balance must be tilted in their favor consistent with the principle of social justice. *(Id.)*

Compensability of injury or illness — Although the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability; the quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by an employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (Magsaysay Maritime Services *vs*. Laurel, G.R. No. 195518, March 20, 2013) p. 210

— For illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer; it suffices that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had; it is already recognized that any kind of work or labor produces stress and strain normally resulting in the wear and tear of the human body. *(Id.)*

— The presumption of compensability of illnesses that are not listed as occupational diseases operates in favor of the seafarer; Section 20 (B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related"; the burden rests upon the employer to overcome the statutory presumption. *(Id.)*

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Child abuse — As defined by Section 3 (b) of R.A. No. 7610, refers to the maltreatment, whether habitual or not, of the child which includes any of the following: xxx (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; under the well-recognized doctrine of pro reo every doubt is resolved in favor of the accused. (Bongalon *vs.* People of the Phils., G.R. No. 169533, March 20, 2013) p. 11

SUMMONS

Substituted service of summons — If defendants have not been validly summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void. (Chu *vs.* Mach Asia Trading Corp., G.R. No. 184333, April 01, 2013) p. 284

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