PHILIPPINE REPORTS

VOL. 721

NOVEMBER 12, 2013 TO NOVEMBER 20, 2013

VOLUME 721

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

NOVEMBER 12, 2013 TO NOVEMBER 20, 2013

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-12-3100. November 12, 2013]

EXECUTIVE JUDGE HENEDINO P. EDUARTE, Regional Trial Court Branch 20, Cauayan Isabela, *complainant, vs.* **ELIZABETH T. IBAY, Clerk II Municipal Trial Court in Cities, Cauayan Isabela,**[1] *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ADMINISTRATIVE CHARGES; STANDARD OF SUBSTANTIAL EVIDENCE AS SUFFICIENT BASIS FOR THE IMPOSITION OF ANY DISCIPLINARY ACTION UPON THE ERRING EMPLOYEE; CASE AT BAR.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Well-entrenched is the rule that substantial evidence, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the erring employee. The standard of substantial evidence is satisfied where the employer, in this case the Court, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence

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[1] Formerly Municipal Trial Court, Cauayan, Isabela. *Rollo*, p. 94.

demanded by his position. While there is no direct evidence to suggest that Ibay actually took the check, forged De Ocampo's signature and encashed the check, the surrounding circumstances point towards her administrative liability.

2. ID.; ID.; ID.; ID.; ABSENT STRONG EVIDENCE OF NON-CULPABILITY, THE RESPONDENT'S DENIAL IS PURELY SELF-SERVING AND WITHOUT EVIDENTIARY VALUE.— Ibay admitted that she took the envelope from the post office and she gave the envelope containing only seven checks, without De Ocampo's check, to Meris. Ibay did not explain the whereabouts of De Ocampo's check, which the OCA found to have been inadvertently included in the envelope Ibay received from the post office. Ibay merely denied the charges against her. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value. In the absence of substantial defense to refute the charges against her, we hold Ibay liable for the loss of the check and the forgery of De Ocampo's signature, leading to the check's encashment. The case against Ibay is bolstered by the fact that Judge Eduarte found striking similarities between her handwriting in the inventory of cases and the forged endorsement in the check. Ibay even confirmed the same in her comment, where she admitted that her handwriting in the inventory bears similarities to that of the endorser of the check.

3. ID.; ID.; ID.; CHARGE OF DISHONESTY; STEALING A CHECK AND ENCASHING IT IS CONSIDERED GROSS DISHONESTY PUNISHABLE BY DISMISSAL FROM THE SERVICE EVEN WHEN COMMITTED FOR THE FIRST TIME; THE COURT WILL NOT TOLERATE DISHONESTY, FOR THE JUDICIARY DESERVES THE BEST FROM ALL ITS EMPLOYEES.— We find that there is substantial evidence to support Ibay's dismissal on the ground of dishonesty. In *Filoteo v. Calago*, we held that stealing a check and encashing it is considered gross dishonesty. We defined dishonesty as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and lack of fairness and straightforwardness. Section 52(A) (1) of the Revised Uniform

Rules on Administrative Cases in the Civil Service provides that dishonesty is a grave offense punishable by dismissal from the service even when committed for the first time. In *Office of the Court Administrator v. Ibay*, we found Ibay guilty of dishonesty for stealing and encashing a check of Magpantay. We suspended her for seven months without benefits, considering that she admitted the offense and she was not administratively charged in the past. Since this is no longer Ibay's first offense and we already warned her before that a similar act would warrant a more severe penalty, we now find it imperative to impose upon her the extreme penalty of dismissal from the service. Time and again, we held that persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service. This Court will not tolerate dishonesty, for the judiciary deserves the best from all its employees.

D E C I S I O N

PER CURIAM:

For our resolution is this administrative case, which arose from the complaint of Geraldine V. De Ocampo (De Ocampo), Court Interpreter of the Municipal Trial Court, Cordon, Isabela (MTC-Cordon).

In her complaint-inquiry, De Ocampo alleged that she did not receive her check for ₱3,000.00 representing her clothing allowance. Upon verification, the Office of the Court Administrator (OCA) found that her check, specifically Land Bank Check No. 890956, was mailed to the now Municipal Trial Court in Cities, Cauayan, Isabela (MTCC-Cauayan), on 2 September 1999, under Registry Receipt No. 864.

In his letter dated 1 October 1999, Fortunato C. Villanueva (Villanueva), Clerk of Court of the MTCC-Cauayan, denied receiving De Ocampo's check. Thus, the OCA requested the Land Bank of the Philippines (LBP) to stop the payment of the check. LBP, however, reported that the check had already been

negotiated and deposited with United Coconut Planters Bank, Cauayan Branch (UCPB-Cauayan), on 9 September 1999. Significantly, the OCA observed that the signature of De Ocampo appearing in her complaint-inquiry is very different from her alleged endorsement at the dorsal portion of the check.

Accordingly, the OCA, through then Court Administrator Alfredo L. Benipayo, directed Executive Judge Henedino P. Eduarte (Judge Eduarte), Regional Trial Court, Cauayan, Isabela, to investigate the matter.

In his Report dated 6 March 2000, Judge Eduarte stated that he investigated the following persons: (1) De Ocampo; (2) Villanueva; (3) Elizabeth T. Ibay (Ibay), Clerk II, MTCC-Cauayan; (4) Anselma Meris (Meris), Stenographer, MTCC-Cauayan; (5) Juan R. Bigornia, Jr., employee of UCPB-Cauayan; (6) Catherine Semana (Semana), an owner of a store inside a commercial complex in Cauayan, Isabela; and (7) Gaudioso Talavera.

The investigation conducted by Judge Eduarte established the following facts:

Ibay, as the receiver of mails addressed to MTCC-Cauayan, took the envelope containing the checks for clothing allowance from the post office of Cauayan, Isabela. Ibay alleged that upon her arrival in the stenographers' room in MTCC-Cauayan, she gave the unopened envelope to Meris who allegedly opened the envelope by tearing its side. Seven checks were found inside the envelope. These checks were for Villanueva, Ibay, Meris, Judge Sergio Plan, Melchor Meris, Aida Magpantay (Magpantay), and Marivic Villanueva (Marivic). After getting her check, Ibay left the other checks with Meris.

Meris confirmed that Ibay took the envelope from the post office of Cauayan, Isabela. Meris narrated that she and Marivic were typing inside the stenographers' room when Ibay arrived. While holding the envelope, Ibay announced, *"Oh, dumating na ang clothing allowance."* Ibay, then, gave the envelope and the paycheck to Meris. Meris observed that the envelope was already opened but she did not see Ibay open the envelope.

After comparing Ibay's handwriting in a five-page Inventory of Cases, wholly written by her, with the endorsement on the check, the following were found to have striking similarities, to wit:

(1) The letter "G" in Geraldine to the letter "G" in "Goderei Gasmen," page 2, Inventory; "Godofredo Garcia," page 4, Inventory; "Grave Oral Def.," "Grave Threat," page 5, Inventory;

(2) Letter "d" in Geraldine and de Ocampo to the letter "d" in "do," pages 1, 2, 4, Inventory; in "Rolando," page 2, Inventory; in "Flordeliza," page 5, Inventory;

(3) "O" in Ocampo to the "O" in "Grave oral Def.," page 5, Inventory;

(4) "G" in Geraldine written in script to the "G" in "Galindo," page 4, Inventory;

(5) "T" in Turayong to the "T" in "Trespass," "Theft," page 1, Inventory; "Tecson," "Truyen," page 5, Inventory;

(6) "C" in Cauayan to the "C" in "Christine," page 2, Inventory; "Campos," page 4, Inventory;

(7) "S" in Isa to the "S" in "Sia," "Santiago," and "Sebastian," page 1, Inventory.[2]

Semana admitted that she is in the business of changing government checks with cash at a discount, and that she discounts Ibay's paychecks. However, Semana claimed that she could not remember De Ocampo's check.

Finally, De Ocampo's check was deposited with UCPB-Cauayan, and cleared by LBP.

In its 1st Indorsement dated 5 September 2001, the OCA required Ibay to comment on the report of Judge Eduarte.

In her letter-comment dated 28 September 2001, Ibay admitted that she took the envelope containing the checks, even though she does not receive the mails to their office all the time. Ibay further admitted that in the inventory, there were similarities

[2] *Id*. at 11-12.

between her handwriting and the indorsement in the check.[3] However, she added that anyone could imitate her handwriting and that it would be unfair if only her specimen signature would be taken into consideration.[4] Ibay also claimed that she would usually ask Magpantay to accompany her whenever she needed to encash her check since she is a resident of San Pablo, Isabela and unfamiliar with Cauayan, Isabela. Finally, Ibay vehemently denied the allegations of Meris and Semana.

In its Resolution dated 14 August 2002,[5] the Court, upon recommendation of the OCA, referred this case to the National Bureau of Investigation (NBI) for further investigation and examination of the questioned document by handwriting experts to determine who committed the forgery. The Court likewise directed the NBI to submit a report within 30 days from receipt of the records of this case.

In its Resolution dated 13 April 2011, the Court noted, among others, that: (a) the NBI, despite receipt of the records on 23 September 2002 by Efren B. Flores of the Questioned Documents Division, failed to submit the required report; (b) in his letter-compliance dated 31 August 2010, NBI Director Magtanggol B. Gatdula (Director Gatdula) informed the Court that they could not proceed with the desired examination due to the absence of the original copy of the check; (c) per records, Atty. Virginia A. Soriano (Soriano), then First Division Clerk of Court, already transmitted the original copy of the check with other documents to the NBI, as evidenced by the stamped "received" by the NBI Questioned Documents Division indicating the date "1/14/03"; (d) further verification with the OCA's Financial Management Office revealed that the check was no longer in its custody; (e) although the result of the laboratory examination of the original copy of the check would significantly help in determining the person who may have forged the signature of De Ocampo, under the present circumstances such laboratory examination may no

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[3] *Id*. at 16.

[4] *Id*.

[5] *Id*. at 25.

longer be possible due to the apparent loss of the check in question; and (f) nevertheless, any administrative liability of Ibay in this case may still be determined on the basis of Judge Eduarte's report and Ibay's comment thereon, as well as the other documents on hand.

Accordingly, the Court, upon recommendation of the OCA, resolved on 13 April 2011 to dispense with the NBI Investigation Report as required in the 14 August 2002 Resolution and reiterated in two subsequent resolutions dated 20 June 2005 and 21 July 2010. The Court also required Director Gatdula to cause the return of the records of this case and the 14 January 2003 transmittal of Soriano including the original copy of the check.

In a separate Resolution also dated 13 April 2011, the Court granted the OCA a period of 30 days from receipt of the records from the NBI to submit its report and recommendation.

In his letter-compliance dated 6 June 2011, Director Gatdula informed the Court that the original copy of the check was found. He suggested that seven or more sample signatures of De Ocampo appearing in public/official documents executed on dates contemporaneous with the date of the check be submitted to the NBI for comparative examination.

In its Resolution dated 27 June 2011, the Court noted Director Gatdula's letter, and directed him to fully comply with the 13 April 2011 Resolution. Accordingly, Director Gatdula returned the records of this case to the Court.

In its Memorandum dated 28 August 2012, the OCA found that the circumstances prior to the discovery of the loss of De Ocampo's check, together with the findings of Judge Eduarte, point to Ibay as the one fully responsible for the check's loss. Thus, the OCA recommended that:

(1) this case be TREATED as a regular administrative matter;

(2) respondent Elizabeth T. Ibay, Clerk II, Municipal Trial Court in Cities, Cauayan City, Isabela, be ADJUDGED GUILTY of dishonesty and be DISMISSED from the service with

forfeiture of all retirement benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations; and

(3) Ms. Ibay be REQUIRED to pay Ms. Geraldine V. De Ocampo, Court Interpreter, Municipal Trial Court, Cordon, Isabela, the amount of Three Thousand Pesos (Php3,000.00) within fifteen (15) days from notice, with legal interest from September 1999 until the same shall have been fully paid.[6]

The recommendations of the OCA are well-taken.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[7] Well-entrenched is the rule that substantial evidence, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the erring employee.[8] The standard of substantial evidence is satisfied where the employer, in this case the Court, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position.[9]

While there is no direct evidence to suggest that Ibay actually took the check, forged De Ocampo's signature and encashed the check, the surrounding circumstances point towards her administrative liability. The circumstances, as pointed out by the OCA, consist of the following:

First, per verification from the records of the Financial Management Office, OCA, the check in question in the name of x x x De Ocampo

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[6] *Id*. at 103.

[7] Rules of Court, Rule 133, Section 5.

[8] *Re: (1) Lost Checks Issued to the Late Melliza, Former Clerk II, MCTC, Zaragga, Iloilo; and (2) Dropping from the Rolls of Andres,* 537 Phil. 634 (2006).

[9] *Id*., citing *Reyno v. Manila Electric Co.*, 478 Phil. 830 (2004).

x x x was inadvertently mailed to the [MTCC-Cauayan], together with the checks intended for the Judge and personnel of the latter court, on September 2, 1999 under Registry Receipt No. 864. *Second,* while Mr. Villanueva, the Clerk of Court of the latter court, denied having received the check in question, based on the investigation of former Executive Judge Eduarte, it was respondent Ibay who took the envelope containing the check in question from the Post Office of Cauayan, Isabela, which she confirmed in her letter-comment dated September 28, 2001. *Third,* instead of handing over the said envelope to Mr. Villanueva, who is her immediate supervisor, respondent Ibay gave the same to Court Stenographer Meris, who insisted that the envelope was already open when respondent Ibay presented it to her. *Fourth*, the check in question was deposited with UCPB, Cauayan, Isabela Branch on September 9, 1999, or shortly after it was mailed to and received by the [MTCC-Cauayan] through respondent Ibay. *Fifth,* Ms. Semana, who owns a store inside a commercial complex in Cauayan, Isabela and who is into the business of rediscounting government checks, claimed that respondent Ibay "had been discounting her paychecks." *Finally,* as established by former Executive Judge Eduarte, there are "striking similarities" between the handwriting of respondent Ibay in the five-page Inventory of Cases of the [MTCC-Cauayan] and the handwritten name and signature of x x x De Ocampo, as well as the handwritten words "Turayong Cauayan, Isa." appearing at the dorsal portion of the check in question.[10]

Ibay admitted that she took the envelope from the post office and she gave the envelope containing only seven checks, without De Ocampo's check, to Meris. Ibay did not explain the whereabouts of De Ocampo's check, which the OCA found to have been inadvertently included in the envelope Ibay received from the post office. Ibay merely denied the charges against her. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value.[11]

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[10] *Rollo,* pp. 99-100.

[11] *Re: (1) Lost Checks Issued to the Late Melliza, Former Clerk II, MCTC, Zaragga, Iloilo; and (2) Dropping from the Rolls of Andres, supra* note 8, citing *Jugueta v. Estacio,* 486 Phil. 206 (2004).

In the absence of substantial defense to refute the charges against her, we hold Ibay liable for the loss of the check and the forgery of De Ocampo's signature, leading to the check's encashment. The case against Ibay is bolstered by the fact that Judge Eduarte found striking similarities between her handwriting in the inventory of cases and the forged endorsement in the check. Ibay even confirmed the same in her comment, where she admitted that her handwriting in the inventory bears similarities to that of the endorser of the check.

In fine, we find that there is substantial evidence to support Ibay's dismissal on the ground of dishonesty. In *Filoteo v. Calago*,[12] we held that stealing a check and encashing it is considered gross dishonesty. We defined dishonesty as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and lack of fairness and straightforwardness.[13]

Section 52(A) (1) of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that dishonesty is a grave offense punishable by dismissal from the service even when committed for the first time. In *Office of the Court Administrator v. Ibay*,[14] we found Ibay guilty of dishonesty for stealing and encashing a check of Magpantay. We suspended her for seven months without benefits, considering that she admitted the offense and she was not administratively charged in the past. Since this is no longer Ibay's first offense and we already warned her before that a similar act would warrant a more severe penalty, we now find it imperative to impose upon her the extreme penalty of dismissal from the service.

Time and again, we held that persons involved in the dispensation of justice, from the highest official to the lowest

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[12] 562 Phil. 474 (2007), citing *Judge Layosa v. Salamanca*, 455 Phil. 28 (2003) and *Court Administrator v. Sevillo*, 336 Phil. 931 (1997).

[13] *Id*., citing *Re: Administrative Case for Dishonesty Against Elizabeth Ting*, 502 Phil. 264 (2005).

[14] 441 Phil. 474 (2002).

clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service.[15] This Court will not tolerate dishonesty, for the judiciary deserves the best from all its employees.[16]

WHEREFORE, the Court finds respondent Elizabeth T. Ibay, Clerk II, Municipal Trial Court in Cities, Cauayan, Isabela, **GUILTY** of dishonesty. She is **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations. She is further directed to pay Geraldine V. De Ocampo the amount of Three Thousand (₱3,000.00) Pesos representing the face value of one (1) check she encashed plus 6% interest from September 1999 until the finality of this Decision.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Velasco, Jr., J., no part due to prior action in OCA.

Perez, J., no part, acted as DCA on matter.

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[15] *Civil Service Commission v. Perocho, Jr.*, 555 Phil. 156 (2007), citing *Office of the Court Administrator v. Capalan,* 513 Phil. 125 (2005).

[16] *Id.*, citing *Judge Salvador v. Serrano*, 516 Phil. 412 (2006).

EN BANC

[A.M. Nos. P-13-3116 & P-13-3112. November 12, 2013]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MS. ROSA A. ACAMPADO, CLERK OF COURT II, MUNICIPAL TRIAL COURT, TAFT, EASTERN SAMAR,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; THE CODE OF CONDUCT FOR COURT PERSONNEL; CANON 1 SECTION 5 AND CANON IV SECTIONS 1 AND 3 THEREOF VIOLATED BY THE RESPONDENT.— The Code of Conduct for Court Personnel prescribes the norms of conduct which are specific to personnel employed in the Judiciary. The specificity of these norms is due to "the special nature of [court personnel's] duties and responsibilities." Respondent Acampado violated the following provisions of the Code: CANON I FIDELITY OF DUTY x x x SECTION 5. Court personnel shall use the resources, property and funds under their official custody in a judicious manner and solely in accordance with the prescribed statutory and regulatory guidelines or procedures. CANON IV PERFORMANCE OF DUTIES SECTION 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours. x x x SECTION 3. Court personnel shall not alter, falsify, destroy or mutilate any record within their control. This provision does not prohibit amendment, correction or expungement of records or documents pursuant to a court order.

2. ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; SIGNIFIES DISREGARD OF DUTY DUE TO CARELESSNESS OR INDIFFERENCE; FAILURE TO COMPLY WITH THE DIRECTIVES OF THE OFFICE OF THE COURT ADMINISTRATOR MANIFESTS THE EMPLOYEE'S INDIFFERENCE TO THE LAWFUL DIRECTIVES OF

THE COURT.— In A.M. No. P-13-3116, respondent Acampado continued to disregard the Orders of this Court to submit additional documents required to complete the financial audit of her books of accounts. Her non-compliance even resulted in the withholding of her salaries, allowances, and other monetary benefits. Simple neglect of duty is defined as the "failure to give proper attention to a required task. It signifies disregard of duty due to carelessness or indifference." Respondent Acampado disregarded the directives sent to her on several occasions by this Court through the Court Management Office of the Office of the Court of the Administrator. She merely alleged that she could not produce on time the booklet of official receipts required from her since the booklet was among the documents damaged by water when a portion of the court had been gutted by fire. We said before that the failure of a respondent to comply with the Office of the Court Administrator's directives manifests his or her "indifference to the lawful directives" of this Court.

3. ID.; ID.; ID.; ID.; ID.; FAILURE TO SUBMIT THE ADDITIONAL DOCUMENTS REQUIRED FOR COMPLETION OF THE FINANCIAL AUDIT AMOUNTS TO SIMPLE NEGLECT, AND BELATED SUBMISSION THEREOF WILL NEITHER EXCULPATE NOR MITIGATE THE EMPLOYEE'S LIABILITY; PENALTY OF FINE OF FIVE THOUSAND PESOS IMPOSED FOR SIMPLE NEGLECT OF DUTY.— For respondent Acampado's failure to submit the additional documents required for completion of the financial audit, the Office of the Court Administrator correctly recommended that she be found guilty of simple neglect of duty and should, therefore, be fined the amount of Five Thousand Pesos (₱5,000.00). Under Rule 10, Section 46 (D) (1) of the Revised Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. Section 49 (b) of the same Rule provides that the minimum of the penalty shall be imposed when no mitigating and aggravating circumstances are present. Submission of the required documents belatedly neither exculpates nor mitigates respondent Acampado's liability. However, the payment of a fine in lieu of suspension

is available in grave, less grave, and light offenses when the penalty imposed is suspension for six (6) months or less. This Court has deemed it proper to impose the fine of Five Thousand Pesos (₱5,000.00) on erring court employees who committed simple neglect of duty. We impose the same penalty on respondent Acampado for disregarding her duty to turn over the required documents due to indifference in the face of several court directives.

4. ID.; ID.; ID.; ID.; THE MISAPPROPRIATION OF JUDICIARY FUNDS AND THE FALSIFICATION OF BANK DEPOSIT SLIPS AMOUNT TO GROSS DISHONESTY AND SERIOUS MISCONDUCT PUNISHABLE BY DISMISSAL; RESTITUTION OF THE SHORTAGES WILL NOT ERASE THE EMPLOYEE'S CULPABILITY.— In A.M. No. P-13-3112, respondent Acampado already admitted the acts charged by the Office of the Court Administrator which included the misappropriation of Judiciary funds and the falsification of bank deposit slips. For these, the Office of the Court Administrator found respondent Acampado guilty of gross dishonesty and serious misconduct punishable by dismissal: x x x Misappropriation of judiciary funds is a serious misconduct, a grave offense punishable by dismissal. Although, respondent Rosa A. Acampado was able to fully restitute the shortages, such act will not in any way erase her culpability. x x x Falsification of bank deposit slips is patent dishonesty. x x x Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary.

5. ID.; ID.; ID.; ID.; THE ACTS OF UNDER REMITTING FUNDS OF THE JUDICIARY, REMITTING CASH BEYOND THE REGLEMENTARY PERIOD, AND FALSIFYING BANK DEPOSITS ARE GRAVE OFFENSES THAT MERIT THE MOST SEVERE PENALTY OF DISMISSAL FROM SERVICE.— We disagree with the Office of the Court Administrator's recommendation to mitigate the respondent's liability and lower the penalty to be imposed. Under the Revised Rules on Administrative Cases in the Civil

Service, the acts of under-remitting funds of the Judiciary, remitting cash beyond the reglementary period, and falsifying bank deposits are grave offenses that merit the most severe penalty of dismissal from service.

6. ID.; ID.; ID.; ID.; ANY SHORTAGES IN THE AMOUNTS TO BE REMITTED AND THE DELAY IN THE ACTUAL REMITTANCE CONSTITUTE GROSS NEGLECT OF DUTY FOR WHICH THE CLERK OF COURT SHALL BE HELD ADMINISTRATIVELY LIABLE.— Clerks of Court are the custodians of the courts' "funds and revenues, records, properties, and premises." They are "liable for any loss, shortage, destruction or impairment" of those entrusted to them. Any shortages in the amounts to be remitted and the delay in the actual remittance "constitute gross neglect of duty for which the clerk of court shall be held administratively liable."

7. ID.; ID.; ID.; ID.; FAILURE OF THE CLERK OF COURT TO TURN OVER THE FUNDS OF THE JUDICIARY THAT WERE PLACED IN HER CUSTODY WITHIN THE PERIOD REQUIRED BY LAW CONSTITUTES GROSS MISCONDUCT AND GROSS NEGLECT OF DUTY.— Respondent Acampado committed gross neglect of duty and grave misconduct when she failed to turn over the funds of the Judiciary that were placed in her custody within the period required by law. We said in *Office of the Court Administrator v. Fueconcillo* that undue delay by itself in remitting collections, keeping the amounts, and spending it for the respondent's "family consumption, and fraudulently withdrawing amounts from the judiciary funds, collectively constitute gross misconduct and gross neglect of duty." Such behavior should not be tolerated as it denigrates this Court's image and integrity.

8. ID.; ID.; ID.; ID.; MISAPPROPRIATION OF JUDICIARY FUNDS, INCURRING CASH SHORTAGES, AND REPEATED FALSIFICATION OF BANK DEPOSIT SLIPS ARE SERIOUS ACTS OF DISHONESTY, AND THE RESTITUTION OF THE MISSING AMOUNTS WILL NOT RELIEVE THE ERRING EMPLOYEE OF HER LIABILITY.— Dishonesty is defined as the: [d]isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud,

deceive or betray. Under the Revised Rules on Administrative Cases in the Civil Service, serious dishonesty is a grave offense punishable by dismissal from service even if the offense was committed for the first time. Respondent Acampado's actions of misappropriating Judiciary funds and incurring cash shortages x x x are serious acts of dishonesty that betrayed the institution tasked to uphold justice and integrity for all. Moreover, respondent Acampado's act of repeatedly falsifying bank deposit slips is patent dishonesty that should not be tolerated by this Court. Restitution of the missing amounts will not relieve respondent Acampado of her liability.

9. ID.; ID.; ID.; THE COURT WILL NOT HESITATE TO RID ITS RANKS OF UNDESIRABLES WHO UNDERMINE ITS EFFORTS TOWARD AN EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE, THUS TAINTING ITS IMAGE IN THE EYES OF THE PUBLIC.— Those in the Judiciary "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 confidence in it." The institution demands "the best possible individuals in the service." "This Court will not hesitate to rid its ranks of undesirables who undermine its efforts toward an effective and efficient administration of justice, thus tainting its image in the eyes of the public." We said in *Office of the Court Administrator v. Bernardino* that: [W]e have not hesitated to impose the ultimate penalty. This Court had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system.

10. ID.; ID.; ID.; GROSS NEGLECT OF DUTY, GRAVE MISCONDUCT, AND SERIOUS DISHONESTY ARE GRAVE OFFENSES THAT MERIT DISMISSAL FROM THE SERVICE.— [T]his Court does not agree with the Office of the Court Administrator's recommendations of imposing the penalty of a fine equivalent to one (1) year's salary to be deducted from her retirement benefits, instead of dismissal from service as the law requires. Dismissal from service is the proper penalty to be imposed on respondent Acampado. Under Rule 10, Section 52 of the Revised Rules on Administrative Cases in the Civil Service, "the penalty of

dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations." In addition, Section 49 of Rule 10 in the Revised Rules on Administrative Cases in the Civil Service provides that: if the respondent is guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. In this case, respondent Acampado is found guilty of more than two charges, which are gross neglect of duty and grave misconduct, and serious dishonesty. All offenses are grave offenses that merit dismissal from service.

RESOLUTION

PER CURIAM:

"Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility."[1] Court personnel are expected to act in a manner free from reproach. Medical treatment of a sick husband does not excuse the actions of the respondent who repeatedly deceived this Court by misusing court funds, falsifying public documents, and failing to comply with orders.

For resolution are two consolidated administrative cases where the respondent is charged with failing to submit the documents required by the Fiscal Monitoring Division of this Court; failing to remit her collections on time; and submitting falsified bank deposit slips. A.M. No. P-13-3116 (*Formerly* A.M. No. 07-11-299-MTC) pertains to the Report on the Non-compliance of respondent Rosa A. Acampado, Clerk II, Municipal Trial Court, Taft, Eastern Samar, to submit additional documents for financial audit. A.M. No. P-13-3112 (*Formerly* A.M. OCA IPI No. 09-3164-P) pertains to the Report on the Financial Audit conducted on the books of account of Rosa A. Acampado and

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[1] *Office of the Court Administrator v. Fontanilla*, A.M. No. P-12-3086, September 18, 2012, 681 SCRA 17, 25.

Jean Gladys N. Lobina of the Municipal Trial Court, Taft, Eastern Samar.

Then Senior Deputy Court Administrator Zenaida N. Elepaño in her Memorandum[2] informed this Court that Rosa A. Acampado, Clerk II, failed to submit to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, the additional documents required to finalize the audit examination of her books of accounts.[3] Respondent Acampado failed to comply despite several warnings and follow-up communications sent by the Office of the Court Administrator.[4] Senior Deputy Court Administrator Elepaño then requested that the salaries, allowances, and other monetary benefits of respondent Acampado be withheld until compliance is made.[5]

Consequently, in a Resolution dated December 12, 2007, this Court withheld respondent Acampado's salaries, allowances, and other monetary benefits until compliance was duly effected as an exception to Administrative Circular No. 2-2000[6] to avoid misuse of government funds and to protect this Court's interest.

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[2] This Memorandum dated October 31, 2007 was docketed as A.M. No. P-13-3116.

[3] A.M. No. P-13-3116, *rollo*, p. 1.

[4] *Id*. at 2, 9, 15, and 17.

[5] *Id*.

[6] This Administrative Circular No. 2-2000 was dated April 12, 2000 and entitled "GUIDELINES ON WITHHOLDING OF SALARIES AND OTHER MONETARY BENEFITS OR SET-OFF AGAINST SALARIES OF ALLEGEDLY ERRONEOUSLY RELEASED MONETARY BENEFITS." The Administrative Circular provides that the Office of the Court Administrator may not unilaterally withhold the salaries and other monetary benefits of judges, court officials, and employees for non-compliance with administrative orders, circulars or for any infractions of misfeasance the Office of the Court Administrator may deem as a sufficient cause to withhold such salaries or benefits. The Circular also provides that "neither may the Office of the Court Administrator unilaterally withhold salary checks of judges and court officials and employees as a means to set off or enforce refund for monetary benefits claimed to have been erroneously or even illegally released to them."

This Court also noted the Memorandum dated October 31, 2007 of the Office of the Court Administrator.[7]

In a Memorandum dated February 19, 2009, the Financial Audit Team headed by Ms. Cielo D. Calonia submitted a report to then Court Administrator and now Associate Justice of this Court, Jose P. Perez.[8] The audit team found that Clerk of Court II, Ms. Rosa Acampado, who was then in charge of the collections of the court, incurred cash shortages in her books of accounts and falsified or tampered bank deposit slips. The team found shortages amounting to One Hundred Thousand Four Hundred Seventy-eight Pesos and Thirty-Three Centavos (₱100,478.33).[9] According to the audit team:

> It is clear that she committed gross neglect of duty and gross dishonesty and even malversation of public funds when she failed to turn over on time her collections (JDF, SAJF, MF, Fiduciary fund) and altered/tampered deposit slips and official receipts to cover-up collections. x x x.
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> xxx xxx xxx
>
> There is no question that Ms. Rosa A. Acampado committed the act of dishonesty in unreported collections of cash bond under Official Receipt Numbers 5581801 to 5581823 totalling to Sixty-Five Thousand Five Hundred Sixty Pesos (₱65,560.00) and altering deposit slips and official receipts during her accountability period.[10]

In a Resolution dated April 15, 2009, this Court treated the Memorandum dated February 19, 2009 of the Office of the Court Administrator as an administrative charge for gross neglect of duty and dishonesty.[11] This Court also consolidated A.M. No. 09-3-41-MTC (*Report on the Financial Audit Conducted on the Books of Account of Ms. Rosa A. Acampado and Ms.*

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[7] A.M. No. P-13-3116, *rollo*, p. 25.

[8] A.M. No. P-13-3112, *rollo*, pp. 3-13.

[9] *Id.* at 10.

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

[11] *Id.* at 75.

Jean Gladys N. Lobina of the Municipal Trial Court, Taft, Eastern Samar) with A.M. No. 07-11-299-MTC (*Report on the Non-Compliance of Ms. Rosa A. Acampado, Clerk of Court II, Municipal Trial Court [MTC], Taft, Eastern Samar to Submit Additional Documents for Financial Audit*).[12] In the same Resolution, Hon. Chita A. Umil, Presiding Judge of the Municipal Trial Court, Taft, Eastern Samar, was directed to: (1) investigate the extent of respondent Acampado's responsibilities in relation to the tampered deposit slips and falsification of official receipts for Fiduciary Fund and submit her report and recommendation within thirty (30) days from receipt of notice; and (2) monitor and advise the Officer-in-Charge to strictly follow the Supreme Court Circulars on the proper handling of Judiciary funds.[13]

Respondent Acampado's salaries and allowances were withheld from February 2008 to April 15, 2009 but were subsequently released by this Court for humanitarian considerations.[14] The release was subject to the condition that Fifty Thousand Pesos (₱50,000.00) would be "retained/set aside" to answer for whatever penalty this Court may impose upon her.[15]

In a Letter dated June 10, 2009, Judge Umil asked that she be relieved from the task of investigating respondent Acampado to maintain the harmonious atmosphere in her office and to maintain neutrality.[16] After granting Judge Umil's request to inhibit herself, this Court referred the matter to Judge Renato Noel C. Echague, Metropolitan Trial Court, Can-avid, Eastern Samar, for investigation, report, and recommendation. Judge Echague then submitted his Findings and Recommendations dated July 15, 2010 to the Office of the Court Administrator.[17]

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[12] *Id*.

[13] *Id*.

[14] *Id*. at 76.

[15] *Id*.

[16] *Id*. at 78.

[17] *Id*. at 86.

The Office of the Court Administrator submitted its evaluation, report, and recommendation on Judge Echague's findings on February 9, 2011.

In an Indorsement dated September 3, 2012, the Deputy Ombudsman for the Visayas resolved to refer for appropriate action the case against respondent Acampado for Malversation of Public Funds[18] and deemed the case closed and terminated in so far as the Office of the Ombudsman was concerned.

The issues for resolution in this case are:

I. Whether respondent Acampado is guilty of gross misconduct and gross neglect of duty;

II. Whether respondent Acampado should be dismissed from service; and

III. Whether mitigating circumstances should be considered in this case.

Findings and Recommendations of the Investigating Judge

Judge Echague found that respondent Acampado incurred the following cash shortages in her collections: (1) ₱23,712.53 for the Judiciary Development Fund; (2) ₱58,285.80 for the Special Allowance for the Judiciary Fund; and (3) ₱5,000.00 for the Mediation Fund, amounting to a total of Eighty-six Thousand Nine Hundred Ninety-eight Pesos and Thirty-three Centavos (₱86,998.33).[19]

After hearing respondent Acampado's admission that she under-remitted Judiciary funds and falsified bank deposit slips, Judge Echague found her guilty of gross misconduct and gross neglect of duty punishable by dismissal from service for failing to turn over cash on time. She is also guilty of dishonesty and falsification of public documents for falsifying bank deposit slips. For failing to submit the additional documents, she is guilty of simple neglect of duty.

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[18] OMB-V-C-10-0194-D.

[19] A.M. No. P-13-3112, *rollo*, p. 168.

However, in view of mitigating circumstances, such as respondent Acampado's admission, remorse, length of service, and the fact that this is her first administrative case, Judge Echague recommended that she be given the following penalties:

1. In A.M. No. 07-11-299-MTC (Failure of Ms. Acampado to submit additional documents needed for financial audit), she is guilty of simple neglect of duty. Accordingly, it is recommended that she be fined Five Thousand Pesos (₱5,000.00).

2. In A.M. No. OCA I.P.I. No. 09-3164-P (Report on the Financial Audit on the books of account of MTC, Taft, Eastern Samar), Ms. Acampado is guilty of gross misconduct and gross neglect of duty for her failure to remit on time her collections. Ms. Acampado is likewise guilty of dishonesty and falsification of public documents for falsifying bank deposit slips. Accordingly, it is respectfully recommended that for these two infractions, she be fined an amount equivalent to six (6) months of her salary to be deducted from her retirement benefits.[20]

Respondent's Arguments

In the hearing which she requested[21] and in lieu of her Comment, respondent Acampado asked this Court for forgiveness. She explained that the shortages were due to under-remittance. She was tempted to use the money for the medical check-ups and medication of her husband who was insulin-dependent due to diabetes and who had been undergoing dialysis treatment.[22]

She also admitted that she falsified 19 Land Bank of the Philippines deposit slips as well as additional 20 bank deposit slips.[23] She prepared the bank deposit slips but failed to go to the bank. She was rattled by the presence of the audit team, and she just surrendered the falsified slips to the team. Respondent Acampado also stated that she already fully restituted the cash shortages in the amount of Eighty-six Thousand Nine Hundred

[20] *Id*. at 172.

[21] Letter dated July 7, 2010, A.M. No. P-13-3112, *rollo*, p. 182.

[22] *Id*. at 185.

[23] *Id*. at 187.

Ninety-eight Pesos and Thirty-three Centavos (₱86,998.33). On her non-compliance to submit additional records needed to finalize the audit, she explained that these records were damaged by water used to put out a fire that had gutted a portion of the municipal hall.[24]

This Court referred the Findings and Recommendations dated July 15, 2010 of Judge Echague to the Office of the Court Administrator for evaluation, report, and recommendation.

Office of the Court Administrator's Report and Recommendations

The Office of the Court Administrator adopted the findings of the investigating judge with modification. According to the Office of the Court Administrator, a clerk of court's failure to make a timely turnover of cash deposited with him or her constitutes not only gross negligence in the performance of duty but also gross dishonesty, if not malversation.[25] The Office of the Court Administrator said that misappropriation of Judiciary funds amounts to a serious misconduct. It is "a grave offense punishable by dismissal."[26] Restitution of the total cash shortages will not erase his or her liability.[27]

The Office of the Court Administrator also said that "falsification of bank deposit slips is patent dishonesty."[28] Dishonesty, as a grave offense, "carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in government service."[29]

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[24] *Id*. at 191.

[25] *Id*. at 225-230. Memorandum dated February 9, 2011, pp. 4-6 *citing Office of the Court Administrator v. Bernardino*, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88.

[26] *Id*. at 229.

[27] *Id*.

[28] *Id*.

[29] *Id*.

However, the Office of the Court Administrator considered certain mitigating circumstances in this case. The Office of the Court Administrator noted how respondent Acampado readily acknowledged the offenses and offered her sincerest apologies. This is also the first time that she was charged with an administrative case. Lastly, the length of service of respondent Acampado, which was more than thirty years (30), was also considered.

The Office of the Court Administrator recommended that:

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2. **respondent Rosa A. Acampado** be found **GUILTY** of simple neglect of duty in A.M. No. 07-11-299-MTC (failure of Ms. Acampado to submit additional documents needed for financial audit) and be **FINED** in the amount of Five Thousand Pesos (₱5,000.00); and likewise be found **GUILTY** of: *(a)* gross misconduct and gross neglect of duty for her failure to remit on time her collections; and *(b)* dishonesty and falsification of public documents for falsifying bank deposit slips in A.M. OCA IPI No. 09-3164-P (Report on the Financial Audit on the books of account of MTC, Taft, Eastern Samar); that she be **FINED** in the amount equivalent to one (1) year of her salary to be deducted from her retirement benefits; and

3. the Presiding Judge of Municipal Trial Court, Taft, Eastern Samar, be **DIRECTED** to **MONITOR** all financial transactions of the court in strict adherence to the issuances of the Court on the proper finding of all judiciary funds, otherwise, he/she shall be equally liable for the infractions committed by the employees under his/her command and supervision.[30]

We agree with the recommendations of the Office of the Court Administrator regarding respondent Acampado's liabilities. However, we disagree with the recommended penalty to be imposed on her.

This is not the first time that this Court has disciplined an erring and dishonest court employee for misappropriating Judiciary funds and falsifying public documents under his or

[30] *Id*. at 230.

her control. In *Rojas, Jr. v. Mina*,[31] we found the respondent guilty of gross misconduct and dishonesty for stealing and encashing Special Allowance for Judges and Justices checks payable to several trial court judges without their consent. In *Office of the Court Administrator v. Elumbaring*,[32] we held that the respondent was guilty of dishonesty for failing to remit the Judiciary Development Fund and Special Allowance for the Judiciary Fund collections in full and on time. Similarly, in *Court Administrator v. Abdullahi*,[33] we said that falsification of Daily Time Records amounts to dishonesty, and dismissal from service is proper even if the offense was committed for the first time.

The Code of Conduct for Court Personnel[34] prescribes the norms of conduct which are specific to personnel employed in the Judiciary.[35] The specificity of these norms is due to "the special nature of [court personnel's] duties and responsibilities."[36]

Respondent Acampado violated the following provisions of the Code:

CANON I
FIDELITY OF DUTY

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SECTION 5. Court personnel shall use the resources, property and funds under their official custody in a judicious manner and solely in accordance with the prescribed statutory and regulatory guidelines or procedures.

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[31] A.M. No. P-10-2867, June 19, 2012, 673 SCRA 592.

[32] A.M. No. P-10-2765, September 13, 2011, 657 SCRA 453.

[33] A.M. No. P-02-1560, March 20, 2002, 379 SCRA 521.

[34] A.M. No. 03-06-13-SC, Effective June 1, 2004.

[35] *Id.*, 5th Whereas Clause.

[36] *Id.*

CANON IV
PERFORMANCE OF DUTIES

SECTION 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

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SECTION 3. Court personnel shall not alter, falsify, destroy or mutilate any record within their control.

This provision does not prohibit amendment, correction or expungement of records or documents pursuant to a court order.

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In A.M. No. P-13-3116,[37] respondent Acampado continued to disregard the Orders of this Court to submit additional documents required to complete the financial audit of her books of accounts. Her non-compliance even resulted in the withholding of her salaries, allowances, and other monetary benefits.[38]

Simple neglect of duty is defined as the "failure to give proper attention to a required task. It signifies disregard of duty due to carelessness or indifference."[39] Respondent Acampado disregarded the directives sent to her on several occasions by this Court through the Court Management Office of the Office of the Court of the Administrator. She merely alleged that she could not produce on time the booklet of official receipts required from her since the booklet was among the documents damaged by water when a portion of the court had been gutted by fire.[40] We said before that the failure of a respondent to comply with

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[37] *Report on the non-compliance of Rosa A. Acampado, MTC-Taft, Eastern Samar, to submit additional documents for financial audit.*

[38] A.M. No. P-13-3116, *rollo*, p. 24.

[39] *Tolentino-Fuentes v. Galindez*, A.M. No. P-07-2410, June 18, 2010, 621 SCRA 189, 194-195 *citing Atty. Dajao v. Lluch*, 429 Phil. 620, 626 (2002).

[40] A.M. No. P-13-3112, *rollo*, p. 191.

the Office of the Court Administrator's directives manifests his or her "indifference to the lawful directives"[41] of this Court.

For respondent Acampado's failure to submit the additional documents required for completion of the financial audit, the Office of the Court Administrator correctly recommended that she be found guilty of simple neglect of duty and should, therefore, be fined the amount of Five Thousand Pesos (₱5,000.00). Under Rule 10, Section 46 (D) (1) of the Revised Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. Section 49 (b) of the same Rule provides that the minimum of the penalty shall be imposed when no mitigating and aggravating circumstances are present. Submission of the required documents belatedly neither exculpates nor mitigates respondent Acampado's liability.[42]

However, the payment of a fine in lieu of suspension is available in grave, less grave, and light offenses when the penalty imposed is suspension for six (6) months or less.[43] This Court has deemed it proper to impose the fine of Five Thousand Pesos (₱5,000.00) on erring court employees who committed simple neglect of duty.[44] We impose the same penalty on respondent Acampado for disregarding her duty to turn over the required documents due to indifference in the face of several court directives.

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[41] *Sesbreño v. Gako, Jr.*, A.M. No. RTJ-08-2144, November 3, 2008, 570 SCRA 398, 407.

[42] *See Failure of Atty. Jacinto B. Peñaflor, Jr., Clerk of Court VI, Regional Trial Court, San Jose, Camarines Sur, to Submit the Required Monthly Report of Collections, Deposits, and Withdrawals*, A.M. No. P-07-2339, August 20, 2008, 562 SCRA 373.

[43] Revised Rules on Administrative Cases in the Civil Service (2011), Rule 10, Sec. 47 (2).

[44] *See Office of the Court Administrator v. Paredes*, A.M. No. P-06–2103, April 17, 2007, 521 SCRA 365; *Vda. de Feliciano v. Rivera*, A.M. No. P-11-2920, September 19, 2012, 681 SCRA 323. *See also Office of the Court Administrator v. Go*, A.M. No. MTJ-07-1667, April 10, 2012, 669 SCRA 1.

In A.M. No. P-13-3112,[45] respondent Acampado already admitted the acts charged by the Office of the Court Administrator which included the misappropriation of Judiciary funds and the falsification of bank deposit slips.[46] For these, the Office of the Court Administrator found respondent Acampado guilty of gross dishonesty and serious misconduct punishable by dismissal:

> x x x Misappropriation of judiciary funds is a serious misconduct, a grave offense punishable by dismissal. Although, respondent Rosa A. Acampado was able to fully restitute the shortages, such act will not in any way erase her culpability.
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> xxx xxx xxx
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> Falsification of bank deposit slips is patent dishonesty. x x x Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary.[47]

Despite the pronouncements made by the Office of the Court Administrator regarding respondent Acampado's actions and her failure to meet the high ethical standards expected of court employees, the Office of the Court Administrator still considered certain allegedly mitigating circumstances. According to the Office of the Court Administrator, respondent Acampado's ready acknowledgment of her actions, her sincerest apologies, her length of service in the Judiciary, and the fact that this is the first time she committed the offenses may be considered as extenuating circumstances.[48] Consequently, the Office of the Court Administrator reduced its recommended penalty from dismissal to a fine in the amount equivalent to one (1) year of her salary to be deducted from her retirement benefits.

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[45] *Report on the Financial Audit on the Books of Account of the MTC-Taft, Eastern Samar*.

[46] A.M. No. P-13-3112, *rollo*, p. 168.

[47] *Id*. at 229.

[48] *Id*.

We disagree with the Office of the Court Administrator's recommendation to mitigate the respondent's liability and lower the penalty to be imposed.

Under the Revised Rules on Administrative Cases in the Civil Service, the acts of under-remitting funds of the Judiciary, remitting cash beyond the reglementary period, and falsifying bank deposits are grave offenses that merit the most severe penalty of dismissal from service.[49]

Gross Neglect of Duty and Grave Misconduct

Clerks of Court are the custodians of the courts' "funds and revenues, records, properties, and premises."[50] They are "liable for any loss, shortage, destruction or impairment"[51] of those entrusted to them. Any shortages in the amounts to be remitted and the delay in the actual remittance "constitute gross neglect

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[49] Revised Rules on Administrative Cases in the Civil Service (2011), Rule 10, Sec. 46.

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 grave offenses shall be punishable by dismissal from the service:

a. Serious Dishonesty;
b. Gross Neglect of Duty;
c. Grave Misconduct;
d. Being Notoriously Undesirable;
e. Conviction of a crime involving moral turpitude;
f. Falsification of official document;
g. Physical or mental incapacity or disability due to immoral or vicious habits;

[50] *See* Section B, Chapter 1 of the 1991 Manual for Clerks of Court as amended by the 2002 Revised Manual for Clerks of Court, p. 4. *See also Office of the Court Administrator v. Canque,* A.M. No. P-04-1830, June 4, 2009, 588 SCRA 226.

[51] *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408, 411. *See also Office of the Court Administrator v. Fontanilla*, A.M. No. P-12-3086, September 18, 2012, 681 SCRA 17 *citing Office of the Court Administrator v. Lising*, A.M. No. P-03-1736, March 8, 2005, 453 SCRA 16, 22.

of duty for which the clerk of court shall be held administratively liable."[52]

Respondent Acampado committed gross neglect of duty and grave misconduct when she failed to turn over the funds of the Judiciary that were placed in her custody within the period required by law. We said in *Office of the Court Administrator v. Fueconcillo* that undue delay by itself in remitting collections, keeping the amounts, and spending it for the respondent's "family consumption, and fraudulently withdrawing amounts from the judiciary funds, collectively constitute gross misconduct and gross neglect of duty."[53] Such behavior should not be tolerated as it denigrates this Court's image and integrity.

Serious Dishonesty

Dishonesty is defined as the:

> [d]isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[54]

Under the Revised Rules on Administrative Cases in the Civil Service, serious dishonesty is a grave offense punishable by

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[52] *Office of the Court Administrator v. Fontanilla*, A.M. No. P-12-3086, September 18, 2012, 681 SCRA 17, 24.

[53] A.M. No. P-06-2208, August 26, 2008, 563 SCRA 226, 236.

[54] (*Re: Alleged Anomaly that transpired in LRC Case No. 181 tried before RTC, Branch 31,Cabarroguis, Quirino) Executive Judge Menrado V. Corpuz, Regional Trial Court, Branch 38, Maddela, Quirino v. Max Ramiterre, Civil Docket Clerk, et al.*, A.M. No. P-04-1779, November 25, 2005, 476 SCRA 108, 121 *citing Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, A.M. No. 2001-7-SC & No. 2001-8-SC, July 22, 2005, 464 SCRA 1; *Office of the Court Administrator v. Yan*, A.M. No. P-98-1281, April 27, 2005, 457 SCRA 389; *Alabastro v. Moncada, Sr.*, A.M. No. P-04-1887 (Formerly OCA IPI No. 03-1645-P), December 16, 2004, 447 SCRA 42.

dismissal from service even if the offense was committed for the first time.[55]

Respondent Acampado's actions of misappropriating Judiciary funds and incurring cash shortages in the amounts of 1) Twenty-three Thousand Seven Hundred Twelve Pesos and Fifty–three Centavos (₱23,712.53) for the Judiciary Development Fund; 2) Fifty-eight Thousand Two Hundred Eighty-five Pesos and Eighty Centavos (₱58,285.80) for the Special Allowance for the Judiciary; and 3) Five Thousand Pesos (₱5,000.00) for the Mediation Fund (MF), totaling to Eighty-six Thousand Nine Hundred Ninety-eight Pesos and Thirty-three Centavos (₱86,998.33) are serious acts of dishonesty that betrayed the institution tasked to uphold justice and integrity for all. Moreover, respondent Acampado's act of repeatedly falsifying bank deposit slips is patent dishonesty that should not be tolerated by this Court. Restitution of the missing amounts will not relieve respondent Acampado of her liability.[56]

Those in the Judiciary "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 confidence in it."[57] The institution demands "the best possible individuals in the service."[58] "This Court will not hesitate to rid its ranks of

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[55] Revised Rules on Administrative Cases in the Civil Service (2011), Rule 10, Sec. 46.

[56] *See Re: Withholding of Other Emoluments of the following Clerks of Court: ELSIE C. REMOROZA of the Municipal Trial Court (MTC) of Mauban, Quezon; ELENA P. REFORMADO of the MTC of Guinayangan, Quezon; EUGENIO STO. TOMAS of the MTC of Cabuyao, Laguna; MAURA D. CAMPAÑO of the MTC of San Jose, Occidental Mindoro; ELEANOR D. FLORES of the Municipal Circuit Trial Court (MCTC) of Taytay, Palawan; and JESUSA P. BENIPAYO of the MCTC of Ligao, Albay*, A.M. No. 01-4-133-MTC, August 26, 2003, 409 SCRA 574.

[57] *Code of Conduct for Court Personnel*. *See Anonymous Complaint Against Sheriff Sales T. Bisnar, Regional Trial Court, Branch 78, Morong, Rizal*, A.M. No. 05-7-458-RTC, August 25, 2005, 468 SCRA 17.

[58] *Cabanatan v. Molina*, A.M. No. P-01-1520, November 21, 2001, 370 SCRA 16, 26.

undesirables who undermine its efforts toward an effective and efficient administration of justice, thus tainting its image in the eyes of the public."[59]

We said in *Office of the Court Administrator v. Bernardino*[60] that:

> [W]e have not hesitated to impose the ultimate penalty. This Court had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system.[61]

Again, this Court does not agree with the Office of the Court Administrator's recommendations of imposing the penalty of a fine equivalent to one (1) year's salary to be deducted from her retirement benefits, instead of dismissal from service as the law requires. Dismissal from service is the proper penalty to be imposed on respondent Acampado. Under Rule 10, Section 52 of the Revised Rules on Administrative Cases in the Civil Service, "the penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations." In addition, Section 49 of Rule 10 in the Revised Rules on Administrative Cases in the Civil Service provides that:

> if the respondent is guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

In this case, respondent Acampado is found guilty of more than two charges, which are gross neglect of duty and grave misconduct, and serious dishonesty. All offenses are grave offenses that merit dismissal from service.

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[59] *Id*.

[60] A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88.

[61] *Id*. at 119-120.

WHEREFORE, respondent Rosa A. Acampado is found **GUILTY** of the following:

i. **SIMPLE NEGLECT OF DUTY** in A.M. No. P-13-3116 for failing to submit the additional documents required for financial audit and is **FINED** the amount of Five Thousand Pesos (₱5,000.00);

ii. **GRAVE MISCONDUCT** and **GROSS NEGLECT OF DUTY** in A.M. No. P-13-3112 for failing to remit on time her collections and **SERIOUS DISHONESTY** for misappropriating funds of the Judiciary and falsifying bank deposit slips. She is **DISMISSED FROM THE SERVICE** with forfeiture of retirement benefits, perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Presiding Judge of Municipal Trial Court, Taft, Eastern Samar, is **DIRECTED to MONITOR** all financial transactions of the court in strict adherence to the issuances of this Court on the proper handling of all Judiciary funds. He or she shall be equally liable for the infractions committed by the employees under his or her command and supervision.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Perez, J., no part, acted as Court Administrator.

EN BANC

[G.R. No. 187854. November 12, 2013]

RAY PETER O. VIVO, *petitioner, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; THE ESSENCE OF ADMINISTRATIVE DUE PROCESS IS A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals* elaborates on the well-established meaning of due process in administrative proceedings in this wise: x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.

2. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; DEFECTS IN THE OBSERVANCE OF DUE PROCESS IS CURED BY THE FILING OF A

MOTION FOR RECONSIDERATION; APPLICATION IN CASE AT BAR.— Any procedural defect in the proceedings taken against the petitioner was cured by his filing of the motion for reconsideration and by his appealing the adverse result to the CSC. The Court held in *Gonzales v. Civil Service Commission* that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard. In *Autencio v. Mañara*, the Court observed that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of. The petitioner was not denied due process of law, for he was afforded the fair and reasonable opportunity to explain his side. That, to us, was sufficient to meet the requirements of due process.

APPEARANCES OF COUNSEL

Jimenea & Associates Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

By petition for review on *certiorari*, the petitioner seeks the review and reversal of the decision promulgated on February 27, 2009,[1] whereby the Court of Appeals (CA) reversed and set aside the resolutions of the Civil Service Commission (CSC) dated April 11, 2007[2] and August 1, 2007.[3]

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[1] *Rollo*, pp. 32-42; penned by Associate Justice Edgardo P. Cruz (retired), and concurred in by Associate Justice Vicente S.E. Veloso, and Associate Justice Ricardo R. Rosario.

[2] *Id.* at 194-203.

[3] *Id.* at 205-210.

Also under review is the denial by the CA of the petitioner's motion for reconsideration through the resolution promulgated May 11, 2009.[4]

Antecedents

The petitioner was employed by respondent Philippine Amusement and Gaming Corporation (PAGCOR) on September 9, 1986, and was PAGCOR's Managing Head of its Gaming Department at the time of his dismissal from office.[5] On February 21, 2002, he received a letter from Teresita S. Ela, the Senior Managing Head of PAGCOR's Human Resources Department, advising that he was being administratively charged with gross misconduct, rumor-mongering, conduct prejudicial to the interest of the company, and loss of trust and confidence;[6] that he should submit a written explanation of the charges; and that he was at the same time being placed under preventive suspension.[7]

On February 26, 2002, the petitioner's counsel, replying to Ela's letter, assailed the propriety of the show-cause memorandum as well as the basis for placing the petitioner under preventive suspension.

On March 14, 2002, the petitioner received the summons for him to attend an administrative inquiry, instructing him to appear before PAGCOR's Corporate Investigation Unit (CIU) on March 15, 2002.[8] At the petitioner's request, however, the inquiry was conducted at his residence on said date. His statement was taken in a question-and-answer format. He was also furnished the memorandum of charges that recited the accusations against him and indicated the acts and omissions constituting his alleged offenses. The memorandum of charges was based on the statements of PAGCOR personnel who had personal knowledge

[4] *Id.* at 43.

[5] *Id.* at 4.

[6] *Id.* at 32.

[7] *Id.*

[8] *Id.* at 33.

of the accusations against him. However, when his counsel requested to be furnished copies of the statements, PAGCOR rejected the request on the ground that he had already been afforded the sufficient opportunity to confront, hear, and answer the charges against him during the administrative inquiry. The petitioner was then allowed to submit his answer on March 26, 2002.

Thereafter, the CIU tendered its investigation report to PAGCOR's Adjudication Committee.[9]

The Adjudication Committee summoned the petitioner to appear before it on May 8, 2002 in order to address questions regarding his case. His counsel moved for the re-scheduling of the meeting because he would not be available on said date, but the Adjudication Committee denied the request upon the reason that the presence of counsel was not necessary in the proceedings. His counsel moved for the reconsideration of the denial of the request.[10]

The petitioner received the letter dated May 15, 2002 from Ela informing him of the resolution of the PAGCOR Board of Directors in its May 14, 2002 meeting to the effect that he was being dismissed from the service.[11]

After the petitioner's motion for reconsideration *vis-à-vis* the resolution of the PAGCOR Board of Directors dismissing him from the service was denied, he appealed his dismissal to the CSC.

In its resolution dated April 11, 2007, the CSC ruled that PAGCOR had violated the petitioner's right to due process, and accordingly set aside his dismissal from the service, *viz*:

In fine, the Commission finds that the right of Vivo to due process was violated when he was ousted from his office without the

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[9] *Id*. at 33-34.

[10] *Id*. at 34.

[11] *Id*. at 11.

corresponding Board Resolution that should have set out the collegial decision of the PAGCOR Board of Directors.

WHEREFORE, foregoing premises considered, the appeal of Ray Peter O. Vivo is hereby **GRANTED**. The letters dated May 15, 2002 and June 5, 2002 issued by Teresita S. Ela, Senior Managing Head, Human Resource Department, Philippine Amusement and Gaming Corporation (PAGCOR), are SET ASIDE.[12]

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The CSC remanded the case to PAGCOR with the instruction for PAGCOR to complete its reinvestigation within three months from receipt of the resolution.

After the CSC denied its motion for reconsideration, PAGCOR elevated the case to the CA.

On February 27, 2009, the CA promulgated its decision reversing and setting aside the decision of the CSC upon its finding that the petitioner had been accorded procedural due process. The CA remanded the case to the CSC for the determination of the appeal of the petitioner on the merits, specifically the issue of whether the dismissal had been for cause.[13]

Hence, this appeal.

Issue

The petitioner raises the following issues, namely:

1. The conclusion of the Court of Appeals that Petitioner's right for (*sic*) due process was not violated transgressed (*sic*) the fundamental rules in administrative due process.
2. The Court of Appeals decision in setting aside CSC Resolutions Nos. 070732, dated 01 April 2007, and 071485, dated 01 August 2007, is contrary to the Uniform Rules on Administrative Cases in the Civil Service and settled jurisprudence.[14]

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[12] *Id*. at 202-203.

[13] *Id.* at 41.

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

The petitioner would have the Court hold that PAGCOR's failure to furnish him a copy of the Board Resolutions authorizing his dismissal and denying his motion for reconsideration was a fatal and irreparable defect in the administrative proceedings that ultimately resulted in the illegality of his dismissal from the service. He further argues that he was denied due process by PAGCOR's refusal to re-schedule the Adjudication Committee meeting in order to enable his counsel to attend the meeting with him, because the refusal constituted a violation of his right to be represented by counsel.

Ruling

The petition for review lacks merit.

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[15] Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary,[16] and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals*[17] elaborates on the well-established meaning of due process in administrative proceedings in this wise:

x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative

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[15] *Office of the Ombudsman v. Reyes*, G.R. No. 170512, October 5, 2011, 658 SCRA 626, 640; citing *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

[16] *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 505, cited in *Pat-og, Sr. v. CSC*, G.R. No. 198755, June 5, 2013.

[17] G.R. No. 166780, December 27, 2007, 541 SCRA 444.

proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[18]

The petitioner actively participated in the entire course of the investigation and hearings conducted by PAGCOR. He received the letter from Ela apprising him of his being administratively charged for several offenses, and directing him to submit an explanation in writing. He was later on properly summoned to appear before the CIU, which conducted its proceedings in his own residence upon his request. During the administrative inquiry, the CIU served him a copy of the memorandum of charges, which detailed the accusations against him and specified the acts and omissions constituting his alleged offenses. He was also given the opportunity to appear before the Adjudication Committee to answer clarificatory questions. Lastly, he was informed through a memorandum of the decision of the Board of Directors dismissing him from the service.

In contrast, the petitioner could not dispute the observance of his right to due process by PAGCOR as set forth herein. He made no credible showing of the supposed violation of his right to due process. He was heard through the written statement he submitted in response to the memorandum of the charges against him. He actively participated in the administrative inquiry conducted by the CIU at his own residence. He was afforded the opportunity to clarify his position in the proceedings before the Adjudication Committee. He was also able to appeal the adverse decision to dismiss him from the service to the CSC. There is also no question that PAGCOR complied with the twin-notice requirement prior to the termination of his employment, the first notice being made through Ela's letter dated February 21, 2002 informing him on his being administratively charged for the offenses mentioned, and the second being through the

[18] *Id.* at 451-452.

letter dated May 15, 2002 advising him that PAGCOR's Board of Directors had resolved to dismiss him from the service. It is settled that there is no denial of procedural due process where the opportunity to be heard either through oral arguments or through pleadings is accorded.[19]

The petitioner takes the CA to task for not considering: (1) PAGCOR's failure to furnish him copies of the Board Resolutions referred to by Ela in the memorandum served on him, and (2) the refusal of PAGCOR to have him be represented by counsel.

The petitioner cannot be sustained.

As the CA found, and correctly so, the petitioner's pleadings explicitly admitted that his dismissal had been effected through board resolutions. That he was not furnished copies of the board resolutions did not negate the existence of the resolutions, and did not invalidate the contents of the board resolutions. It is beyond question that he was duly informed of the subject-matter of the board resolutions. Consequently, the CSC's conclusion that his dismissal had been unauthorized was unfounded. In any case, even assuming for the sake of argument that there was no board resolution approving his dismissal, the lapse did not render his dismissal illegal but unauthorized. However, as the CA succinctly put it, an unauthorized act could be the subject of ratification.[20]

As regards the supposed denial of the petitioner's right to counsel, it is underscored that PAGCOR denied his request to re-schedule the conference before the Adjudication Committee because his counsel would not be available on the day fixed for that purpose. In its letter denying the request, the Adjudication Committee asserted that the presence of counsel was not indispensable in the conduct of its proceedings. We find nothing objectionable in the denial of the request. In an administrative proceeding like that conducted against the petitioner, a respondent

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[19] *Liguid v. Camano, Jr.,* A.M. No. RTJ-99-1509, August 8, 2002, 387 SCRA 1, 10.

[20] *Rollo,* p. 40.

has the *option* of engaging the services of counsel. As such, the right to counsel is not imperative because administrative investigations are themselves inquiries conducted only to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.[21]

It is noteworthy, however, that the petitioner was actually assisted by his counsel from the outset of the administrative case against him. That counsel, Atty. Cesar B. Jimenea Jr. of the Jimenea and Associates, ensured that the petitioner's every concern reached PAGCOR, and that he was clarified of any matter affecting his rights all throughout the investigation and hearings. As the records indicate, his counsel sent to Ela a letter calling attention to supposedly palpable violations of his client's right to due process, and objecting to Ela's right to place his client under preventive suspension. The same counsel filed in behalf of the petitioner the letter-requests to be furnished certain documents and records of the investigation,[22] his answer to the memorandum of charges,[23] the letter-request for the re-setting of the conference before the Adjudication Committee,[24] the reconsideration of the letter denying the request,[25] and the motion to reconsider the decision of the Board of Directors to dismiss him from the service.[26]

In any event, any procedural defect in the proceedings taken against the petitioner was cured by his filing of the motion for reconsideration and by his appealing the adverse result to the CSC. The Court held in *Gonzales v. Civil Service Commission*[27]

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[21] *Lumiqued v. Exevea*, G.R. No. 117565, November 18, 1997, 282 SCRA 125, 141.

[22] *Rollo,* p. 89.

[23] *Id.* at 90-103.

[24] *Id.* at 105.

[25] *Id.* at 109-112.

[26] *Id.* at 126-139.

[27] G.R. No. 156253, June 15, 2006, 490 SCRA 741, 746.

that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard. In *Autencio v. Mañara*,[28] the Court observed that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.

The petitioner was not denied due process of law, for he was afforded the fair and reasonable opportunity to explain his side. That, to us, was sufficient to meet the requirements of due process.[29] In *Casimiro v. Tandog*,[30] the Court pronounced:

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.
>
> In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.

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[28] G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55-56.

[29] *Id.* at 55.

[30] G.R. No. 146137, June 8, 2005, 459 SCRA 624, 631, cited in *Department of Agrarian Reform v. Samson*, G.R. No. 161910, June 17, 2008, 554 SCRA 500, 509.

In fine, the CA committed no reversible error in holding that PAGCOR had properly observed the requirements of due process in its administrative proceedings against the petitioner.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on February 27, 2009 by the Court of Appeals; **REQUIRES** the Civil Service Commission to determine the petitioner's appeal on the merits, particularly the issue of whether the dismissal was for cause; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[A.C. No. 7965. November 13, 2013]

AZUCENA SEGOVIA-RIBAYA, *complainant, vs.* **ATTY. BARTOLOME C. LAWSIN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CODE); A LAWYER SHOULD NOT WITHHOLD THE PROPERTY OF HIS CLIENT; FAILURE TO PROPERLY ACCOUNT FOR AND DULY RETURN HIS CLIENT'S MONEY DESPITE DUE DEMAND IS TANTAMOUNT TO A VIOLATION OF RULES 16.01 AND 16.03, CANON 16 OF THE CODE; PRESENT IN CASE AT BAR.— The Court agrees with the

IBP that respondent's failure to properly account for and duly return his client's money despite due demand is tantamount to a violation of Rules 16.01 and 16.03, Canon 16 of the Code. x x x Verily, a lawyer's duty to his client is one essentially imbued with trust so much so that it is incumbent upon the former to exhaust all reasonable efforts towards its faithful compliance. In this case, despite that singular encounter, respondent had thereafter all the opportunity to return the subject amount but still failed to do so. Besides, the obligatory force of said duty should not be diluted by the temperament or occasional frustrations of the lawyer's client, especially so when the latter remains unsatisfied by the lawyer's work. Indeed, a lawyer must deal with his client with professional maturity and commit himself towards the objective fulfilment of his responsibilities. If the relationship is strained, the correct course of action is for the lawyer to properly account for his affairs as well as to ensure the smooth turn-over of the case to another lawyer. Except only for the retaining lien exception under Rule 16.03, Canon 16 of the Code, the lawyer should not withhold the property of his client. Unfortunately, absent the applicability of such exception or any other justifiable reason therefor, respondent still failed to perform his duties under Rules 16.01 and 16.03, Canon 16 of the Code which perforce warrants his administrative liability.

2. ID.; ID.; A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; NON-COMPLIANCE WITH THE STANDARD OF PROFICIENCY REQUIRED OF A LAWYER IN CASE AT BAR; IMPOSABLE PENALTY.— The Court, however, deems it proper to increase the IBP's recommended period of suspension from the practice of law from six (6) months to one (1) year in view of his concomitant failure to exercise due diligence in handling his client's cause as mandated by Rules 18.03 and 18.04, Canon 18 of the Code: x x x A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. After a judicious scrutiny of the records, the Court observes that respondent did not only accomplish his undertaking under the retainer, but likewise failed to give an adequate explanation for such non-performance despite the protracted length of time given for him to do so. As such omissions equally showcase

respondent's non-compliance with the standard of proficiency required of a lawyer as embodied in the above-cited rules, the Court deems it apt to extend the period of his suspension from the practice of law from six (6) months to one (1) year similar to the penalty imposed in the case of *Del Mundo v. Capistrano*.

3. ID.; ID.; FINDINGS DURING ADMINISTRATIVE-DICIPLINARY PROCEEDING HAVE NO BEARING ON THE LIABILITIES OF THE PARTIES INVOLVED WHICH ARE CIVIL IN NATURE; APPLICATION IN CASE AT BAR.— The Court must clarify that the foregoing resolution should not include a directive for the return of the amount of ₱31,500.00 as recommended by the IBP Board of Governors. The same amount was given by complainant to respondent to cover for registration expenses; hence, its return partakes the nature of a purely civil liability which should not be dealt with during an administrative-disciplinary proceeding. In *Tria-Samonte v. Obias*, the Court recently held that its "findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature – meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement – as the same should be threshed out in a proper proceeding of such nature." This pronouncement the Court applies to this case and thus, renders a disposition solely on respondent's administrative liability.

APPEARANCES OF COUNSEL

Yolando F. Lim for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] filed by Azucena Segovia-Ribaya (complainant) against Atty. Bartolome C. Lawsin (respondent), the antecedents of which are detailed as follows:

[1] *Rollo*, p. 2. Dated July 21, 2008.

The Facts

On November 18, 2005, the parties entered into a retainership agreement[2] (retainer) whereby respondent undertook to, *inter alia*, process the registration and eventually deliver, within a period of six (6) months, [3] the certificate of title over a certain parcel of land (subject land) in favor of complainant acting as the representative of the Heirs of the late Isabel Segovia. In connection therewith, respondent received from complainant the amounts of ₱15,000.00 and ₱39,000.00[4] to cover for the litigation and land registration expenses, respectively.

Notwithstanding the expenditure of the ₱39,000.00 given for registration expenses (subject amount) and the lapse of more than three (3) years from the retainer's date, complainant alleged that respondent, without proper explanation, failed to fulfill his undertaking to register the subject land and deliver to complainant the certificate of title over the same. As complainant was tired of respondent's excuses, she finally decided to just withdraw the subject amount from respondent. For such purpose, she confronted the latter at his office and also subsequently sent him two (2) demand letters,[5] but all to no avail. [6] Hence, complainant was prompted to file the instant administrative complaint.

In his Comment,[7] respondent admitted that he indeed received the subject amount from complainant but averred that after receiving the same, the latter's brother, Erlindo, asked to be

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[2] *Id*. at 6.

[3] *Id*. at 6 and 73.

[4] While complainant asserted and the retainer indicates that the amount received for the purpose of registration expenses was ₱39,500.00, respondent admitted having received the amount of ₱39,000.00 only. (See respondent's Comment dated October 27, 2008, *id*. at 16.)

[5] *Id*. at 11 and 12. The two (2) demand letters were dated June 21, 2007 and July 2, 2007, respectively.

[6] *Id*. at 73-74.

[7] *Id*. at 16-19.

reimbursed the amount of ₱7,500.00 which the latter purportedly paid to the land surveyor.[8] Respondent likewise alleged that he later found out that he could not perform his undertaking under the retainer because the ownership of the subject land was still under litigation.[9] Finally, respondent stated that he wanted to return the balance of the subject amount to complainant after deducting what Erlindo took from him, but was only prevented to do so because he was maligned by complainant when she went to his office and there, shouted and called him names in the presence of his staff.[10]

In the Court's Resolutions dated December 17, 2008[11] and March 2, 2009,[12] the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation. After both parties failed to appear during the mandatory conference, IBP Investigating Commissioner Atty. Salvador B. Hababag (Investigating Commissioner) required the parties to submit their respective position papers.[13] Complainant filed her position paper[14] on October 8, 2009, while respondent failed to do so.

The IBP's Report and Recommendation

On November 6, 2009, the Investigating Commissioner issued his Report and Recommendation,[15] finding respondent to have violated Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (Code) for his failure to properly account for the money entrusted to him without any adequate explanation why he could not return the same. The Investigating

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[8] *Id*. at 16.

[9] *Id*. at 17.

[10] *Id*. See also *id*. at 74-75.

[11] *Id*. at 30.

[12] *Id*. at 43 and 44.

[13] *Id*. at 51. Order dated September 11, 2009.

[14] *Id*. at 52-61.

[15] *Id*. at 72-78.

Commissioner found that respondent's acts demonstrated his "lack of candor, fairness, and loyalty to his client, who entrusted him [with] money and documents for [the] registration of the [subject] land."[16] The Investigating Commissioner likewise held that respondent's failure to return the subject amount, despite being given "adequate time to return"[17] the same, "not to mention the repeated x x x demands made upon him,"[18] constitutes "gross dishonesty, grave misconduct, and even misappropriation of money"[19] in violation of the above-stated rules. In view of the foregoing, the Investigating Commissioner recommended that respondent be suspended from the practice of law for a period of six (6) months, with a stern warning that a repetition of the same or similar offenses in the future shall be dealt with more severely.[20]

In a Resolution[21] dated December 29, 2012, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation with modification, ordering the return of the amount of ₱31,500.00,[22] with legal interest and within thirty (30) days from receipt of notice, to complainant.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating Rules 16.01 and 16.03, Canon 16 of the Code.

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[16] *Id*. at 76.

[17] *Id*.

[18] *Id*.

[19] *Id*. at 77.

[20] *Id*. at 78.

[21] *Id*. at 71. IBP Resolution No. XX-2012-629.

[22] The balance from the amount respondent admittedly received from complainant, *i.e.*, ₱39,000.00, minus the amount of ₱7,500.00, which the former purportedly reimbursed to the latter's brother, Erlindo.

The Court's Ruling

The Court concurs with and affirms the findings of the IBP anent respondent's administrative liability but deems it proper to: (*a*) extend the recommended period of suspension from the practice of law from six (6) months to one (1) year; and (*b*) delete the recommended order for the return of the amount of ₱31,500.00.

Anent respondent's administrative liability, the Court agrees with the IBP that respondent's failure to properly account for and duly return his client's money despite due demand is tantamount to a violation of Rules 16.01 and 16.03, Canon 16 of the Code which respectively read as follows:

> CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.
>
> Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Records disclose that respondent admitted the receipt of the subject amount from complainant to cover for pertinent registration expenses but posited his failure to return the same due to his client's act of confronting him at his office wherein she shouted and called him names. With the fact of receipt being established, it was then respondent's obligation to return the money entrusted to him by complainant. To this end, suffice it to state that complainant's purported act of "maligning" respondent does not justify the latter's failure to properly account for and return his client's money upon due demand. Verily, a lawyer's duty to his client is one essentially imbued with trust

so much so that it is incumbent upon the former to exhaust all reasonable efforts towards its faithful compliance. In this case, despite that singular encounter, respondent had thereafter all the opportunity to return the subject amount but still failed to do so. Besides, the obligatory force of said duty should not be diluted by the temperament or occasional frustrations of the lawyer's client, especially so when the latter remains unsatisfied by the lawyer's work. Indeed, a lawyer must deal with his client with professional maturity and commit himself towards the objective fulfilment of his responsibilities. If the relationship is strained, the correct course of action is for the lawyer to properly account for his affairs as well as to ensure the smooth turn-over of the case to another lawyer. Except only for the retaining lien exception[23] under Rule 16.03, Canon 16 of the Code, the lawyer should not withhold the property of his client. Unfortunately, absent the applicability of such exception or any other justifiable reason therefor, respondent still failed to perform his duties under Rules 16.01 and 16.03, Canon 16 of the Code which perforce warrants his administrative liability.

The Court, however, deems it proper to increase the IBP's recommended period of suspension from the practice of law from six (6) months to one (1) year in view of his concomitant failure to exercise due diligence in handling his client's cause as mandated by Rules 18.03 and 18.04, Canon 18 of the Code:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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[23] "An attorney's lien is of two kinds: one is called retaining a lien and the other charging lien. The retaining lien is the right of the attorney to retain the funds, documents, and papers of his client which have lawfully come into his possession until his lawful fees and disbursements have been paid and to apply such funds to the satisfaction thereof. The charging lien is the right which the attorney has upon all judgments for the payment of money, and executions issued in pursuance of said judgments, which he has secured in litigation of his client. Under this rule, this lien, whether retaining or charging, takes legal effect only from and after, but not before, notice of said lien has been entered in the record and served on the adverse party." (*Caiña v. Hon. Victoriano,* 105 Phil. 194, 196 [1959]; citations omitted)

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

After a judicious scrutiny of the records, the Court observes that respondent did not only accomplish his undertaking under the retainer, but likewise failed to give an adequate explanation for such non-performance despite the protracted length of time given for him to do so. As such omissions equally showcase respondent's non-compliance with the standard of proficiency required of a lawyer as embodied in the above-cited rules, the Court deems it apt to extend the period of his suspension from the practice of law from six (6) months to one (1) year similar to the penalty imposed in the case of *Del Mundo v. Capistrano*.[24]

As a final point, the Court must clarify that the foregoing resolution should not include a directive for the return of the amount of ₱31,500.00 as recommended by the IBP Board of Governors. The same amount was given by complainant to respondent to cover for registration expenses; hence, its return partakes the nature of a purely civil liability which should not be dealt with during an administrative-disciplinary proceeding. In *Tria-Samonte v. Obias*,[25] the Court recently held that its "findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature – meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement – as

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[24] The Court, in view of the lawyer's admission of his failure to act on his client's case as well as to account and return the funds entrusted to him, found the latter to have violated Rules 16.01 and 16.03, Canon 16 and Rules 18.03 and 18.04, Canon 18 of the Code and accordingly, suspended him from the practice of law for one (1) year. (See A.C. No. 6903, April 16, 2012, 669 SCRA 462.)

[25] As noted in this case, "[a]n example of a liability which has an intrinsic link to the professional engagement would be a lawyer's acceptance fees." (A.C. No. 4945, October 8, 2013.)

the same should be threshed out in a proper proceeding of such nature." This pronouncement the Court applies to this case and thus, renders a disposition solely on respondent's administrative liability.

WHEREFORE, respondent Atty. Bartolome C. Lawsin is found guilty of violating Rules 16.01 and 16.03, Canon 16, and Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon his receipt of this Resolution, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[A.C. No. 8954. November 13, 2013]

HON. MARIBETH RODRIGUEZ-MANAHAN, Presiding Judge, Municipal Trial Court, San Mateo, Rizal, *complainant, vs.* **ATTY. RODOLFO FLORES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIARY; COURT ORDERS ARE TO BE RESPECTED, NOT BECAUSE THE JUDGES WHO ISSUE THEM SHOULD BE RESPECTED, BUT BECAUSE OF THE RESPECT AND CONSIDERATION THAT SHOULD BE EXTENDED TO THE JUDICIAL BRANCH OF THE GOVERNMENT.— There is no doubt that Atty. Flores failed to obey the trial court's order to submit proof of his MCLE compliance notwithstanding the several opportunities given him. "Court orders are to be respected not because the judges who issue them should be respected, but because of the respect and consideration that should be extended to the judicial branch of the Government. This is absolutely essential if our Government is to be a government of laws and not of men. Respect must be had not because of the incumbents to the positions, but because of the authority that vests in them. Disrespect to judicial incumbents is disrespect to that branch of the Government to which they belong, as well as to the State which has instituted the judicial system."

2. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; ATTORNEYS ARE ENJOINED TO ABSTAIN FROM SCANDALOUS, OFFENSIVE OR MENACING LANGUAGE OR BEHAVIOR BEFORE THE COURTS; VIOLATION; IMPOSABLE PENALTY.— Atty. Flores also employed intemperate language in his pleadings. As an officer of the court, Atty. Flores is expected to be circumspect in his language. Rule 11.03, Canon 11 of the Code of Professional Responsibility enjoins all attorneys to abstain from scandalous, offensive or menacing language or behavior before the Courts. Atty. Flores failed in this respect. x x x However, we find the recommended penalty too harsh and not commensurate with the infractions committed by the respondent. It appears that this is the first infraction committed by respondent. Also, we are not prepared to impose on the respondent the penalty of one-year suspension tor humanitarian reasons. Respondent manifested before this Court that he has been in the practice of law for half a century. Thus, he is already in his twilight years. Considering the foregoing, we deem it proper to fine respondent in the amount of ₱5,000.00

and to remind him to be more circumspect in his acts and to obey and respect court processes.

R E S O L U T I O N

DEL CASTILLO, *J.*:

Respondent Atty. Rodolfo Flores (Atty. Flores) was counsel for the defendant in Civil Case No. 1863 captioned as *Marsha Aranas, plaintiff, versus Arnold Balmores, defendant,* a suit for damages filed before the Municipal Trial Court of San Mateo, Rizal and presided by herein complainant Judge Maribeth Rodriguez-Manahan (Judge Manahan). During the proceedings in Civil Case No. 1863, Judge Manahan issued an Order[1] dated January 12, 2011, whereby she voluntarily inhibited from hearing Civil Case No. 1863. The said Order reads in part, *viz*:

> More than mere contempt do his (Atty. Flores) unethical actuations, his traits of dishonesty and discourtesy not only to his own brethren in the legal profession, but also to the bench and judges, would amount to grave misconduct, if not a malpractice of law, a serious ground for disciplinary action of a member of the bar pursuant to Rules 139a & b.
>
> IN VIEW WHEREOF, furnish a copy of this Order to the Bar Discipline Committee, Integrated Bar of the Philippines, & to the Supreme Court *en banc*, for appropriate investigation and sanction.[2]

Upon receipt of the copy of the above Order, the Office of the Bar Confidant (OBC) deemed the pronouncements of Judge Manahan as a formal administrative Complaint against Atty. Flores. Docketed as A.C. No. 8954, the case was referred to the Executive Judge of the Regional Trial Court of Rizal for investigation, report and recommendation.[3]

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[1] *Rollo*, pp. 2-5.

[2] *Id*. at 5.

[3] *Id*. at 1, 7.

In her Investigation, Report and Recommendation,[4] Investigating Judge Josephine Zarate Fernandez (Investigating Judge) narrated the antecedents of the case as follows:

A complaint for Damages was filed before the Municipal Trial Court (MTC) of San Mateo, Rizal docketed as Civil Case No. 1863, entitled Marsha Aranas *vs*. Arnold Balmores. The Public Attorney's Office (PAO) thru Atty. Ferdinand P. Censon represented the complainant while Atty. Rodolfo Flores appeared as counsel for the defendant.

x x x During the Preliminary Conference x x x, respondent Atty. Flores entered his appearance and was given time to file a Pre-Trial Brief. x x x On May 24, 2010, respondent Atty. Flores filed his Pre-Trial Brief but without proof of MCLE compliance [hence it] was expunged from the records without prejudice to the filing of another [P]re-[T]rial [B]rief containing the required MCLE compliance. x x x Atty. Flores asked [for] ten (10) days to submit proof.

The preliminary conference was reset several times (August 11, September 8) for failure of respondent Atty. Flores to appear and submit his [P]re-[T]rial [B]rief indicating thereon his MCLE compliance. The court *a quo* likewise issued Orders dated September 15 and October 20, 2010 giving respondent Atty. Flores [a] last chance to submit his [P]re-[T]rial [B]rief with stern warning that failure to do so shall be considered a waiver on his part.

Meanwhile, respondent Atty. Flores filed a Manifestation in Court dated September 14, 2010 stating among others, the following allegations:

xxx xxx xxx

4. When you took your oath as member of the Bar, you promised to serve truth, justice and [fair play]. Do you think you are being truthful, just and fair by serving a cheater[?]

5. Ignorance of the law excuses no one for which reason even Erap was convicted by the Sandiganbayan. But [even worse] is a lawyer who violates the law.

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[4] *Id*. at 28-31.

> 6. Last but not the least, God said Thou shall not lie. Again the Philippine Constitution commands: Give every Filipino his due. The act of refusal by the plaintiff is violative of the foregoing divine and human laws.
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> xxx xxx xxx

Respondent Atty. Flores later filed his [P]re-[T]rial [B]rief bearing an MCLE number which was merely superimposed without indicating the date and place of compliance. During the preliminary conference on November 24, 2010, respondent Atty. Flores manifested that he will submit proof of compliance of his MCLE on the following day. On December 1, 2010, respondent Atty. Flores again failed to appear and to submit the said promised proof of MCLE compliance. In its stead, respondent Atty. Flores filed a Letter of even date stating as follows:

> If only to give your Honor another chance to prove your pro plaintiff sentiment, I am hereby filing the attached Motion which [you may once more] assign to the waste basket of [nonchalance].
>
> With the small respect that still remains, I have asked the defendant to look for another lawyer to represent him for I am no longer interested in this case because I feel I cannot do anything right in your sala.[5]

The Investigating Judge found Atty. Flores to have failed to give due respect to the court by failing to obey court orders, by failing to submit proof of his compliance with the Mandatory Continuing Legal Education (MCLE) requirement, and for using intemperate language in his pleadings. The Investigating Judge recommended that Atty. Flores be suspended from the practice of law for one year.[6]

The OBC adopted the findings and recommendation of the Investigating Judge.[7]

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[5] *Id.* at 28-30.

[6] *Id.* at 31.

[7] *Id.*, unpaginated.

Our Ruling

There is no doubt that Atty. Flores failed to obey the trial court's order to submit proof of his MCLE compliance notwithstanding the several opportunities given him. "Court orders are to be respected not because the judges who issue them should be respected, but because of the respect and consideration that should be extended to the judicial branch of the Government. This is absolutely essential if our Government is to be a government of laws and not of men. Respect must be had not because of the incumbents to the positions, but because of the authority that vests in them. Disrespect to judicial incumbents is disrespect to that branch of the Government to which they belong, as well as to the State which has instituted the judicial system."[8]

Atty. Flores also employed intemperate language in his pleadings. As an officer of the court, Atty. Flores is expected to be circumspect in his language. Rule 11.03, Canon 11 of the Code of Professional Responsibility enjoins all attorneys to abstain from scandalous, offensive or menacing language or behavior before the Courts. Atty. Flores failed in this respect.

At this juncture, it is well to remind respondent that:

> While a lawyer owes absolute fidelity to the cause of his client, full devotion to his client's genuine interest and warm zeal in the maintenance and defense of his client's rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of law. A lawyer is entitled to voice his criticism within the context of the constitutional guarantee of freedom of speech which must be exercised responsibly. After all, every right carries with it the corresponding obligation. Freedom is not freedom from responsibility, but freedom with responsibility. The lawyer's fidelity to his client must not be pursued at the expense of truth and orderly

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[8] *Lt. Villaflor v. Sarita*, 367 Phil. 399, 407 (1999), citing *De Leon v. Torres*, 99 Phil. 462, 466 (1956).

administration of justice. It must be done within the confines of reason and common sense.[9]

However, we find the recommended penalty too harsh and not commensurate with the infractions committed by the respondent. It appears that this is the first infraction committed by respondent. Also, we are not prepared to impose on the respondent the penalty of one-year suspension for humanitarian reasons. Respondent manifested before this Court that he has been in the practice of law for half a century.[10] Thus, he is already in his twilight years. Considering the foregoing, we deem it proper to fine respondent in the amount of ₱5,000.00 and to remind him to be more circumspect in his acts and to obey and respect court processes.

ACCORDINGLY, respondent Atty. Rodolfo Flores is **FINED** in the amount of ₱5,000.00 with **STERN WARNING** that the repetition of a similar offense shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[9] *Re: Letter dated 21 February 2005 of Atty. Noel Sorreda*, 502 Phil. 292, 301(2005).

[10] *Rollo,* p. 37.

THIRD DIVISION

[A.C. No. 9698. November 13, 2013]

ROLANDO E. CAWALING, PEDRO L. LABAYO, WENCESLAO Q. ARROYO, JR., CLEMENTE B. BUEN, RAMON D. DERIT, DWIGHT B. DURAN, FELIZARDO R. FRANCISCO, JR., SUSANA G. HABOC, ARNOLD C. PEREZ, VERLAND E. VERGARA, AMELIA L. ESPINOSA, NOEL P. BOLA, VENERANDO A. PADUA, JR., LAURENCE ALBERT D. AYO, WILLY B. AQUINO, EDUARDO A. REMPIS, JIMMY A. BUTAC, EDUARDO D. DOCTAMA, and ANTONIO T. REODIQUE, *complainants, vs.* **NAPOLEON M. MENESE (Retired Commissioner, NLRC-Second Division), RAUL T. AQUINO (Presiding Commissioner, NLRC-Second Division) and TERESITA D. CASTILLON-LORA (Commissioner, NLRC-Second Division),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FILING OF BOND, MANDATORY AND JURISDICTIONAL; THE WHOLE ESSENCE OF REQUIRING THE FILING OF BOND IS DEFEATED IF THE BOND ISSUED TURNED OUT TO BE INVALID DUE TO THE SURETY COMPANY'S EXPIRED ACCREDITATION.— The rules are explicit that the filing of a bond for the perfection of an appeal is mandatory and jurisdictional. The requirement that employers post a cash or surety bond to perfect their appeal is apparently intended to assure workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the former's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligations to satisfy their employees' just and lawful claims. However, the whole essence of requiring the filing of bond is defeated if the bond issued turned out to be invalid due to the surety company's expired accreditation.

2. ID.; ID.; ID.; ID.; THE DEFENSE OF GOOD FAITH FOR INFORMING THE COURT OF THEIR EXPIRED ACCREDITATION AS A SURETY COMPANY DOES NOT, IN ANY WAY, RENDER THE ISSUED BOND VALID; CASE AT BAR.— Respondents argued that Intra Strata exhibited good faith in informing them of their expired accreditation. We are, however, unconvinced. The defense of good faith does not, in any way, render the issued bond valid. The fact remains that due to the expired accreditation of Intra Strata, it has no authority to issue the subject bond. It was improper to honor the appeal bond issued by a surety company which was no longer accredited by this Court. Having no authority to issue judicial bonds not only does Intra Strata cease to be a reputable surety company – the bond it likewise issued was null and void.

3. ID.; ID.; ID.; IT IS ONLY THE SUPREME COURT, THROUGH THE OFFICE OF THE COURT ADMINISTRATOR, WHICH CAN GIVE AUTHORITY AND ACCREDITATION TO SURETY COMPANIES TO BE ABLE TO TRANSACT BUSINESS INVOLVING JUDICIAL BONDS; VIOLATION IN CASE AT BAR.— It is not within respondents' discretion to allow the filing of the appeal bond issued by a bonding company with expired accreditation regardless of its pending application for renewal of accreditation. Respondents cannot extend Intra Strata's authority or accreditation. Neither can it validate an invalid bond issued by a bonding company with expired accreditation, or give a semblance of validity to it pending this Court's approval of the application for renewal of accreditation. It must be the emphasized that it is only the Supreme Court, through the Office of the Court Administrator, which can give authority and accreditation to surety companies to be able to transact business involving judicial bonds. x x x Thus, without the approval of this Court, the bond issued by bonding companies produces no legal effect. Respondents, by allowing the bonding company with expired accreditation to post bonds, as a consequence, put the litigants at risk, in the event the Court denies the application for accreditation. It betrays the purpose of the required certification issued by this Court which seeks to protect the litigants from spurious surety companies.

4. REMEDIAL LAW; DISCIPLINE OF LAWYERS; DISBARMENT AS A PENALTY; THE SUPREME COURT HAS CONSISTENTLY HELD THAT ONLY A CLEAR AND PREPONDERANT EVIDENCE WOULD WARRANT THE IMPOSITION OF SUCH A HARSH PENALTY AS DISBARMENT; NOT PRESENT IN CASE AT BAR.— Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. This Court has consistently held that only a clear preponderant evidence would warrant the imposition of such a harsh penalty. It means that the record must disclose as free from doubt a case that compels the exercise by the court of its disciplinary powers. The dubious character of the act done, as well as the motivation thereof, must be clearly demonstrated. In disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the complainant establishes his case by clear, convincing and satisfactory evidence. This complainants failed to do.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Disbarment/Disciplinary Action dated November 26, 2012[1] filed against respondents Napoleon M. Menese,[2] Raul T. Aquino and Teresita D. Castillon-Lora, Commissioners of the Second Division of the NLRC, for gross misconduct, gross ignorance of the law and procedure, and violation of Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

Complainants were employees of Bacman Geothermal, Inc. *(Bacman)*, who were dismissed from their employment. They

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[1] *Rollo*, pp. 1-14.

[2] Retired Commissioner of the National Labor Relations Commission.

filed a complaint for illegal dismissal against Bacman Geothermal, Inc., Danilo G. Catigtig, Ernesto Espinosa and Oscar M. Lopez.

On January 23, 2011, the Labor Arbiter rendered a decision[3] in favor of the complainants and declared them to be illegally dismissed. Bacman appealed and filed an Appeal Memorandum[4] on February 22, 2012. The appeal was raffled to the Second Division of the NLRC where respondents were sitting as Commissioners. There being a monetary award in the decision, Bacman posted a *supersedeas* bond issued by Intra Strata Assurance Corporation *(Intra Strata)* on February 23, 2012.

Meanwhile, Intra Strata filed a Manifestation[5] dated February 23, 2012 before the Regional Arbitration Branch No. V of the NLRC. It stated therein that their certification of accreditation and authority from the Supreme Court had expired on January 31, 2012, but their application for renewal is pending before the Supreme Court.

Complainants, in their Reply/Opposition to Respondent's Appeal, assailed the regularity of the surety bond. They argued that considering that the certification of accreditation and authority given to Intra Strata had already expired on January 31, 2012 as admitted in their Manifestation, it no longer has the authority to issue the surety bond.

Complainants further asserted that under Section 6, paragraph 6 of Rule VI of the 2011 NLRC Rules of Procedure, respondents were under obligation to verify if the bond is regular and genuine, and shall cause the dismissal of the appeal should the bond be irregular, to wit:

Section 6. BOND. – x x x

xxx xxx xxx

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[3] *Rollo*, pp. 16-33.

[4] *Id*. at 34-66.

[5] *Id*. at 95-96.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

However, complainants lamented that instead of dismissing the appeal pursuant to the above-mentioned provision, respondents entertained the appeal of Bacman and even reversed the decision of the Labor Arbiter in their Decision dated April 2, 2012. Complainants moved for reconsideration where they pointed out the irregularity in the bond and claimed that the NLRC did not acquire jurisdiction over the appeal. The NLRC, in its Resolution dated August 30, 2012, denied the same.

Before the promulgation of the decision, respondent Menese had retired from service.

Complainants averred that the acts of respondents in allowing the filing of appeal bond of Bacman despite the expired accreditation of Intra Strata constitute gross misconduct and gross ignorance of the law and procedure. Complainants maintained that the dismissal of the appeal where the bond is irregular is so elementary, thus, respondents should be familiar with it.

Finally, complainants claimed that respondents, by disregarding the rules of procedure of the NLRC, not only violated Canon 1 and Rule 1.01 of the Code of Professional Responsibility, but also caused injustice to them. Thus, complainants pray that respondents be disbarred or be imposed with the appropriate disciplinary sanctions.

On January 21, 2013, the Court resolved to require respondents to comment on the complaint against them for gross misconduct, gross ignorance of the law and procedure, and violation of Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

In their Comment[6] dated April 12, 2013, respondents denied the charges and accusations against them. Respondents explained that contrary to the claims of the complainants, the appeal bond is existing and valid. They assert that while at the time of the filing of the appeal, the surety company's authority to issue judicial bonds had already expired, such fact was never concealed by the surety company. They added that Intra Strata's filing of Manifestation informing the Commission of its undertaking to submit the certification as soon as the certification is issued was a sign of good faith.

Respondents stressed that it is a normal occurrence that accreditation of bonding companies takes weeks to process, thus, the Commission allowed appeals secured by bonds issued by surety companies with pending application for renewal of their authority to issue judicial bonds. They maintained that what is more important is that they were informed of such fact and that the surety company committed to submit the certificate as soon as issued.

Respondents further argued that as per Memorandum dated May 16, 2012 issued by the Legal and Enforcement Division of the NLRC, Intra Strata was listed as accredited by the Supreme Court for the period covering February 1, 2012 to July 31, 2012.

Respondents surmised that complainants merely filed the instant complaint against them as they failed to get a favorable judgment from the Commission. Respondents, thus, pray that the instant complaint be dismissed for lack of merit.

RULING

The pertinent portions of Sections 4 and 6, Rule VI of the Revised Rules of Procedure of the NLRC read:

SECTION 4. *REQUISITES FOR PERFECTION OF APPEAL* – a) The appeal shall be: (1) filed within the reglementary period

[6] In his Manifestation dated April 14, 2013, respondent Menese resolved to adopt the same Comment filed by his co-respondents.

provided in Section 1 of this Rule; (2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; (4) in three (3) legibly typewritten or printed copies; and (5) accompanied by i) proof of payment of the required appeal fee and legal research fee; **ii) posting of a cash or surety bond as provided in Section 6 of this Rule**; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

SECTION 6. BOND. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, **an appeal by the employer may be perfected only upon the posting of a cash or surety bond**. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

(a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.

(b) a copy of the indemnity agreement between the employer-appellant and bonding company; and

(c) a copy of security deposit or collateral securing the bond.

A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.[7]

In a nutshell, the rules are explicit that the filing of a bond for the perfection of an appeal is mandatory and jurisdictional. The requirement that employers post a cash or surety bond to perfect their appeal is apparently intended to assure workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the former's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligations to satisfy their employees' just and lawful claims. However, the whole essence of requiring the filing of bond is defeated if the bond issued turned out to be invalid due to the surety company's expired accreditation.

In the instant case, at the time of the filing of the *supersedeas* bond no. JCL (15)-HO-001522/50934[8] on behalf of Bacman in the amount of Php5,790,543.06,[9] Intra Strata was no longer an accredited surety company as it admitted in their Manifestation dated February 23, 2012. A perusal of Intra Strata's certificate of accreditation and authority would show that its accreditation was valid only until January 31, 2012. Thus, beyond January 31, 2012, Intra Strata was no longer a reputable surety company possessing the authority to transact business relative to issuing judicial bonds.

Respondents argued that Intra Strata exhibited good faith in informing them of their expired accreditation. We are, however, unconvinced. The defense of good faith does not, in any way, render the issued bond valid. The fact remains that due to the expired accreditation of Intra Strata, it has no authority to issue the subject bond. It was improper to honor the appeal bond issued by a surety company which was no longer accredited by this Court. Having no authority to issue judicial bonds not only

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[7] Emphasis supplied.

[8] *Rollo*, p. 71.

[9] *Id*. at 95.

does Intra Strata cease to be a reputable surety company – the bond it likewise issued was null and void.

Necessarily, after being informed of the expired accreditation of Intra Strata, respondents should have refrained from allowing Intra Strata to transact business or to post a bond in favor of Bacman. It is not within respondents' discretion to allow the filing of the appeal bond issued by a bonding company with expired accreditation regardless of its pending application for renewal of accreditation. Respondents cannot extend Intra Strata's authority or accreditation. Neither can it validate an invalid bond issued by a bonding company with expired accreditation, or give a semblance of validity to it pending this Court's approval of the application for renewal of accreditation.

It must be emphasized that it is only the Supreme Court, through the Office of the Court Administrator,[10] which can give authority and accreditation to surety companies to be able to transact business involving judicial bonds, to wit:

II. ACCREDITATION OF SURETY COMPANIES: **In order to preclude spurious and delinquent surety companies from transacting business with the courts, no surety company or its authorized agents shall be allowed to transact business involving surety bonds with the Supreme Court,** Court of Appeals, the Court of Tax Appeals, the Sandiganbayan, Regional Trial Courts, Shari'a District Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'a Circuit Courts and other courts which may thereafter be created, **unless accredited and authorized by the Office of the Court Administrator.**[11]

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[10] Under Presidential Decree 828, as amended by P.D. 842, and Supreme Court Resolution dated October 24, 1996, the Office of the Court Administrator (OCA) assists the Supreme Court in exercising administrative supervision over all lower courts, specifically on administrative matters, court management problems, fiscal operations and legal concerns involving the lower courts. Corollary to its functions, the OCA is designated as the implementing arm of the Court in the enforcement of the policies and procedure on surety bonds. (A.M. No. 04-7-02-SC)

[11] A.M. No. 04-7-02-SC. (Emphasis ours.)

Thus, without the approval of this Court, the bond issued by bonding companies produces no legal effect. Respondents, by allowing the bonding company with expired accreditation to post bonds, as a consequence, put the litigants at risk, in the event the Court denies the application for accreditation. It betrays the purpose of the required certification issued by this Court which seeks to protect the litigants from spurious surety companies.

Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.[12] This Court has consistently held that only a clear preponderant evidence would warrant the imposition of such a harsh penalty. It means that the record must disclose as free from doubt a case that compels the exercise by the court of its disciplinary powers. The dubious character of the act done, as well as the motivation thereof, must be clearly demonstrated.[13] In disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the complainant establishes his case by clear, convincing and satisfactory evidence.[14] This complainants failed to do.

WHEREFORE, premises considered, the complaint against Napoleon M. Menese, Raul T. Aquino and Teresita D. Castillon-Lora is **DISMISSED.**

SO ORDERED.

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

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[12] *Arma v. Montevilla,* A.C. No. 4829, July 21, 2008, 559 SCRA 1, 8.

[13] *Id.* at 8-9.

[14] *Aquino v. Villamar-Mangaoang,* 469 Phil. 613, 618 (2004).

FIRST DIVISION

[A.M. No. P-12-3089. November 13, 2013]
(Formerly OCA I.P.I. No. 11-3591-P)

HEIRS OF CELESTINO TEVES, REPRESENTED BY PAUL JOHN TEVES ABAD, ELSA C. AQUINO and FELIMON E. FERNAN, *complainants, vs.* **AUGUSTO J. FELICIDARIO, SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT OF MANILA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; SIMPLE DISHONESTY WAS COMMITTED BY THE SHERIFF THROUGH HIS SILENCE AND/OR INACTION, WHEN THE CIRCUMSTANCES DEMANDED OTHERWISE AND THAT THE DISHONESTY WAS COMMITTED IN HIS PRIVATE LIFE AND NOT IN THE COURSE OF PERFORMANCE OF HIS OFFICIAL FUNCTIONS; PRESENT IN CASE AT BAR.— Respondent is guilty of simple dishonesty and conduct prejudicial to the best interest of the service, but not of grave misconduct. In *Villordon v. Avila*, the Court defined dishonesty as "intentionally making a false statement on any material fact[;]" and "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." It is true that respondent did not have a hand in the re-survey conducted by the DAR in 2003 which resulted in the increased land area of his Lot 189. Nonetheless, respondent's actuations thereafter displayed his lack of honesty, fairness, and straightforwardness, not only with his neighbors, but also with the concerned government agencies/officials. Complainants and respondent had been awarded and occupying their respective properties under the DAR Resettlement Program since 1966, yet, respondent did not express surprise and/or bafflement that the land area of his Lot 189 was significantly increased from 838 square meters to 941 square meters after

the 2003 re-survey. Honesty, fairness, and straightforwardness, as well as good faith and prudence, would have impelled respondent to bring the matter to the attention of complainants and the DAR, and inquire and verify with the DAR his entitlement to the increased land area, especially when he was well-aware that complainants had been in possession of the disputed area, and had, in fact, introduced substantial improvements thereon, for almost four decades. x x x Considering that the increase in land area of Lot 189 was due to the (erroneous) result of the 2003 re-survey of the Sampaloc Townsite by the DAR; that respondent's dishonesty was committed through his silence and/or inaction, when the circumstances demanded otherwise, rather than his active and/or express misrepresentation to the complainants and concerned public officials; and that respondent committed the dishonesty in his private life and not in the course of performance of his official functions, the Court holds him guilty of only simple dishonesty.

2. ID.; ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE; AS LONG AS THE QUESTIONED CONDUCT TARNISHES THE IMAGE AND INTEGRITY OF HIS PUBLIC OFFICE, THE CORRESPONDING PENALTY MAY BE METED ON THE ERRING PUBLIC OFFICER OR EMPLOYEE; CASE AT BAR.— In addition to being dishonest, respondent appears to have illegally forced his way into the disputed area. As a Sheriff, he is expected to be familiar with court procedure and processes, especially those concerning the execution of orders and decisions of the courts. It is difficult for the Court to believe that respondent is completely unaware that even as the registered owner of the real property and with the *barangay* officials' assistance, he cannot simply enter and take possession of the disputed area and destroy complainants' improvements thereon. He must first initiate an ejectment case against complainants before the appropriate court and secure a court order and writ of possession. The Civil Service law and rules do not give a concrete description of what specific acts constitute conduct prejudicial to the best interest of the service, but the Court defined such an offense in *Ito v. De Vera* as acts or omissions that violate the norm of public accountability and diminish or tend to diminish the faith of the people in the

Judiciary, thereby prejudicing the best interest of the administration of justice. In *Government Service Insurance System v. Mayordomo*, the Court further declared that the administrative offense of conduct prejudicial to the best interest of the service need not be related to or connected with the public officer's official functions. As long as the questioned conduct tarnishes the image and integrity of his public office, the corresponding penalty may be meted on the erring public officer or employee.

3. ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); PENALTIES FOR SIMPLE DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; EXPLAINED; APPLICATION IN CASE AT BAR.— On November 18, 2011, the Civil Service Commission (CSC) promulgated the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Under Rule 10, Section 46(E) of RRACCS, simple dishonesty is a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year for the second offense; and dismissal for the third offense. Rule 10, Section 46(B)(8) classifies conduct prejudicial to the best interest of the service as a grave offense penalized by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense. Rule 10, Section 50 additionally provides that if the civil servant is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. Based on the foregoing rules, the Court shall apply the penalty for conduct prejudicial to the best interest of the service, it being the more serious offense. The Court then considers for purposes of determining the proper penalty, respondent's simple dishonesty as an aggravating circumstance; while respondent's 43 years in government service, 32 of which had been in the judiciary, as mitigating circumstance. The Court likewise takes into account, for humanitarian reasons, that respondent is almost of retirement age at 64 years. Consequently, the penalty of suspension without pay for six (6) months and one (1) day is appropriate under the circumstances.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is the Complaint-Affidavit[1] of complainants Heirs of Celestino Teves (represented by Paul John Teves Abad), Elsa C. Aquino, and Felimon E. Fernan, accusing respondent Augusto Felicidario, Sheriff IV of the Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Manila, of Grave Misconduct, Dishonesty and Conduct Unbecoming an Officer of the Court.

Complainants alleged that they are the successors-in-interest of the late Celestino Teves to two parcels of land, initially identified as Lots 263 and 264 of the Sampaloc Townsite in Tanay, Rizal, distributed under the Department of Agrarian Reform (DAR) Resettlement Project. Lots 263 and 264 measured 965 square meters and 648 square meters, respectively, or 1,613 square meters combined. The late Celestino Teves and complainants have been in possession of Lots 263 and 264 since 1960. Lots 263 and 264 are adjacent and contiguous to Lot 268, which has been occupied by respondent and with an area of 838 square meters. In May 2003, upon the approval of a new subdivision plan, Lots 263 and 264 were clustered into one lot, designated as Lot 190; while Lot 268 was designated as Lot 189.[2] Under the same plan, the area of Lot 189 was erroneously increased from 838 square meters to 941 square meters. Respondent knew of this error but being dishonest, he concealed it from the DAR. Respondent was eventually issued Original Certificate of Title (OCT) No. M-01182, pursuant to Certificate of Land Ownership Award (CLOA) No. 00222161, for Lot 189, with a total area of 941 square meters. On the basis of OCT No. M-01182 (CLOA No. 00222161), respondent started to unlawfully and forcibly acquire 117 square meters

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[1] *Rollo,* pp. 1-7.

[2] Complainants mistakenly referred to the parcel of land as Lot 180 in their Complaint-Affidavit.

of complainants' Lot 190 (disputed area) by (a) altering and installing concrete boundaries; (b) destroying the riprap and cyclone wires which served as boundary between respondent's Lot 189 and complainants' Lot 190; (c) destroying the comfort room, dirty kitchen, warehouse, and trees in the disputed area; and (d) constructing a concrete fence with steel gate around Lot 189 and the disputed area. Complainants were helpless in preventing respondent from performing the aforementioned acts as respondent bragged that he is a Sheriff of the RTC of Manila and threatened complainants with bodily harm.

Complainants had filed with the DAR Region IV-A a letter-complaint against respondent, docketed as Case No. A-0400-0168-09. Complainants pointed out that Regional Director Antonio G. Evangelista (Evangelista) of DAR Region IV-A issued an Order dated October 20, 2009, ruling in their favor. Pertinent portions of said Order read:

> Per Memorandum dated May 19, 2009 of [Legal Officer (LO)] Cleufe S. Eder as noted by Atty. Raul I. Bautista, the [DAR Provincial Office (DARPO)] Legal Division conducted an investigation/ inspection on the subject lots on May 18, 2009 and the following facts were established to wit:
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> xxx xxx xxx
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> 6. That based on that new survey in 2003, [Certificate of Land Ownership Award (CLOA)] with No. 00222161/ OCT No. M-01182 with an area of 941 square meters was awarded to Augusto Felicidario on October 2, 2005. Augusto Felicidario conducted his own survey to determine the boundaries based on the issued CLOA. It appears that there was an area of 117 square meters from his original area of 838 square meters, however, the excess area of 117 square meters belong to Elsa Aquino, Felimon Fernan and Heirs of Celestino Teves. Augusto Felicidario tainted with bad faith instead proceed[ed] to get the excess area of 117 square meters and placed another *mujon*, other than the old *mujon* previously placed during the 1965 survey of 838 square meters;

7. That CLOA/s for Elsa Aquino, Felimon Fernan and [Heirs] of Celestino Teves have not yet been issued to them. They were not aware of the changes in their respective area of possession until in March 2009 when Augusto Felicidario destroyed the riprap and the old cyclone wires which serves as the boundary of Elsa Aquino *et al*. with motive to forcibly get the 117 square meters covering the portions of 54 square meters, 51 square meters, and 12 square meters from Elsa Aquino *et al*.;

xxx xxx xxx

In the same Memorandum, LO Cleufe S. Eder stated that the only basis of the claim of Augusto Felicidario over the portions of the areas of Elsa Aquino and Felimon Fernan is that said portions appeared to be included in his CLOA, where in truth and in fact, was not included in his actual area of possession and occupation. Evidently, Lot 189 (formerly Lot 268) is bounded by old boundaries (*muhon*), riprap and cyclone wires erected since 1960's or more that forty-five (45) years by complainants which is only adjacent/adjoining to Lot 189 (Lot [268]) of Augusto Felicidario who incidentally been in the said premises for a long period of time and fully aware that he possessed only 838 square meters as evidenced by the Lot Description Survey conducted in December 1966. Complainants and Augusto Felicidario have been good neighbors, until the latter on March 29, 2009 received a copy of TCT-CLOA in October 2005 awarding him 941 square meters per new subdivision survey in 2003. Thereafter, Augusto Felicidario threatened to eject Elsa Aquino *et al*. purposely to acquire the portions of 51 square meters and 12 square meters without a lawful order.

[Provincial Agrarian Reform Officer (PARO)] Samuel S. Solomero concurred with the recommendation of DARPO-Legal Division that the CLOA issued to Augusto Felicidario be cancelled/corrected to only 838 square meters as his actual area of possession and further recommended that individual CLOAs be generated/issued in favor of Elsa Aquino, Felimon Fernan and Heirs of Celestino Teves in accordance with their actual area of possession.

DAR Administrative Order No. 1 Series of 1992, specifically paragraph IV, regarding the Modes of Disposition of Homelots, provides that:

"Homelots in barangay sites and residential, commercial and industrial lots in townsites shall be disposed of by direct sale to actual occupants occupying said homelots".

WHEREFORE, premises considered, an Order is hereby issued:

1. **DIRECTING** the PARO to undertake the necessary steps to cause the correction of [the] area inscribed in OCT No. M-01182 (CLOA No. 00222161) issued in the name of Augusto Felicidario from 941 square meters to 838 square meters; and

2. **DIRECTING** the PARO and the [Municipal Agrarian Reform Officer (MARO)] to make the necessary steps for the issuance of individual titles in the names of Elsa Aquino, Felimon Fernan and Heirs of Celestino Teves based on their actual area of possession.[3]

The DAR Region IV-A Order dated October 20, 2009 in Case No. A-0400-0168-09 became final and executory as no motion for reconsideration and/or appeal was filed.[4]

Respondent, in his Comment,[5] denied complainants' allegations. He prayed for the outright dismissal of the instant complaint against him since the acts subject thereof are not related to his official functions as Deputy Sheriff and are not grounds for administrative action. In addition, respondent explained that as a result of the re-survey conducted by the DAR Geodetic Engineer in May 2003, the area of complainants' Lot 190 was decreased to 210 square meters, while that of respondent's Lot 189 was increased to 941 square meters. Based on the 2003 re-survey, respondent was issued OCT No. M-01182 (CLOA No. 00222161) for Lot 189. Respondent has been in continuous actual and physical possession of Lot 189 and religiously paying the real estate tax thereon as they fall due. In 2009, respondent applied for and was granted a Fencing Permit

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

[4] *Id*. at 61. Per Certification dated February 24, 2010 of Regional Director Antonio G. Evangelista.

[5] *Id*. at 39-47.

by the Office of the Building Official of Tanay. On the strength of the Fencing Permit and with the assistance of *barangay* officials, respondent proceeded to place new fences or *mujon*/ markers along the perimeter of Lot 189. Although respondent acknowledged the existence of the final and executory Order dated October 20, 2009 of the DAR Region IV-A in Case No. A-0400-0168-09, adverse to his interest, respondent maintained that he had been deprived of due process of law because he never received summons or notice relative to said case, thus, he had already requested the Office of the President for a reinvestigation of the same. Respondent also mentioned in his Comment that the PARO had already instituted a Petition for Correction of CLOA No. 00222161/OCT No. M-01182 before the DAR Adjudication Board (DARAB) Region IV-A, docketed as PARAD Case No. R-0409-0009 to 0010-10.

Respondent argued that the acts imputed by complainants against him were not related to the performance of his official duties and were not in any manner related to a case in which complainants are parties or have legal interests. Besides, a cursory reading of the allegations in the complaint will clearly show the absence of the requisites of corruption or a clear intent to violate the law or a flagrant disregard of established rule; as well as the lack of evidence that respondent's conduct in the exercise of his rights as a private individual debased the public's confidence in the courts. Respondent reiterated that he had no hand in the increase of his total lot area after the new survey. Lastly, respondent averred that complainants, in filing the present complaint, was forum shopping with the intention of purposely vexing, harassing, and intimidating respondent and thereby gain upper ground. Complainants mean to escalate a private matter to the institution respondent is serving.

Complainants filed a Reply[6] but raised no new matters.

On July 26, 2012, the Office of the Court Administrator (OCA) submitted its report[7] with the following recommendations:

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

[7] *Id*. at 76-81.

In view of the foregoing, this Office respectfully submits for the consideration of the Honorable Court the following recommendations:

1. the instant administrative complaint against Augusto J. Felicidario, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Manila, be ***RE-DOCKETED*** as a regular administrative matter; and

2. respondent be found ***GUILTY*** of Conduct Prejudicial to the Best Interest of the Service and be ***SUSPENDED*** for three (3) months without pay.[8]

In a Resolution[9] dated September 24, 2012, the Court re-docketed the administrative complaint against respondent as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Respondent[10] and complainants[11] submitted their respective Manifestations informing the Court that they were already submitting the case for decision based on the pleadings on record.

The Court partly diverges from the findings of the OCA. Respondent is guilty of simple dishonesty and conduct prejudicial to the best interest of the service, but not of grave misconduct.

In *Villordon v. Avila*,[12] the Court defined dishonesty as "intentionally making a false statement on any material fact[;]" and "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

It is true that respondent did not have a hand in the re-survey conducted by the DAR in 2003 which resulted in the increased

[8] *Id*. at 81.

[9] *Id*. at 82.

[10] *Id*. at 85-86.

[11] *Id*. at 87.

[12] A.M. No. P-10-2809, August 10, 2012, 678 SCRA 247, 255.

land area of his Lot 189. Nonetheless, respondent's actuations thereafter displayed his lack of honesty, fairness, and straightforwardness, not only with his neighbors, but also with the concerned government agencies/officials. Complainants and respondent had been awarded and occupying their respective properties under the DAR Resettlement Program since 1966, yet, respondent did not express surprise and/or bafflement that the land area of his Lot 189 was significantly increased from 838 square meters to 941 square meters after the 2003 re-survey. Honesty, fairness, and straightforwardness, as well as good faith and prudence, would have impelled respondent to bring the matter to the attention of complainants and the DAR, and inquire and verify with the DAR his entitlement to the increased land area, especially when he was well-aware that complainants had been in possession of the disputed area, and had, in fact, introduced substantial improvements thereon, for almost four decades. Instead, respondent, undeniably benefitting from the increased land area of Lot 189, held his peace and already proceeded to secure a certificate of title in his name for Lot 189, with a land area of 941 square meters. When respondent was finally issued OCT No. M-01182 (CLOA No. 00222161), he invoked the same as justification for occupying the 117-square meter disputed area, destroying complainants' improvements thereon, and enclosing Lot 189 (inclusive of the disputed area) within a concrete fence and steel gate. Whether or not an error was indeed committed by the DAR officials during the 2003 re-survey, resulting in the increased land area of Lot 189, respondent evidently took advantage of complainants' ignorance of the situation in order to acquire OCT No. M-01182 (CLOA No. 00222161) with nary an opposition. It bears to stress that the final and executory Order dated October 20, 2009 of the DAR Region IV-A in Case No. A-0400-0168-09 declared erroneous the increase in land area of respondent's Lot 189 after the 2003 re-survey and the PARO had already instituted proceedings before the DARAB for the correction of respondent's OCT No. M-01182 (CLOA No. 00222161). While respondent is seeking to have the final and executory DAR Region IV-A Order set aside by the Office of the President, as things stand

at present, the basis for respondent's legal title to the disputed area is doubtful, at best. Considering that the increase in land area of Lot 189 was due to the (erroneous) result of the 2003 re-survey of the Sampaloc Townsite by the DAR; that respondent's dishonesty was committed through his silence and/or inaction, when the circumstances demanded otherwise, rather than his active and/or express misrepresentation to the complainants and concerned public officials; and that respondent committed the dishonesty in his private life and not in the course of performance of his official functions, the Court holds him guilty of only simple dishonesty.

Respondent's deportment under the circumstances likewise constitute conduct prejudicial to the best interest of the service. In addition to being dishonest, respondent appears to have illegally forced his way into the disputed area. As a Sheriff, he is expected to be familiar with court procedure and processes, especially those concerning the execution of orders and decisions of the courts. It is difficult for the Court to believe that respondent is completely unaware that even as the registered owner of the real property and with the *barangay* officials' assistance, he cannot simply enter and take possession of the disputed area and destroy complainants' improvements thereon. He must first initiate an ejectment case against complainants before the appropriate court and secure a court order and writ of possession.

The Civil Service law and rules do not give a concrete description of what specific acts constitute conduct prejudicial to the best interest of the service, but the Court defined such an offense in *Ito v. De Vera*[13] as acts or omissions that violate the norm of public accountability and diminish or tend to diminish the faith of the people in the Judiciary, thereby prejudicing the best interest of the administration of justice. In *Government Service Insurance System v. Mayordomo*,[14] the Court further declared that the administrative offense of conduct prejudicial to the best interest of the service need not be related to or connected

[13] 540 Phil. 23, 34 (2006).

[14] G.R. No. 191218, May 31, 2011, 649 SCRA 667, 686.

with the public officer's official functions. As long as the questioned conduct tarnishes the image and integrity of his public office, the corresponding penalty may be meted on the erring public officer or employee.

Respondent's transgressions may not be related to his official duties and functions, but certainly reflect badly upon the entire Judiciary. Respondent failed to live up to the high ethical standards demanded by the office he occupies. As the Court explained in *Marquez v. Clores-Ramos*:[15]

> It can not be overemphasized that every employee of the judiciary should be an example of integrity, uprightness and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but in his personal and private dealings with other people, to preserve the Court's good name and standing. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel. Thus, it becomes the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice. (Citations omitted.)

However, precisely because respondent was not acting in the performance of his official duties, he cannot be administratively liable for misconduct, whether grave or simple. The survey of cases presented in *Largo v. Court of Appeals*[16] is particularly instructive:

> [T]he administrative offense committed by petitioner is not "misconduct." To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of his official duties. In *Manuel v. Calimag, Jr.*, it was held that:
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> > Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only

[15] 391 Phil. 1, 11 (2000).

[16] 563 Phil. 293, 302-304 (2007).

> as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."

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In *Salcedo v. Inting* we also ruled –

> It is to be noted that the acts of the respondent judge complained of have no direct relation with his official duties as City Judge. The misfeasance or malfeasance of a judge, to warrant disciplinary action must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of said judge.

In *Milanes v. De Guzman*, a mayor collared a person, shook him violently, and threatened to kill him in the course of a political rally of the Nacionalista Party where said mayor was acting as the toastmaster. The Court held that the acts of the mayor cannot come under the class of the administrative offense of misconduct, considering that as the toastmaster in a non-governmental rally, he acted in his private capacity, for said function was not part of his duties as mayor. In *Amosco v. Magro*, the respondent Judge was charged with grave misconduct for his alleged failure to pay the amount of ₱215.80 for the purchase of empty Burma sacks. In dismissing the case, the Court sustained, among others, the argument of respondent Judge that the charge did not constitute misconduct because it did not involve the discharge of his official duties. It was further held that misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a

misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. So also, a Judge's abandonment of, and failure to give support to his family; and alleged sale of carnapped motor vehicles, do not fall within the species of misconduct, not being related to the discharge of official functions. (Citations omitted.)

Now the Court considers the appropriate penalty to be imposed upon respondent.

On November 18, 2011, the Civil Service Commission (CSC) promulgated the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Under Rule 10, Section 46(E) of RRACCS, simple dishonesty is a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year for the second offense; and dismissal for the third offense. Rule 10, Section 46(B)(8) classifies conduct prejudicial to the best interest of the service as a grave offense penalized by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense. Rule 10, Section 50 additionally provides that if the civil servant is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

Based on the foregoing rules, the Court shall apply the penalty for conduct prejudicial to the best interest of the service, it being the more serious offense. The Court then considers for purposes of determining the proper penalty, respondent's simple dishonesty as an aggravating circumstance; while respondent's 43 years in government service, 32 of which had been in the judiciary, as mitigating circumstance. The Court likewise takes into account, for humanitarian reasons, that respondent is almost of retirement age at 64 years. Consequently, the penalty of suspension without pay for six (6) months and one (1) day is appropriate under the circumstances.

WHEREFORE, the Court finds respondent Augusto Felicidario, Sheriff IV of the Office of the Clerk of Court, Regional Trial Court, Manila, **GUILTY** of simple dishonesty and conduct grossly prejudicial to the best interest of the service and is suspended for a period of six (6) months and one (1) day without pay, with a stern warning that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170904. November 13, 2013]

BANI RURAL BANK, INC., ENOC THEATER I AND II and/or RAFAEL DE GUZMAN, *petitioners, vs.* **TERESA DE GUZMAN, EDGAR C. TAN and TERESA G. TAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; POST EMPLOYMENT; TERMINATION BY EMPLOYER; ILLEGAL DISMISSAL; A DECISION IN AN ILLEGAL DISMISSAL CASE CONSISTS ESSENTIALLY OF TWO COMPONENTS; ENUMERATED.— In *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division),* we held that a decision in an illegal dismissal case consists essentially of two components: The *first* is that part of the decision that cannot now be disputed because it has been confirmed with finality. This is the finding of the illegality of the dismissal and the awards of separation pay in lieu of

reinstatement, backwages[.] The *second* part is the computation of the awards made.

2. ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); AS A RULE, FINAL JUDGMENT THEREOF MAY NO LONGER BE ALTERED, AMENDED OR MODIFIED; EXCEPTION TO THE RULE IS THE EXISTENCE OF STRAINED RELATIONS BETWEEN THE EMPLOYEES AND THE EMPLOYER AS A SUPERVENING EVENT; PRESENT IN CASE AT BAR.— As a rule, "a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. Any attempt on the part of the x x x entities charged with the execution of a final judgment to insert, change or add matters not clearly *contemplated* in the dispositive portion violates the rule on immutability of judgments." An exception to this rule is the existence of supervening events which refer to facts transpiring after judgment has become final and executory or to new circumstances that developed after the judgment acquired finality, including matters that the parties were not aware of prior to or during the trial as they were not yet in existence at that time. Under the circumstances of this case, the existence of the strained relations between the petitioners and the respondents was a supervening event that justified the NLRC's modification of its final March 17, 1995 resolution. The NLRC, in its July 31, 1998 decision, based its conclusion that strained relations existed on the conduct of the parties during the first execution proceedings before Labor Arbiter Gambito. The NLRC considered the delay in the respondents' reinstatement and the parties' conflicting claims on whether the respondents wanted to be reinstated. The NLRC also observed that during the intervening period from the first computation (which was done in 1995) to the appeal and resolution of the correctness of the first computation (subject of the NLRC's July 31, 1998 decision), neither party actually did anything to implement the respondents' reinstatement. The NLRC considered these actions as indicative of the strained relations between the parties so that neither of them actually wanted to implement the reinstatement decree in the March 17, 1995 resolution. The NLRC concluded that the award of reinstatement was no longer

possible; thus, it awarded separation pay, in lieu of reinstatement. Unless exceptional reasons are presented, these above findings and conclusion can no longer be disturbed after they lapsed to finality.

3. REMEDIAL LAW; APPEALS; THE SUPREME COURT REVIEW OF THE COURT OF APPEALS' DECISION IN A LABOR CASE IS LIMITED TO THE DETERMINATION OF WHETHER THE COURT OF APPEALS CORRECTLY RESOLVED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE DECISION OF THE SECRETARY OF LABOR; GRAVE ABUSE OF DISCRETION, DEFINED.— A review of the CA' s decision in a labor case, brought to the Court via Rule 45 of the Rules of Court, is limited to a review of errors of law imputed to the CA. In *Montoya v. Transmed Manila Corporation,* we laid down the basic approach in reviews of Rule 45 decisions of the CA in labor cases. x x x This manner of review was reiterated in *Holy Child Catholic School v. Hon. Patricia Sta. Tomas, etc., et al.,* where the Court limited its review under Rule 45 of the CA's decision in a labor case to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion in the decision of the Secretary of Labor, and not on the basis of whether the latter's decision on the merits of the case was strictly correct. Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment amounting to or equivalent to lack of jurisdiction. There is grave abuse of discretion when the power is exercised in an arbitrary or despotic manner by reason of "passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; POST EMPLOYMENT; ILLEGAL DISMISSAL; LEGAL REMEDIES; AWARD OF SEPARATION PAY IN LIEU OF REINSTATEMENT; WHEN PROPER; ENUMERATION.— Article 279 of the Labor Code, as amended, provides backwages and reinstatement as basic awards and consequences of illegal dismissal. x x x "By jurisprudence derived from this provision, separation pay may [also] be awarded to an illegally dismissed

employee in lieu of reinstatement." Section 4(b), Rule I of the Rules Implementing Book VI of the Labor Code provides the following instances when the award of separation pay, in lieu of reinstatement to an illegally dismissed employee, is proper: (a) when reinstatement is no longer possible, in cases where the dismissed employee's position is no longer available; (b) **the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and (c) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved.** In these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages. **The payment of separation pay and reinstatement are exclusive remedies**. The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.

5. ID.; ID.; ID.; ID.; ID.; BASES OF COMPUTATION FOR SEPARATION PAY AND BACKWAGES, DISTINGUISHED.— For clarity, the bases for computing separation pay and backwages are different. Our ruling in *Macasero v. Southern Industrial Gases Philippines* provides us with the manner these awards should be computed: x x x The normal consequence of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. 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. The payment of separation pay is in addition to payment of backwages. The computation of separation pay is based on the length of the employee's service; and the computation of backwages is based on the actual period when the employee was unlawfully prevented from working.

6. ID.; ID.; ID.; ID.; ID.; BACKWAGES; COMPUTATION OF BACKWAGES DEPENDING ON THE FINAL AWARDS ADJUDGED, EXPLAINED.— The computation of backwages depends on the final awards adjudged as a consequence of illegal dismissal, in that: *First*, when reinstatement is ordered, the general concept under Article 279 of the Labor Code, as amended, computes the backwages

from the time of dismissal until the employee's reinstatement. The computation of backwages (and similar benefits considered part of the backwages) can even continue beyond the decision of the labor arbiter or NLRC and ends only when the employee is actually reinstated. *Second,* when separation pay is ordered in lieu of reinstatement (in the event that this aspect of the case is disputed) or reinstatement is waived by the employee (in the event that the payment of separation pay, in lieu, is not disputed), backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay.** *Third,* when separation pay is ordered after the finality of the decision ordering the reinstatement by reason of a supervening event that makes the award of reinstatement no longer possible (as in the case), backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay.** The above computation of backwages, when separation pay is ordered, has been the Court's consistent ruling. In *Session Delights Ice Cream and Fast Foods v. Court Appeals (Sixth Division,* we explained that the finality of the decision becomes the reckoning point because in allowing separation pay, the **final** decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.

APPEARANCES OF COUNSEL

Rrancisco F. Baraan III for petitioners.
Nilo L. Geonzon for respondents.

D E C I S I O N

BRION, *J.*:

We pass upon the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioners Bani Rural Bank, Inc., ENOC Theater I and II, and Rafael de Guzman. They assail the decision[2] dated September 1, 2005 and the

[1] *Rollo,* pp. 9-30.

[2] *Id.* at 36-46; penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin.

resolution[3] dated December 14, 2005 of the Court of Appeals (*CA*) in CA-G.R. SP No. 70085. The assailed CA rulings, in turn, affirmed the computation of the backwages due respondents Teresa de Guzman and Edgar C. Tan[4] made by the National Labor Relations Commission (NLRC).

The Facts

The respondents were employees of Bani Rural Bank, Inc. and ENOC Theatre I and II who filed a complaint for illegal dismissal against the petitioners. The complaint was initially dismissed by Labor Arbiter Roque B. de Guzman on March 15, 1994. On appeal, the National Labor Relations Commission (*NLRC*) reversed Labor Arbiter De Guzman's findings, and ruled that the respondents had been illegally dismissed. In a **resolution**[5] **dated March 17, 1995**, the NLRC ordered the petitioners to:

> ... [R]einstate the two complainants to their former positions, without loss of seniority rights and other benefits and privileges, with backwages from the time of their dismissal (constructive) until their actual reinstatement, less earnings elsewhere.[6]

The parties did not file any motion for reconsideration or appeal. The March 17, 1995 resolution of the NLRC became final and executory and the computation of the awards was remanded to the labor arbiter for execution purposes.

The first computation of the monetary award under the March 17, 1995 resolution of the NLRC

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[3] *Id*. at 33-34.

[4] In the consolidated cases of *Teresa de Guzman Tan v. Bani Rural Bank, Inc. And/or Rafael de Guzman,* docketed as NLRC CN. SUB-RAB-01-07-7-0136-93 CA No. L-001403, and *Edgar C. Tan and Teresa G. Tan v. ENOC Theatre I and II and/or Rafael de Guzman,* docketed as NLRC CN. SUB-RAB-01-07-7-0137-93 CA No. L-001405.

[5] *Rollo*, pp. 71-87; penned by Commissioner Ireneo Bernardo, and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra.

[6] *Id*. at 87.

The computation of the respondents' backwages, **under the terms of the March 17, 1995 NLRC resolution**, was remanded to Labor Arbiter Rolando D. Gambito. *First*, Labor Arbiter Gambito deducted the earnings derived by the respondents either from Bani Rural Bank, Inc. or ENOC Theatre I and II. *Second*, Labor Arbiter Gambito fixed the period of backwages from the respondents' illegal dismissal until **August 25, 1995,** or **the date when the respondents allegedly manifested that they no longer wanted to be reinstated.**[7]

The respondents appealed Labor Arbiter Gambito's computation with the NLRC. In a **decision**[8] **dated July 31, 1998,** the NLRC modified the terms of the March 17, 1995 resolution insofar as it clarified the phrase "less earnings elsewhere." The NLRC additionally awarded the payment of separation pay, in lieu of reinstatement, under the following terms:

> The decision of this Commission is hereby MODIFIED to the extent that: (1) the phrase "earnings elsewhere" in its dispositive portion shall exclude the complainants' salaries from the Rural Bank of Mangantarem; and (2) in lieu of reinstatement, the respondents are hereby ordered to pay the complainants separation pay equivalent to one month salary for every year of service computed from the start of their employment up to the date of the finality of the decision.[9]

The NLRC justified **the award of separation pay on account of the strained relations** between the parties. In doing so, the NLRC ruled:

> Insofar as the second issue is concerned, it should be noted: (1) that in his report dated November 8, 1995, the NLRC Sheriff stated that on October 5, 1995, he went to the Sub-Arbitration Branch to serve the writ of execution upon the complainants; that they did not appear, but instead, sent a representative named Samuel de la Cruz who informed him that they were interested, not on being

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[7] *Id*. at 88-98; order dated December 16, 1997.

[8] *Id*. at 101-112; penned by Presiding Commissioner Lourdes Javier.

[9] *Id*. at 111.

reinstated, but only in the monetary award; (2) that in a letter dated October 9, 1995, the complainants authorized one Samuel de la Cruz to get a copy of the writ of execution; and (3) that during the pre-execution conference, the respondents' counsel manifested that the respondents were requiring the complainants to report for work "on Monday" and, in turn, the complainants' counsel manifested that the complainants were asking to be reinstated. The proceedings already protracted as it is-would be delayed further if this case were to be remanded to the Labor Arbiter for a hearing to ascertain the correctness of the above-mentioned sheriff's report. Besides, **if both parties were really interested in the complainants' being reinstated, as their counsels stated during the pre-execution conference, the said reinstatement should already have been effected. Since neither party has actually done anything to implement the complainants' reinstatement, it would appear that the relations between them have been strained to such an extent as to make the resumption of the employer-employee relationship unpalatable to both of them.** Under the circumstances, separation pay may be awarded in lieu of reinstatement.[10]

The respondents filed a motion for reconsideration on whether the award of backwages was still included in the judgment. The NLRC dismissed the motion for having been filed out of time.

On January 29, 1999, **the July 31, 1998 decision of the NLRC lapsed to finality and became executory.**

The second computation of the monetary awards under the July 31, 1998 decision of the NLRC

The recomputation of the monetary awards of the respondents' backwages and separation pay, according to the decision dated July 31, 1998 and the modified terms of the March 17, 1995 resolution of the NLRC, was referred to Labor Arbiter Gambito. In the course of the recomputation, the petitioners filed before Labor Arbiter Gambito a *Motion to Quash Writ of Execution and Suspend Further Execution*; they reiterated their position that the respondents' backwages should be computed only up to August 25, 1995, citing the alleged manifestation made by the respondents, through Samuel de la Cruz, as their basis.

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[10] *Id*. at 109-110; emphasis ours, citations omitted.

In an order[11] dated July 12, 2000, Labor Arbiter Gambito computed the respondents' backwages only up to August 25, 1995.

The NLRC's Ruling

The respondents appealed the July 12, 2000 order of Labor Arbiter Gambito to the NLRC, which reversed Labor Arbiter Gambito's order. In its decision[12] dated September 28, 2001, the NLRC ruled that the computation of the respondents' backwages should be until ***January 29, 1999, which was the date when the July 31, 1998 decision*** attained finality:

> WHEREFORE, the Order of Labor Arbiter Rolando D. Gambito dated July 12, 2000 is SET ASIDE. In lieu thereof, judgment is hereby rendered by ordering respondents to pay complainants backwages up to January 29, 1999 as above discussed.[13]

The NLRC emphasized that the issue relating to the computation of the respondents' backwages had been settled in its July 31, 1998 decision. In a resolution dated January 23, 2002, the NLRC denied the motion for reconsideration filed by the petitioners.

The petitioners disagreed with the NLRC's ruling and filed a petition for *certiorari* with the CA, raising the following issues:

(A) THE COMMISSION ACTED WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT REVERSED AND SET ASIDE THE ORDER OF LABOR ARBITER ROLANDO D. GAMBITO DATED JULY 12, 2000 AND ORDERED THE COMPUTATION OF PRIVATE RESPONDENTS' BACKWAGES TO COVER THE PERIOD AFTER AUGUST 25, 1995, OR UNTIL JANUARY 29, 1999, THE DATE OF FINALITY OF THE SECOND RESOLUTION OF THE COMMISSION.

(B) THE COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION

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[11] *Id*. at 119-122.

[12] *Id*. at 123-131.

[13] *Id*. at 130.

FOR DENYING PETITIONERS' MOTION FOR RECONSIDERATION.[14]

The CA Rulings

The CA found the petition to be without merit. It held that *certiorari* was not the proper remedy since no error of jurisdiction was raised or no grave abuse of discretion was committed by the NLRC. The CA stated that:

> The extraordinary remedy of *certiorari* is proper if the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. When a court, tribunal or officer has jurisdiction over the person and the subject matter of dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*.[15]

Thus, the CA echoed the NLRC's conclusions:

> As explained in the assailed Decision, what is controlling for purposes of the backwages is the NLRC's Resolution dated 17 March 1995 which decreed that private respondents are entitled to backwages from the time of their dismissal (constructive) until their actual reinstatement; and considering that the award of reinstatement was set aside by the NLRC in its final and executory Decision dated 31 July 1998 which ordered the payment of separation pay in lieu of reinstatement to be computed up to the finality on 29 January 1999 of said Decision dated 31 July 1998, then the computation of the backwages should also end on said date, which is 29 January 1999.[16]

Citing the case of *Chronicle Securities Corp. v. NLRC*,[17] the CA held that backwages are granted to an employee or worker

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[14] *Id*. at 57.

[15] *Id*. at 44; italics supplied.

[16] *Id*. at 43.

[17] 486 Phil. 560, 569-570 (2004).

who had been illegally dismissed from employment. If reinstatement is no longer possible, the backwages shall be computed from the time of the illegal termination up to the finality of the decision.

The Present Petition

The petitioners argue that the following reversible errors were committed by the CA, namely:

(1) In ruling that no grave abuse of discretion was committed by the NLRC when it issued the September 28, 2001 decision, the January 23, 2002 resolution and the July 31, 1998 decision, which modified the final and executory resolution dated March 17, 1995 of the NLRC computing the backwages only until the reinstatement of the respondents;

(2) When it manifestly overlooked or misappreciated relevant facts, *i.e.*, Labor Arbiter Gambito's computation did conform to the NLRC's March 17, 1995 resolution considering the manifestation of Samuel that the respondents no longer wanted to be reinstated, in response to the order of execution dated August 25, 1995; and

(3) When it declared that only errors of judgment, and not jurisdiction, were committed by the NLRC.

In their Comment,[18] the respondents contend that the computation of the backwages until January 29, 1999 was consistent with the tenor of the decision dated July 31, 1998 and the modified March 17, 1995 resolution of the NLRC.

After the petitioners filed their Reply,[19] the Court resolved to give due course to the petition; in compliance with our directive, the parties submitted their respective memoranda repeating the arguments in the pleadings earlier filed.[20]

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[18] *Rollo*, pp. 150-157.

[19] *Id.*, at 168-174.

[20] *Id.* at 176-177; Court Resolution dated November 22, 2006.

The Issue

As presented, the issue boils down to whether the respondents' backwages had been correctly computed under the decision dated September 28, 2001 of the NLRC, as confirmed by the CA, in light of the circumstance that there were two final NLRC decisions affecting the computation of the backwages.

The Court's Ruling

We find the petition unmeritorious.

Preliminary considerations

In *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division),*[21] we held that a decision in an illegal dismissal case consists essentially of two components:

> The *first* is that part of the decision that cannot now be disputed because it has been confirmed with finality. This is the finding of the illegality of the dismissal and the awards of separation pay in lieu of reinstatement, backwages[.]
>
> The *second* part is the computation of the awards made.[22]

The first part of the decision stems from the March 17, 1995 NLRC resolution finding an illegal dismissal and defining the legal consequences of this dismissal. The second part involves the computation of the monetary award of backwages and the respondents' reinstatement. Under the terms of the March 17, 1995 resolution, the respondents' backwages were to be computed from the time of the illegal dismissal up to their reinstatement.

In the first computation of the backwages, Labor Arbiter Gambito confronted the following circumstances and the Sheriff's Report dated November 8, 1995:[23] first, how to interpret the phrase "less earnings elsewhere" as stated in the dispositive portion of the March 17, 1995 resolution of the NLRC; second,

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[21] G.R. No. 172149, February 8, 2010, 612 SCRA 10.

[22] *Id*. at 21; italics supplied.

[23] *Rollo*, p. 109.

the effect of the alleged manifestation (dated October 9, 1995) of Samuel that the respondents were only interested in the monetary award, not in their reinstatement; and third, the effect of the respondents' counsel's statement during the pre-execution proceedings that the respondents simply wanted to be reinstated.

The records indicate that the respondents denied Samuel's statement and asked for reinstatement through their counsel. Nevertheless, Labor Arbiter Gambito relied on Samuel's statement and fixed the computation date of the respondents' backwages to be up to and until August 25, 1995 or the date the order of execution was issued for the NLRC's March 17, 1995 decision. As stated in his July 12, 2000 order,[24] Labor Arbiter Gambito found it fair and just that in the execution of the NLRC's decision, the computation of the respondents' backwages should "stop at that time when it was put on record by them [respondents] that they had no desire to return to work."[25]

The NLRC disregarded Labor Arbiter Gambito's first computation. In the dispositive portion of its July 31, 1998 decision, the NLRC modified the final March 17, 1995 resolution. The first part of this decision – the original ruling of illegal dismissal – was left untouched while the second part of the decision – the monetary award and its computation – was altered to conform with the strained relations between the parties that became manifest during the execution phase of the March 17, 1995 resolution.

The effect of the modification of the March 17, 1995 resolution of the NLRC was **two-fold: one**, the reinstatement aspect of the March 17, 1995 resolution was **expressly** substituted by an order of payment of separation pay; and **two**, the July 31, 1998 decision of the NLRC now provided for two monetary awards (backwages and separation pay). The July 31, 1998 decision of the NLRC became final since neither parties appealed.

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[24] *Id.* at 119-122.

[25] *Id.* at 120.

Immutability of Judgment

That there is already a final and executory March 17, 1995 resolution finding that respondents have been illegally dismissed, and awarding backwages and reinstatement, is not disputed. That there, too, is the existence of another final and executory July 31, 1998 decision modifying the reinstatement aspect of the March 17, 1995 resolution, by awarding separation pay, is likewise beyond dispute.

As a rule, "a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. Any attempt on the part of the x x x entities charged with the execution of a final judgment to insert, change or add matters not clearly *contemplated* in the dispositive portion violates the rule on immutability of judgments."[26]An exception to this rule is the existence of supervening events[27] which refer to facts transpiring after judgment has become final and executory or to new circumstances that developed after the judgment acquired finality, including matters that the parties were not aware of prior to or during the trial as they were not yet in existence at that time.[28]

Under the circumstances of this case, the existence of the strained relations between the petitioners and the respondents was a supervening event that justified the NLRC's modification of its final March 17, 1995 resolution. The NLRC, in its July 31, 1998 decision, based its conclusion that strained relations existed on the conduct of the parties during the first execution proceedings before Labor Arbiter Gambito. The NLRC considered the delay in the respondents' reinstatement and the parties' conflicting claims on whether the respondents wanted to be

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[26] *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division), supra* note 21, at 19-20; citation omitted, italics supplied.

[27] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 23 (2002).

[28] *Ibid.*

reinstated.[29] The NLRC also observed that during the intervening period from the first computation (which was done in 1995) to the appeal and resolution of the correctness of the first computation (subject of the NLRC's July 31, 1998 decision), neither party actually did anything to implement the respondents' reinstatement. The NLRC considered these actions as indicative of the strained relations between the parties so that neither of them actually wanted to implement the reinstatement decree in the March 17, 1995 resolution. The NLRC concluded that the award of reinstatement was no longer possible; thus, it awarded separation pay, in lieu of reinstatement. Unless exceptional reasons are presented, these above findings and conclusion can no longer be disturbed after they lapsed to finality.

Appeal of a labor case under Rule 45

A review of the CA's decision in a labor case, brought to the Court via Rule 45 of the Rules of Court, is limited to a review of errors of law imputed to the CA. In *Montoya v. Transmed Manila Corporation,*[30] we laid down the basic approach in reviews of Rule 45 decisions of the CA in labor cases, as follows:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In**

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[29] *Rollo,* p. 129.

[30] G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343; emphases supplied, citations omitted.

question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?

This manner of review was reiterated in *Holy Child Catholic School v. Hon. Patricia Sto. Tomas, etc., et al.*,[31] where the Court limited its review under Rule 45 of the CA's decision in a labor case to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion in the decision of the Secretary of Labor, and not on the basis of whether the latter's decision on the merits of the case was strictly correct.

Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment amounting to or equivalent to lack of jurisdiction.[32] There is grave abuse of discretion when the power is exercised in an arbitrary or despotic manner by reason of "passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[33]

With this standard in mind, we find no reversible error committed by the CA when it found no grave abuse of discretion in the NLRC's ruling. We find the computation of backwages and separation pay in the September 28, 2001 decision of the NLRC consistent with the provisions of law and jurisprudence. The computation conforms to the terms of the March 17, 1995 resolution (on illegal dismissal and payment of backwages) and the July 31, 1998 decision (on the computation of the backwages and the payment of separation pay).

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[31] G.R. No. 179146, July 23, 2013.

[32] *Don Orestes Romualdez Electric Coop., Inc. v. NLRC*, 377 Phil. 268, 273 (1999).

[33] *Ibid*.

Article 279 of the Labor Code, as amended,[34] provides backwages and reinstatement as basic awards and consequences of illegal dismissal:

> Article 279. Security of Tenure. – x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

"By jurisprudence derived from this provision, separation pay may [also] be awarded to an illegally dismissed employee in lieu of reinstatement."[35] Section 4(b), Rule I of the Rules Implementing Book VI of the Labor Code provides the following instances when the award of separation pay, in lieu of reinstatement to an illegally dismissed employee, is proper: (a) when reinstatement is no longer possible, in cases where the dismissed employee's position is no longer available; (b) **the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and** (c) **when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved.**[36] In these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages.[37] **The payment of separation pay and**

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[34] Republic Act No. 6715 or An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for These Purposes Certain Provisions of Presidential Decree No. 442, as amended, Otherwise Known as the Labor Code of the Philippines, Appropriating Funds Therefore and For Other Purposes.

[35] *Session Delights Ice Cream and Fast Foods v. Court Appeals (Sixth Division), supra* note 21 at 25 citing *Mt. Carmel College v. Resuena,* G.R. No. 173076, October 10, 2007, 533 SCRA 518, 541.

[36] *Ibid.*

[37] *Bombase v. NLRC*, 315 Phil. 551, 556 (1995).

reinstatement are exclusive remedies. The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.[38]

For clarity, the bases for computing separation pay and backwages are different. Our ruling in *Macasero v. Southern Industrial Gases Philippines*[39] provides us with the manner these awards should be computed:

> [U]nder Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages and **reinstatement *or* payment of separation pay in lieu thereof:**
>
> > **Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement.** The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. **In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, *or* separation pay if reinstatement is no longer viable, and backwages.**
> >
> > The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. 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. The payment of separation pay is in addition to payment of backwages.[40]

The computation of separation pay is based on the length of the employee's service; and the computation of backwages is based on the actual period when the employee was unlawfully prevented from working.[41]

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[38] *Nissan North EDSA, Balintawak, Quezon City v. Serrano, Jr.*, G.R. No. 162538, June 4, 2009, 588 SCRA 238, 248.

[39] G.R. No. 178524, January 30, 2009, 577 SCRA 500.

[40] *Id.* at 506-507; emphases, italics and underscores ours.

[41] *Lim v. National Labor Relations Commission*, 253 Phil. 318, 328 (1989).

The basis of computation of backwages

The computation of backwages depends on the final awards adjudged as a consequence of illegal dismissal, in that:

First, when reinstatement is ordered, the general concept under Article 279 of the Labor Code, as amended, computes the backwages from the time of dismissal until the employee's reinstatement. The computation of backwages (and similar benefits considered part of the backwages) can even continue beyond the decision of the labor arbiter or NLRC and ends only when the employee is actually reinstated.[42]

Second, when separation pay is ordered in lieu of reinstatement (in the event that this aspect of the case is disputed) or reinstatement is waived by the employee (in the event that the payment of separation pay, in lieu, is not disputed), backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay.**

Third, when separation pay is ordered after the finality of the decision ordering the reinstatement by reason of a supervening event that makes the award of reinstatement no longer possible (as in the case), backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay.**

The above computation of backwages, when separation pay is ordered, has been the Court's consistent ruling. In *Session Delights Ice Cream and Fast Foods v. Court Appeals (Sixth Division*, we explained that the finality of the decision becomes the reckoning point because in allowing separation pay, the **final** decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[43]

We may also view the proper computation of backwages (whether based on reinstatement or an order of separation pay) in terms of the life of the employment relationship itself.

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[42] *Javellana, Jr. v. Belen,* G.R. No. 181913, March 5, 2010, 614 SCRA 342, 350-351.

[43] *Supra* note 21 at 26.

When reinstatement is ordered, the employment relationship continues. Once the illegally dismissed employee is reinstated, any compensation and benefits thereafter received stem from the employee's continued employment. In this instance, backwages are computed only up until the reinstatement of the employee since after the reinstatement, the employee begins to receive compensation from his resumed employment.

When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay since the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment.

The computation of the respondents' backwages

As the records show, the contending parties did not dispute the NLRC's order of separation pay that replaced the award of reinstatement on the ground of the supervening event arising from the newly-discovered strained relations between the parties. The parties allowed the NLRC's July 31, 1998 decision to lapse into finality and recognized, by their active participation in the second computation of the awards, the validity and binding effect on them of the terms of the July 31, 1998 decision.

Under these circumstances, while there was no express modification on the period for computing backwages stated in the dispositive portion of the July 31, 1998 decision of the NLRC, it is nevertheless clear that the award of reinstatement under the March 17, 1995 resolution (to which the respondents' backwages was initially supposed to have been computed) was substituted by an award of separation pay. As earlier stated, the awards of reinstatement and separation pay are exclusive remedies; the change of awards (from reinstatement to separation

pay) under the NLRC's July 31, 1998 not only modified the awards granted, but also changed the manner the respondents' backwages is to be computed. The respondents' backwages can no longer be computed up to the point of reinstatement as there is no longer any award of reinstatement to speak of.

We also emphasize that the payment of backwages and separation pay cannot be computed from the time the respondents allegedly expressed their wish to be paid separation pay. In the first place, the records show that the alleged manifestation by the respondents, through Samuel, was actually a mere expression of interest.[44] More importantly, the alleged manifestation was disregarded in the NLRC's July 31, 1998 decision where the NLRC declared that the award of separation pay was due to the supervening event arising from the strained relations (not a waiver of reinstatement) that justified the modification of the NLRC's final March 17, 1995 resolution on the award of reinstatement. Simply put, insofar as the computation of the respondents' backwages, we are guided by the award, modified to separation pay, under the NLRC's July 31, 1998 decision.

Thus, the computation of the respondents' backwages must be from the time of the illegal dismissal from employment until the finality of the decision ordering the payment of separation pay. It is only when the NLRC rendered its July 31, 1998 decision ordering the payment of separation pay (which both parties no longer questioned and which thereafter became final) that the issue of the respondents' employment with the petitioners was decided with finality, effectively terminating it. The respondents' backwages, therefore, must be computed from the time of their illegal dismissal until January 29, 1999, the date of finality of the NLRC's July 31, 1998 Decision.

As a final point, the CA's ruling must be modified to include legal interest commencing from the finality of the NLRC's July 31, 1998 decision. The CA failed to consider that the NLRC's July 31, 1998 decision, once final, becomes a judgment for money from which another consequence flows – the payment of interest

[44] *Rollo,* p. 109.

in case of delay.[45] Under the circumstances, the payment of legal interest of six percent (6%) upon the finality of the judgment is proper. It is not barred by the principle of immutability of judgment as it is compensatory interest arising from the final judgment.[46]

WHEREFORE, premises considered, we **DENY** the petition and thus effectively **AFFIRM with MODIFICATION** the decision dated September 1, 2005 and the resolution dated December 14, 2005 of the Court of Appeals in CA-G.R. SP No. 70085. The petitioners Bani Rural Bank, Inc., Enoc Theatre I and II and/or Rafael de Guzman, are **ORDERED** to **PAY** respondents Teresa de Guzman, Edgar C. Tan and Teresa G. Tan the following:

(a) Backwages computed from the date the petitioners illegally dismissed the respondents up to January 29, 1999, the date of the finality of the decision dated July 31, 1998 of the National Labor Relations Commission in NLRC CN. SUB-RAB-01-07-7-0136-93 CA No. L-001403 and NLRC CN. SUB-RAB-01-07-7-0137-93 CA No. L-001405;

(b) Separation pay computed from respondents' first day of employment up to January 29, 1999 at the rate of one (1) month pay per year of service; and

(c) Legal interest of six percent (6%) *per annum* of the total monetary awards computed from January 29, 1999 until their full satisfaction.

The labor arbiter is hereby **ORDERED** to make another recomputation according to the above directives.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[45] *Session Delights Ice Cream and Fast Foods v. Court Appeals (Sixth Division), supra* note 21, at 23, 26.

[46] *Gonzales v. Solid Cement Corporation*, G.R. No. 198423, October 20, 2012, 684 SCRA 344. See BSP Circular No. 799, Series of 2013.

SECOND DIVISION

[G.R. No. 176269. November 13, 2013]

PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* **KENNETH MONCEDA *Y* SY *ALIAS* "WILLIAM SY" and YU YUK LAI *ALIAS* "SZE YUK LAI,"** *appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS.— In a charge of illegal sale of *shabu*, the prosecution must prove beyond reasonable doubt: (a) the identity of the buyer and the seller, (b) the identity of the object and the consideration of the sale; and (c) the delivery of the thing sold and of the payment made. What assumes primary importance is the proof clearly showing that an illegal transaction actually took place, and the presentation in court of what was sold as evidence of the *corpus delicti*.

2. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; INCONSISTENCIES WHEN REFERRING TO MINOR DETAILS AND COLLATERAL MATTERS, DO NOT AFFECT THE VERACITY NOR THE WEIGHT OF THE TESTIMONY.— The rule is that inconsistencies in the testimony of witnesses, when referring only to minor details and collateral matters, do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such minor inconsistencies even enhance their veracity as the variances erase any suspicion of a rehearsed testimony.

3. ID.; ID.; ID.; FRAME-UP AS A DEFENSE; LIKE ALIBI, ALLEGATION OF FRAME-UP MUST ADDUCE CLEAR AND CONVINCING EVIDENCE TO OVERCOME THE PRESUMPTION OF REGULARITY OF OFFICIAL ACTS OF GOVERNMENT OFFICIALS.— In *People v. Zheng Bai Hui*, we held that like the defense of alibi, frame-up is an allegation that can easily be concocted. For this claim to prosper,

the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; BUY-BUST OPERATION; PRIOR SURVEILLANCE IS NOT NECESSARY TO RENDER THE BUY-BUST OPERATION LEGITIMATE; SUSTAINED.— We have held that prior surveillance is not necessary to render a buy-bust operation legitimate, especially when the buy-bust team is accompanied at the target area by the informant. Similarly, the presentation of an informant as a witness is not regarded as indispensable to the success in prosecuting drug-related cases. It is only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his identity be disregarded. In this case, the informant had actively participated in the buy-bust operation and her testimony, if presented, would merely corroborate the testimonies of the members of the buy-bust team.

5. ID.; ID.; ID.; ID.; CHAIN OF CUSTODY; IN CONVICTING AN ACCUSED FOR DRUG-RELATED OFFENSES, IT IS ESSENTIAL THAT THE IDENTITY OF THE DRUGS MUST BE ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUISITE TO MAKE A FINDING OF GUILT; CASE AT BAR.— The existence of the drug is the *corpus delicti* of the crime of illegal possession of dangerous drugs and is an essential element to secure a conviction. It is on this point that all doubts on the identity of the evidence should be removed through the monitoring and tracking of the movement of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. x x x It has been clearly established that after SPO1 Pastrana seized the carton box and the three packs of *shabu* from the appellants, they were endorsed to Col. Castillo, who, in turn, personally delivered them to Camp Crame where they were properly marked. The Initial Laboratory Report of Forensic Analyst Zata also shows that the specimens that were analyzed were the same specimens that PO3 Pastrana had marked and that the prosecution subsequently presented in

court. In convicting an accused for drug-related offenses, it is essential that the identity of the drugs must be established with the same unwavering exactitude as that requisite to make a finding of guilt. In this case, we see no irregularity on the part of the buy-bust operatives as to break the required chain of custody which could warrant the acquittal of Lai.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Sebrio De Las Alas Manalili and Batacan for Yu Yuk Lai.

D E C I S I O N

BRION, *J.*:

We resolve the recourse to this Court by appellants Kenneth Monceda *y* Sy and Yu Yuk Lai in this dangerous drugs case. They assail their conviction before the Court of Appeals (*CA*)[1] and the Regional Trial Court (*RTC*)[2] of the charges of violating Section 15, Article III of Republic Act 6425,[3] as amended by Republic Act No. 7659.[4]

The Antecedent Facts

The Information brought against the appellants and under which they were indicted, and subsequently convicted, reads:

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[1] Decision dated May 30, 2005 and resolution dated September 13, 2006 in CA-G.R. CR-H.C. No. 00434; penned by Associate Justice Ruben T. Reyes, and concurred in by Associate Justices Josefina-Salonga and Fernanda Lampas Peralta. *Rollo*, pp. 4-34; and CA *rollo*, pp. 309-310, respectively.

[2] Decision dated September 20, 2001, Regional Trial Court, Branch 27, Manila; CA *rollo*, pp. 175-215. Penned by Judge Teresa P. Soriaso.

[3] The Dangerous Drugs Act of 1972.

[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.

That on or about November 7, 1998, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent and without authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver to a poseur-buyer three (3) kilograms, more or less, of methylamphetamine hydrochloride (*shabu*), which is a regulated drug.[5]

The appellants were duly arraigned and they entered a plea of "not guilty" on April 14, 1999.[6] Trial on the merits thereafter took place.

The Prosecution's Version

The record of the case shows that on November 6, 1998, a female informant told P/Inspector Ramon Arsenal of the Special Operations Divisions, Narcotics Group, Philippine National Police (*PNP*) that a "contact" was looking for a buyer of huge quantities of *methamphetamine hydrochloride* (*"shabu").* The informant also disclosed that the "contact" preferred to be paid in casino chips, not in cold cash.[7]

Based on this information, P/Inspector Arsenal immediately formed a team to conduct a buy-bust operation. The team was composed of Police Officer 3 (*PO3*) Geronimo Pastrana, who was designated as the *poseur*-buyer, P/Inspector Arsenal, and Senior Police Officer 3 *(SPO3)* Elpidio Anasta. The deal, as the subsequent agreement showed, was for ₱2,000,000.00 worth of *shabu.* The transaction was to be consummated at Hotel Sofitel's parking lot between 3:00 and 11:00 p.m. the next day.[8]

Police Chief Superintendent *(P/C Supt.)* Emmanuel Licup, the Finance Officer of the PNP Narcotics Group, secured the casino chips to be used – ₱2,000,000.00 worth, consisting of

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[5] CA *rollo,* p. 19.

[6] *Id.* at 47.

[7] *Rollo,* p. 5.

[8] *Id.* at 7.

four (4) casino chips (each worth ₱500,000.00) – from Casino Filipino at the Holiday Inn, Manila Pavilion Hotel.[9]

On November 7, 1998, the female informant confirmed the transaction and the buy-bust team proceeded to Hotel Sofitel at around 1:30 p.m. PO3 Pastrana and the female informant were in a red Honda Civic hatchback with plate number TKT-461. They parked near the lobby of Hotel Sofitel. P/Inspector Arsenal and SPO3 Anasta rode on a separate vehicle and they parked about fifteen (15) meters behind PO3 Pastrana's vehicle. Twenty (20) other operatives of the team strategically positioned themselves throughout the area.[10]

At around 5:30 p.m., a blue Mitsubishi Lancer (plate number WEJ-310) arrived and parked in front of PO3 Pastrana's vehicle. After a few moments, a man – later identified as Monceda – alighted and approached the female informant. The latter introduced PO3 Pastrana as the buyer of *shabu*. Monceda first returned to his car, whispered something to his lady companion, before coming back to PO3 Pastrana's vehicle. Monceda insisted that he needed to see the casino chips, which PO3 Pastrana then showed him.[11]

Monceda circled back to the car to pick up his lady companion, later identified as Lai. She was carrying a carton box. Monceda introduced Lai to PO3 Pastrana, at the same time that Lai was giving the carton box to Monceda who forthwith handed the package to PO3 Pastrana while saying: *"Pare, iyan na yung order mong bato, 3 kilo yan."*[12]

PO3 Pastrana inspected the carton box, which he saw contained three (3) plastic bags. After confirming that the plastic bags contained *shabu*, he placed them at the rear seat of the red Honda Civic hatchback. He then handed the four casino chips to Monceda who immediately gave them to Lai. PO3 Pastrana, at that point,

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[9] *Id.* at 6.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 8.

gave the pre-arranged signal to the buy-bust team, prompting them to converge on the transacting parties. When PO3 Pastrana identified himself as an agent of the PNP Narcotics Group, Monceda tried to run away but PO3 Pastrana caught him. P/Inspector Arsenal and SPO3 Anasta, on the other hand, apprehended Lai and, while doing this, took the chips away from her.[13]

The appellants were initially brought to Diamond Hotel where the high-ranking officers of the Narcotics Group had stationed themselves. PO3 Pastrana surrendered the keys of the red Honda Civic hatchback vehicle, together with the three plastic bags of *shabu,* to senior officer Colonel *(Col.)* Arturo Castillo. The bags and their contents were later forwarded to the PNP Crime Laboratory for chemical analysis. The appellants were brought to the PNP Headquarters in Camp Crame, Quezon City, and were subjected to physical examination there.[14]

The prosecution and the defense agreed that the testimony of Forensic Analyst Edwin Zata was to be dispensed with. They further stipulated that:

1. The specimen of *shabu*, subject matter of this case, with a total weight of 2,992.4 grams was subjected to laboratory analysis at the PNP Crime Laboratory, Camp Crame, Quezon City;

2. The laboratory analysis was conducted by Edwin Zata in compliance with the memorandum of P/Supt. Arthur Maceda Castillo for the Director of the PNP Crime Laboratory to conduct laboratory examination of the specimen of *shabu*, Exhs. "F" and "F-1";

3. The authenticity of the Initial Laboratory Report of Forensic Analyst Zata, dated November 9, 1998 to the effect that the laboratory examination of the specimen in question gave positive results for methamphetamine hydrochloride, a regulated drug, Exhs. "G" and "G-1";

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[13] *Id.*

[14] *Id.* at 9.

4. The authenticity of Physical Sciences Report No. D-3649-98 also issued by Forensic Chemist Zata dated November 9, 1998, to the effect that the qualitative examination of the specimen gave positive results for methamphetamine hydrochloride, Exhs. "H" and "H-1";

5. The existence of the three plastic bags of *shabu*, subject of this case, Exhs. "I", "J" and "K";

6. Forensic Chemist Zata has no personal knowledge as to the source of *shabu* in question;

7. The specimen of *shabu* was forwarded to the Crime Laboratory Service and received by the said office at 10:55 a.m. but the specimen was actually received by the Chemistry Division at 11:00 a.m.; and

8. Forensic Chemist Zata only conducted random of the specimen of *shabu*. No percentage purity test was conducted.[15]

The Version of the Defense

The defense presented a different version of events. The appellants denied selling the *shabu* and claimed that they were victims of a frame-up. Lai, together with five other witnesses, took the witness stand for the defense, but Monceda declined.

Lai asserted that Monceda was her nephew and that she has been engaged in various businesses: as a rice retailer, an importer, and a casino financier. She also claimed to be a member of a Taiwanese association engaged in lending money to casino players and that she arrived from China the night before her arrest. She cited this as the reason why she could not have possibly arranged the drug transaction.[16]

Lai further testified that on November 7, 1998, she was at Hotel Sofitel. She had with her the income of the association amounting to ₱2,000,000.00 and US$30,000.00 in cash. She was about to convert the money to chip checks when she received a call from Monceda who told her that the police were arresting

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[15] Records II, pp. 16-17; italics ours.

[16] TSN, February 23, 2001, pp. 11-19.

him at Diamond Hotel. She immediately tried to leave but Jimmy Uy, a regular borrower, stopped her to borrow money. She hurriedly gave him ₱100,000.00 and told Uy that she would be back after settling Monceda's problem. Lai's son and driver were then waiting at the Hotel Sofitel's lobby and all three left on board her car, a blue Mitsubishi Lancer, for Diamond Hotel.[17]

Lai narrated that on reaching Diamond Hotel, about twenty to thirty policemen ordered them to alight from their vehicle. They quickly searched her vehicle for *shabu* but found the paper bag containing the money instead. Afterwards, they ordered her to board her car, but her son and her driver were told to stay. Four policemen boarded her car with her, seating her at the middle portion of the back seat. They drove around Metro Manila for several hours.[18]

While inside the car, she claimed that she was robbed. Her Rolex wristwatch, her other pieces of jewelry and the paper bag containing the money she brought with her were all taken. At around 11:00 p.m., after hours of driving around Metro Manila, they finally told her to get out of the vehicle. She refused as it was dangerous to alight at that place, and asked instead to be dropped-off at the nearest police station; she also pleaded for the return of her properties.[19]

Instead of taking her to the police station, they brought her to Camp Crame where a plastic bag was placed over her head and where she was repeatedly beaten while being asked where she had hidden the *shabu*. She could not give them any answer because she did not know what they were talking about. When the plastic bag was removed, she was told to accompany them to her house in Parañaque City. Her tormentors thought that the *shabu* was in her cabinet. She consented as she had no choice but to give in to their demands.[20]

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[17] *Id*. at 22-27.

[18] *Id*. at 28-30.

[19] *Id*. at 31-33.

[20] *Id*. at 34-41.

Policemen were at her house when they arrived. She also noticed that her housemaids had been badly beaten. She was forced to open her cabinets but only her other pieces of jewelry were there, not *shabu*. These were also taken from her before she was brought back to Camp Crame. It was only at that time that she saw Monceda again and she noted that he had also been badly beaten.[21]

On cross-examination, Lai admitted that she knew Monceda to be a drug user. She explained that Monceda, for a small consideration of ₱5,000.00, was hired by a certain "Mama Rosa" to deliver a package somewhere in Malate. He used the red Honda Civic hatchback vehicle, which Lai believed to belong to "Mama Rosa" and not to PO3 Pastrana. Monceda was not informed of the contents of the package which turned out to be the 3 plastic bags of *shabu* that were recovered from the vehicle. She insisted that the drugs were not recovered from her blue Mitsubishi Lancer vehicle.[22]

Lai's statements were corroborated by Uy, who admitted that he indeed borrowed ₱100,000.00 from her while she was talking to someone at the phone.[23] Lai's housemaid and the other defense witnesses also testified about the incident at Diamond Hotel and at her house.[24]

The RTC Ruling

On September 20, 2001, the RTC convicted the appellants as charged. The RTC relied on the presumption of regularity in the buy-bust operation and rejected the appellants defenses of denial and frame-up. The RTC declared that the appellants were caught *in flagrante delicto* while selling *shabu* to a poseur-buyer in a buy-bust operation. The seizure of *shabu* was considered lawful since it was incident to a lawful arrest. The

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[21] *Id*. at 42-45.

[22] TSN, March 30, 2001, pp. 16-18.

[23] Records II, pp. 32-33.

[24] *Id*. at 30-36.

RTC sentenced them to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱5,000,000.00 each.[25]

The appellants appealed to the CA. During the pendency of the appeal, Monceda committed suicide.

The CA Ruling

The CA affirmed the RTC decision. The CA found that the collective testimonies of the prosecution witnesses were corroborated by the physical evidence on record. The CA also found Lai's defense to be weak, especially after she failed to present her son and her driver as witnesses. Her defense was further weakened when no single complaint was ever filed against the members of the buy-bust team for the abuses they allegedly committed.

The Issues

Lai raised the following assignment of errors:

I.

THE CA ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PROSECUTION WITNESSES WHILE TOTALLY DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

II.

THE CA ERRED IN RULING THAT THE NON-PRESENTATION OF THE CONFIDENTIAL INFORMANT DID NOT VIOLATE THE RIGHTS OF THE ACCUSED-APPELLANTS.

III.

THE CA ERRED IN HOLDING THAT THERE WAS PROPER HANDLING AND TRANSFER OF THE CUSTODY OF THE CONFISCATED DRUGS.

Lai argues that the lower courts erred in evaluating the testimonial evidence by relying mainly on the presumption of regularity: they failed to give due weight to the possible motive

[25] Records II, p. 52.

that impelled the police officers to perpetuate the frame-up. Lai also faults the lower courts for disregarding the defense's evidence which pointed out the inconsistencies in the testimonies of the prosecution witnesses. She emphasizes that her testimony was sufficiently corroborated by the testimony of the other defense witnesses.

Lai also contends that her constitutional right was violated because the confidential informant was not presented as witness. Lastly, she argues that the identification of the *shabu* was not sufficiently proven since the seized items were not marked at the time she was apprehended and were improperly handled.

The Court's Ruling

We deny the petition for lack of merit.

In a charge of illegal sale of *shabu*, the prosecution must prove beyond reasonable doubt: (a) the identity of the buyer and the seller, (b) the identity of the object and the consideration of the sale; and (c) the delivery of the thing sold and of the payment made.[26] What assumes primary importance is the proof clearly showing that an illegal transaction actually took place, and the presentation in court of what was sold as evidence of the *corpus delicti*.[27]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operations. We generally defer to the trial court's assessment of the evidence as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand.[28]

In this case, we find from the records sufficient evidence of the illegal sale with the accused as the sellers and see no compelling need to re-evaluate the trial court's assessments.

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[26] *People v. Unisa,* G.R. No. 185721, September 28, 2011, 658 SCRA 305, 324.

[27] *The People of the Philippines v. Noel Bartolome y Bajo,* G.R. No. 191726, February 6, 2013.

[28] *People v. Alivio,* G.R. No. 177771, May 30, 2011, 649 SCRA 318, 328.

The testimonies of the prosecution witnesses, namely: PO3 Pastrana, P/Inspector Arsenal, SPO3 Anasta, P/C Supt. Licup, and Col. Castillo were positive and straightforward. While there existed some inconsistencies in their individual testimonies compared with one another, these testimonies – considered in their totality – leave no doubt in our minds that an illegal sale of *shabu* had actually taken place with the accused as the sellers.

We observe that Lai particularly challenges the testimony of P/Inspector Arsenal for its integrity and believability. At his cross-examination, P/Inspector Arsenal testified that it was Monceda who carried the box containing the *shabu* and who handed the box to Lai, while Monceda was at the same time introducing Lai to PO3 Pastrana. Lai then handed the box to PO3 Pastrana who placed it in the red Honda Civic hatchback.[29] But at the re-direct and re-cross examination, P/Inspector Arsenal was emphatic that it was Lai herself who carried the box and gave it to Monceda, who in turn handed it to PO3 Pastrana.[30]

We are not persuaded that this inconsistency is sufficient to taint the prosecution's case to the point that it should fail. The rule is that inconsistencies in the testimony of witnesses, when referring only to minor details and collateral matters, do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such minor inconsistencies even enhance their veracity as the variances erase any suspicion of a rehearsed testimony.[31] Besides, P/Inspector Arsenal was on a separate vehicle, at a some distance from the actual buy-bust transaction. It is possible that he might have been mixed up and confused on who was carrying the box containing *shabu*. But this uncertainty is a minor matter in the context of what had been sufficiently proven as a whole. What is material to consider is that the transacting parties were there, together with the red box that contained the *shabu*; the order by which the box was handled is not all that important and material given

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[29] Records II, p. 14.

[30] *Id*. at 15-16.

[31] *People v. Khor*, 366 Phil. 762, 790.

that it passed from the appellants and ultimately to PO3 Pastrana. In other words, the illegal transaction had indeed taken place. Significantly, PO3 Pastrana, the *poseur*-buyer and the one who directly received the drugs, was unwavering in his testimony that it was Lai who was carrying the box:

Q: After you were introduced by your confidential agent, what transpired next?

A: He went back to his car and he whispered something to his lady companion and then came back to me. He insisted that he be shown the casino chips. And after I showed them to him, he went back to his car.

Q: After he return[ed] to his car, what happened next?

A: A woman alighted from the car and the two of them approached me. The lady was carrying a carton and she was introduced to me by William Sy mentioning her name as Yu Yuk Lai. After the introduction, Yu Yuk Lai handed the carton she was carrying to William Sy who in turn handed it to me saying "*Pare, iyan na iyong order mong bato, 3 kilo iyan*."

Q: When that carton box was handed to you by William Sy, what did you do?

A: I examined the contents of the carton to ascertain if it is *shabu*. Then I placed the carton inside our car and I got the 4 casino chips and gave them to William Sy. After that, I executed the pre-arranged signal and I introduced myself as Narcom Agent. At this point, William Sy tried to escape but I got hold of him. (interrupted).

xxx xxx xxx

Q: During the last hearing, you identified the carton box containing 3 plastic bags containing *shabu*, could you tell us what is the relation of that box that you mentioned and the *shabu* inside it to that you identified during the last hearing?

A: Those were the items handed to me by William Sy during the buy-bust operation.[32]

[32] TSN, September 15, 1999, pp. 16-18; italics ours.

In *People v. Zheng Bai Hui*,[33] we held that like the defense of alibi, frame-up is an allegation that can easily be concocted. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials.

Lai, unfortunately for her, failed to corroborate her statements regarding the alleged arrest which occurred at Diamond Hotel. Her presented witnesses all testified on the events before or after her arrest. Lai's lone testimony regarding the circumstances of arrest at Diamond Hotel, on the other hand, failed to overcome the positive and credible testimony showing the existence of the buy-bust operation at Sofitel Hotel. Worse, the two persons, her son and her driver, who accompanied her during the alleged arrest at Diamond Hotel, and who could have possibly shed light to her version of the events – both refused to testify. We find this development perplexing and is a matter which greatly weakened Lai's frame-up allegations.

No prior surveillance and non-presentation of the informant

Lai next argues that the absence of any prior surveillance casts doubt on the veracity of the buy-bust operation. This argument, in our view, suffers from obvious lack of merit.

We have held that prior surveillance is not necessary to render a buy-bust operation legitimate, especially when the buy-bust team is accompanied at the target area by the informant.[34] Similarly, the presentation of an informant as a witness is not regarded as indispensable to the success in prosecuting drug-related cases.[35] It is only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his identity be disregarded.[36] In this case, the informant had actively participated

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[33] 393 Phil. 68, 135 (2000).

[34] *People v. Abedin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 336.

[35] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.

[36] *Supra* note 27.

in the buy-bust operation and her testimony, if presented, would merely corroborate the testimonies of the members of the buy-bust team.

Neither can Lai question the authenticity of the casino chips. The testimonies of P/C Supt. Licup and the treasury head of Casino Filipino clearly explained how P/C Supt. Licup procured the chips the day before the buy-bust operation.[37] These casino chips were photocopied, marked, and properly presented in court during the trial.[38]

The chain of custody

The existence of the drug is the *corpus delicti* of the crime of illegal possession of dangerous drugs and is an essential element to secure a conviction. It is on this point that all doubts on the identity of the evidence should be removed through the monitoring and tracking of the movement of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[39]

Lai's argument relies heavily on a photograph[40] taken by the buy-bust operatives, which shows that the carton box was actually wrapped in a red and white plastic bag. Lai quoted the testimony of PO3 Pastrana:

Q: Before you placed the carton box inside your Hunchback Honda Civic, did you wrap it?

xxx xxx xxx

A: No, sir.

Q: Are you aware that pictures were taken of the stuff that was placed in the rear seat of your Honda Civic Hunchback?

A: I do not know about that, sir.

Court: You show him the picture if there is a picture.

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[37] TSN, January 10, 2000, pp. 1-33.

[38] Records, p. 27.

[39] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 274.

[40] Records, pp. 531-533.

Atty. Mejia: Yes, Your Honor.

Q: I am showing to you a picture which purports to have been taken on November 7, 1998, are you familiar with the items and personalities depicted in that picture?

A: Yes, I am familiar, sir.[41]

xxx xxx xxx

Q: Now, are you aware, Mr. Witness that the red plastic box which Major Suan and Col. Ruiz are shown in this picture as in the process of urbaning allegedly contained the cartoon box which you placed at the rear seat of your car?

A: ***What was handed to me was a cartoon box and it was not contained in a plastic bag as shown in the picture.***

COURT: Are you sure about that?

A: ***Itong pinapakita sa akin, sigurado ako dahil hindi ko nakita 'yan.***

COURT: So, it's only now that you saw this plastic bag colored red and white which is supposed to contain the [carton], this is the first time you saw this plastic bag?

A: [It's] only now, sir.[42]

Lai, however, fails to consider that at the time the photographs were taken at Diamond Hotel, PO3 Pastrana was no longer around to witness the events. He had already turned over the seized items to Col. Castillo at Diamond Hotel before he left; thus, he cannot possibly testify on the condition of the seized items when the photographs were taken.[43] During the cross-examination of PO3 Pastrana, he said:

Q: Are you telling the Honorable Court, that immediately after the confidential agent parked the car at the parking area in front of the Diamond Hotel, she left the premises?

A: Yes, sir.

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[41] TSN, October 6, 1999, p. 23.

[42] *Id*. at 23-25; italics and emphases ours.

[43] TSN, January 12, 2000, pp. 36-40.

xxx xxx xxx

Q: Who turned over the key, you or the confidential informant?

A: I was the one, sir.

Q: But you did not remove the [carton] box at the rear seat of the Honda Hunchback?

A: No more, sir.

Q: And you were no longer around when pictures were taken of the stuff that you allegedly confiscated?

A: ***I was not anymore present, sir.***[44]

After the incidents at Diamond Hotel, the seized goods were taken to Camp Crame where PO3 Pastrana identified the carton box and the three plastic bags containing *shabu*, before marking his initials over them.[45] These were then turned over to the project officer for submission to laboratory examination. The testimony of Col. Castillo is substantial if only to prove that there was proper handling and transfer of the seized goods after the specimens were surrendered to him:

Q: And you were the one [who] personally brought the [carton] box containing plastic bags?

A: Yes, sir, because it was under my direct custody already, sir.

Q: At your office, what did you do [to] them in connection with this case?

A: I waited for the operating elements and when Major Suan arrived, I called for him and turned over these evidences to him as much as he is the project officer on case, sir.

Q: Now, in connection with this case, Mr. Witness, do you recall whether you requested for laboratory examination?

A: Yes, sir, I did.

xxx xxx xxx

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[44] TSN, October 13, 1999, p. 5.

[45] Records II, p. 19.

Q: After this request, what else did you do in connection with this case?

A: I went to my office and routine procedure having turned over to the group of Major Suan already all these evidences for whatever follow-up they want to undertake.[46]

Based on these considerations, we conclude that there was proper handling and transfer of the confiscated items. To recapitulate, it has been clearly established that after SPO1 Pastrana seized the carton box and the three packs of *shabu* from the appellants, they were endorsed to Col. Castillo, who, in turn, personally delivered them to Camp Crame where they were properly marked. The Initial Laboratory Report of Forensic Analyst Zata also shows that the specimens that were analyzed were the same specimens that PO3 Pastrana had marked and that the prosecution subsequently presented in court.[47]

In convicting an accused for drug-related offenses, it is essential that the identity of the drugs must be established with the same unwavering exactitude as that requisite to make a finding of guilt.[48] In this case, we see no irregularity on the part of the buy-bust operatives as to break the required chain of custody which could warrant the acquittal of Lai.

WHEREFORE, based on the foregoing premises, we hereby **DISMISS** the appeal for lack of merit, and accordingly **AFFIRM** the decision dated May 30, 2005 and the resolution dated September 13, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00434. Costs against Yu Yuk Lai.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[46] TSN, January 12, 2000, pp. 29-32.

[47] Records I, p. 25.

[48] *Sales v. People*, G.R. No. 182296, April 7, 2009, 584 SCRA 680, 688-689.

SECOND DIVISION

[G.R. No. 176702. November 13, 2013]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MARCELINO A. DECHAVEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS WILL NOT BE DISTURBED ON APPEAL; A NOTABLE EXCEPTION IS THE PRESENCE OF CONFLICT BETWEEN OR AMONG THE TRIBUNALS' RULINGS ON QUESTIONS OF FACTS; CASE AT BAR.— The rule that the Court will not disturb the CA's findings of fact is not an absolute rule that admits of no exceptions. A notable exception is the presence of conflict of findings of fact between or among the tribunals' rulings on questions of fact. The case before us squarely falls under this exception as the tribunals below made *two critical conflicting factual findings*.

2. POLITICAL LAW; ADMINISTRATIVE LAW; THE QUANTUM OF EVIDENCE TO SUPPORT AN ADMINISTRATIVE RULING IS SUBSTANTIAL EVIDENCE; SUBSTANTIAL EVIDENCE, DEFINED.— This Court cannot be any clearer in laying down the rule on the quantum of evidence to support an administrative ruling: "In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming."

3. ID.; ID.; CESSATION FROM OFFICE OF A PUBLIC OFFICIAL BY RESIGNATION OR RETIREMENT NEITHER WARRANTS THE DISMISSAL OF THE ADMINISTRATIVE COMPLAINT FILED AGAINST HIM WHILE HE WAS STILL IN THE SERVICE NOR DOES IT RENDER SAID ADMINISTRATIVE CASE MOOT AND

ACADEMIC; SUSTAINED.— As early as 1975, we have upheld the rule that "the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications." x x x Recently, we emphasized that in a case that a public official's cessation from service does not render moot an administrative case that was filed prior to the official's resignation. x x x Likewise, in *Baquerfo v. Sanchez*, we held: **Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic**. x x x Thus, from the strictly legal point of view and as we have held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the acts of the respondent, save only where death intervenes and the action does not survive.

APPEARANCES OF COUNSEL

Valencia Ciocon Dabao Valencia De la Paz Dionela Pandan and Rubica Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

The petitioner, Office of the Ombudsman (*Ombudsman*), seeks in this Rule 45 petition for review on *certiorari*[1] the reversal of the Court of Appeals' *(CA*'s*)* decision[2] and resolution[3] reversing

[1] *Rollo*, pp. 10-32.

[2] In CA-G.R. SP. No. 00673, dated March 31, 2006; penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr.; *id*. at 35-47.

[3] *Id*. at 50-51; dated February 7, 2007.

the Ombudsman's rulings[4] that dismissed respondent Marcelino A. Dechavez (*Dechavez*) from the service for dishonesty.

THE FACTS

The attendant facts are not complicated and, in fact, involve the oft-repeated scenario in the public service workplace – a complaint by subordinate employees against their superior officer for misconduct in office. In a twist of fortune (or misfortune), an accident triggered the whole train of events that led to the present case.

Dechavez was the president of the Negros State College of Agriculture (*NSCA*) from 2001 until his retirement on April 9, 2006. On May 5, 2002, a Sunday, Dechavez and his wife, Amelia M. Dechavez (*Mrs. Dechavez*), used the college service Suzuki Vitara to go to Pontevedra, Negros Occidental. Dechavez drove the vehicle himself. On their way back to the NSCA, they figured in a vehicular accident in Himamaylan City, resulting in minor injuries to the occupants and damage to the vehicle.

To support his claim for insurance, Dechavez executed an affidavit[5] before the Government Service Insurance System

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[4] Decision dated October 29, 2004 and order dated April 6, 2005; *id.* at 71-80 and 81-86, respectively.

[5] *Id.* at 14-15; dated May 10, 2002, which states:

That, last May 5, 2002, Mrs. Amelia M. Dechavez, my wife and I went to Pontevedra, Negros Occidental on official business, using the college vehicle Suzuki-Vitara as the official service vehicle of the undersigned;

That, at the time of the undersigned's official trip on May 5, 2002, there was no other driver available to do the driving and motivated by the fact that the destination was not too far with the estimate that the undersigned and his wife can return to their station before sunset;

That, the official trip was considered very urgent at the time for the good of the service;

That, it is part of the official duties and responsibilities of the undersigned as head of the state college to develop and maintain good linkages with both government and non-government organizations;

That, Mrs. Dechavez made a follow-up of the unsubmitted evaluation sheets of the cooperating teachers in the District of Pontevedra, where

(*GSIS*). The GSIS subsequently granted Dechavez's claims amounting to ₱308,000.00, while the NSCA shouldered ₱71,000.00 as its share in the vehicle's depreciation expense. The GSIS released ₱6,000.00 for Mrs. Dechavez's third-party liability claim for bodily injuries.

On November 11, 2002, twenty (20) faculty and staff members of the NSCA (*complainants*) asked the Commission on Audit (*COA*) to conduct an audit investigation of NSCA's expenditures in the May 5, 2002 vehicular accident. The COA dismissed the complaint for lack of merit.[6]

The complainants then sought recourse with the Ombudsman, Visayas, through a verified complaint[7] charging Dechavez with Dishonesty under Section 46(b)(1), Chapter 6, Tile I of the Administrative Code of 1987.[8]

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some NeSCA student teachers underwent their practice teaching activities in the second semester of SY 2001-2002, at the same time delivering the certificates of merit to the critic teachers and Principals of Pontevedra South Elementary School, and Assistant Superintendent Schools;

That the undersigned used to perform his extension service or confer with NeSCA's linkages like the technical staff of Hon. Congressman Carlos "Charlie" O. Cojuangco of the 4th Congressional District of Negros Occidental during week-ends to maximize his time during regular work days[.] [underscore supplied]

[6] *Id*. at 37.

[7] The complainants alleged that the affidavit executed by the respondent was untrue because of the following: 1) the NSCA drivers were all present and available during that time, it being a Sunday, and no official trips were assigned to them; 2) the trip was not "very urgent" as the tasks allegedly done could be accomplished on regular days, *i.e*., weekdays; and 3) that the alleged unsubmitted evaluation sheets of the cooperating teachers where two (2) NSCA students underwent their practice teaching were no longer necessary as these two (2) students had already graduated as of March 2002.

[8] Section 46. Discipline: General Provisions. —

(a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(1) Dishonesty[.]

THE OMBUDSMAN'S RULING

The Ombudsman dismissed Dechavez from the service with all accessory penalties after finding him guilty.[9] The Ombudsman ruled that the complainants sufficiently established their allegations, while Dechavez's defenses had been successfully rebutted. The motion for reconsideration that Dechavez filed was subsequently denied.[10]

THE CA'S RULING

The CA examined the same pieces of evidence that the Ombudsman considered and **reversed the Ombudsman's findings**.[11]

In complete contrast with the Ombudsman's rulings, the CA found that the complainants failed to sufficiently show that Dechavez had deliberately lied in his May 10, 2002 affidavit. Dechavez sufficiently proved that he went on an official trip, based on the reasons outlined below and its reading of the evidence:

First, there was nothing wrong if Dechavez worked on a Sunday; he must, in fact, be commended for his dedication.

Second, the Ombudsman should have accorded greater belief on the NSCA drivers' positive assertion that they were not available to drive for Mr. and Mrs. Dechavez (as they had serviced other faculty members at that time), as against the NSCA security guards' allegation that these drivers were available then (because they allegedly saw the drivers within the college premises on that Sunday); speculations on the nature of the trip should not arise simply because Dechavez personally drove the vehicle.

Third, the certifications of Mr. Larry Parroco (Pontevedra Sanggunian Bayan Member) and Mr. Cornelio Geanga (Chair of the Education Committee and Head Teacher of the M.H.

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[9] *Supra* note 4.

[10] *Ibid*.

[11] *Supra* note 2.

Del Pilar Elementary School) should have persuaded the Ombudsman that the affiants are public officials who would not lightly issue a certification or falsely execute affidavits as they know the implications and consequences of any falsity.

Fourth and lastly, the two lists of teaching instructors had been prepared by the same person, and if the second list had indeed been questionable, Mr. Pablito Cuizon (NSCA's Chairman for Instructions) would have not attached the second list to his affidavit.

On February 7, 2007, the CA denied[12] the motion for reconsideration filed by the Ombudsman.

THE PARTIES' ARGUMENTS

The Ombudsman argues that the guilt of Dechavez has been proven by substantial evidence – the quantum of evidence required in administrative proceedings. It likewise invokes its findings and posits that because they are supported by substantial evidence, they deserve great weight and must be accorded full respect and credit.

Dechavez counters that the present petition raises factual issues that are improper for a petition for review on *certiorari* under Rule 45. He adds that the present case has been mooted by his retirement from the service on April 9, 2006, and should properly be dismissed.

THE COURT'S RULING

The Court finds the petition meritorious.

The CA's factual findings are conclusive; exceptions

The rule that the Court will not disturb the CA's findings of fact is not an absolute rule that admits of no exceptions.[13] A

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[12] *Supra* note 3.

[13] Settled is the rule that the jurisdiction of this Court in cases brought before it from the CA via Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter are conclusive, except

notable exception is the presence of conflict of findings of fact between or among the tribunals' rulings on questions of fact. The case before us squarely falls under this exception as the tribunals below made *two critical conflicting factual findings*. We are thus compelled to undertake our own factual examination of the evidence presented.

This Court cannot be any clearer in laying down the rule on the quantum of evidence to support an administrative ruling: "In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming."[14]

Our own examination of the records tells us that the Ombudsman's findings and appreciation of the presented evidence are more in accord with reason and common experience so that it successfully proved, by the required quantum of evidence, Dechavez's dishonesty, at the same time that we find the

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in the following instances: "(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is 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 in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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 petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record"; *Sps. Sta. Maria v. CA*, 349 Phil. 275, 282-283 (1998), citing *Medina v. Asistio*, 191 SCRA 218, 223-224 (1990).

[14] *Orbase v. Office of the Ombudsman*, G.R. No. 175115, December 23, 2009, 609 SCRA 111, 126, citing *Office of the Ombudsman v. Fernando J. Beltran*, G.R. No. 168039, June 5, 2009, 588 SCRA 574.

respondent's reading of the evidence to be stretched to the point of breaking, as our analysis below shows.

We start with our agreement with the CA's view that the Ombudsman's finding – that Dechavez was not on official business on May 5, 2002 because it was a Sunday (a non-working day) – by itself, is not sufficient basis for the conclusion that Dechavez's business on that day was not official. We, nevertheless, examined the other surrounding facts and are convinced that the spouses Dechavez's trip was a personal one; thus, Dechavez had been dishonest when he made the claim that he went on official business. The dishonesty, of course, did not arise simply from the nature of the trip, but from the claim for insurance that brought the spouses a substantial sum.

First. Dechavez alleged that the trip was urgent, and there were no drivers available; hence, he drove the vehicle himself. He added that the fact that the trip ticket was accomplished on May 5, 2002, a Sunday, and that it was typewritten, are not material as he was not prohibited from driving the car himself.

We do not agree with Dechavez's claim about the immateriality of the trip ticket; it was presented as evidence and, as such, carries implications far beyond what Dechavez claims. The fact alone that the ticket, for a trip that was allegedly urgent, was typewritten already speaks volumes about the integrity of this piece of evidence. We agree with the Ombudsman, based on common experience and probability, that had the trip really been urgent and had the trip ticket been accomplished on the date of the trip, May 5, 2002, it would have been handwritten. The trip ticket, however, was typewritten, indicating that it had been prepared ahead of time, or thereafter, not on that Sunday immediately before leaving on an urgent trip. In fact, if it had been prepared ahead of time, then the trip could not have been urgent as there was advance planning involved.

In other words, if the trip ticket had been prepared ahead of time, the trip should have been scheduled ahead of time, and necessary arrangements should have been made for the availability of a driver. Therefore, it was unlikely that Dechavez would

have known that no driver would be available for him on the date of the trip.

On another note, if the trip ticket had been prepared after the trip, the Ombudsman was correct in observing that Dechavez had no authority to drive the vehicle in the absence of the requisite trip ticket.[15] Worse, if it had been prepared after the trip after an accident had intervened, then there had been a conscious attempt to "sanitize" the incidents of the trip. It is at this point where the claim for insurance becomes material; the trip ticket removed all questions about the regularity and official character of the trip.

After examining the testimonies, too, we lean in favor of the view that there were available drivers on May 5, 2002, contrary to what Dechavez claimed. As between the assertion of the security guards that they had seen available drivers on the day of the trip, and the drivers' denial (and assertion that they had serviced other faculty members at that time), the settled evidentiary rule is that "as between a positive and categorical testimony which has a ring of truth, on one hand[,] and a bare denial[,] on the other, the former is generally held to prevail."[16] Furthermore, while Dechavez insists that the allegations of the drivers were corroborated by the teachers they had driven for, the attestations of these teachers remained to be hearsay: Dechavez failed to present their attestations in evidence.

Dechavez additionally argues that the way the trip ticket was accomplished bears no significance in these circumstances, insisting further that it is of no moment that he drove the vehicle himself, as he was not prohibited from doing so. Read in isolation, the Court might just have found these positions convincing. Read with the other attendant circumstances, however, the argument becomes shaky.

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[15] *Rollo*, p. 78.

[16] *People v. Biago*, 261 Phil. 525, 532-533 (1990), citing *People v. Abonada*, 251 Phil. 482 (1989).

If Dechavez thought that there was nothing wrong in driving the vehicle himself, why would he indicate that the reason he drove the vehicle himself was that there were no available drivers, and that it was urgent? Finally, if indeed it was true that Dechavez used to perform his extension service or confer with the NSCA's linkages during weekends, how come the trip became urgent and the driver had not been assigned beforehand?

Second. We cannot give weight to the certification of Mr. Parroco that Dechavez used to visit the Pontevedra District to coordinate with his office, and that Dechavez also visited his office on May 5, 2002. We likewise disregard the statement of Mr. Geanga that Dechavez appeared before his office on May 5, 2002. The certifications of these two witnesses were submitted only in October 2004 or two (2) years after the case was filed with the Ombudsman. The time lag alone already renders the certifications suspect and this inconsistency has not been satisfactorily explained. The late use of the certifications also deprived the complainants of the opportunity to refute them and the Ombudsman the chance to examine the affiants. As the Ombudsman observed, too, it is hard to believe that all four (4) of them – Mr. and Mrs. Dechavez, Mr. Parroco, and Mr. Geanga – happened to agree to work on a Sunday, a non-working day; this story simply stretches matters beyond the point of believability in the absence of supporting proof that this kind of arrangement has been usual among them.

Finally, we find that Mrs. Dechavez was not on official business on May 5, 2002; in fact, she was not teaching at that time. We note in this regard that the parties presented two (2) *conflicting* instructor's summer teaching loads for 2002: the first one, dated April 1, 2002, which did not include Mrs. Dechavez, while the other, an *undated* one, included Mrs. Dechavez's name. Curiously, the same person who prepared both documents, Mr. Cuizon, failed to explain why there were two (2) versions of the same document. Considering the highly irregular and undated nature of the list that contained the name of Mrs. Dechavez, we again concur with the Ombudsman's reading that while we can presume that the undated list had

been prepared before the start of the summer classes, we can also presume that the other list had been prepared subsequently to conveniently suit the defense of the respondent.[17]

Likewise, Ms. Fe Ulpiana, a teacher at the NSCA, whose name appears in the second document, attested that she had never been assigned to register and assess the students' school fees, contrary to what appeared thereon. We find it worth mentioning that Dechavez's witness, Mr. Cuizon, despite being subpoenaed by the Ombudsman, failed to furnish the Schedule of Classes for Summer 2002 and the Actual Teaching Load for Summer 2002.[18] Dechavez also failed to provide the Ombudsman with the subpoenaed daily time record (*DTR*) of Mrs. Dechavez for summer 2002 as the DTR supposedly could not be located.

All told, too many gaps simply existed in Dechavez's tale and supporting evidence for his case to be convincing.

Retirement from the service during the pendency of an administrative case does not render the case moot and academic

As early as 1975, we have upheld the rule that "the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications."[19]

Arguably, the cited case above is not applicable as it involved a *judge* who retired four (4) days after a charge of grave

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[17] *Rollo*, p. 76.

[18] *Id.* at 76.

[19] *Atty. Perez v. Judge Abiera*, 159-A Phil. 575, 580 (1975); citation omitted.

misconduct, gross dishonesty and serious inefficiency was filed against him. The wisdom of citing this authority in the present case can be found, however, in its ruling that: "If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation."[20]

Recently, we emphasized that in a case that a public official's cessation from service does not render moot an administrative case that was filed prior to the official's resignation. In the 2011 case of *Office of the Ombudsman v. Andutan, Jr.*,[21] we reiterated the doctrine and laid down the line of cases supporting this principle when we ruled:

> To recall, we have held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. In *Pagano v. Nazarro, Jr.*, we held that:
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> > In *Office of the Court Administrator v. Juan* [A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658], this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable-[*Baquerfo v. Sanchez*, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13, 19-20]. [Italics supplied, citation omitted]

Likewise, in *Baquerfo v. Sanchez*,[22] we held:

> **Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint**

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[20] *Id*. at 581.

[21] G.R. No. 164679, July 27, 2011, 654 SCRA 539, 551.

[22] 495 Phil. 10 (2005).

filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable. [Emphases ours; citations omitted]

Thus, from the strictly legal point of view and as we have held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the acts of the respondent, save only where death intervenes and the action does not survive.

WHEREFORE, under these premises, we hereby **GRANT** the petition for review on *certiorari*. Accordingly, we **REVERSE AND SET ASIDE** the decision dated March 31, 2006 and the resolution dated February 7, 2007 of the Court of Appeals in CA-G.R. SP. No. 00673, and **REINSTATE** the decision dated October 29, 2004 and the order dated April 6, 2005 of the Office of the Ombudsman.

Costs against respondent Marcelino A. Dechavez.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 180529. November 13, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **BANK OF COMMERCE,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; MERGER; THE CLEAR TERMS OF THE AGREEMENT BRING COMMISSIONER OF INTERNAL REVENUE (CIR) TO A CONCLUSION THAT THE PURCHASE AND SALE DID NOT RESULT IN A MERGER BETWEEN BANK OF COMMERCE (BOC) AND TRADERS ROYAL BANK (TRB).— [T]he CTA 1st Division's Resolution in *Traders Royal Bank*, explicitly addressed the issue between BOC and TRB. The CTA 1st Division, relying on the provisions in both the Purchase and Sale Agreement and the Tax Code, determined that the agreement did not result in a merger. x x x Thus, when the CTA *En Banc* took into consideration the above ruling in its Amended Decision, it necessarily affirmed the findings of the CTA 1st Division and found them to be correct. This Court likewise finds the foregoing ruling to be correct. The CTA 1st Division was spot on when it interpreted the Purchase and Sale Agreement to be just that and not a merger. The Purchase and Sale Agreement, the document that is supposed to have tied BOC and TRB together, was replete with provisions that clearly stated the intent of the parties and the purpose of its execution, *viz*: 1. Article I of the Purchase and Sale Agreement set the terms of the assets sold to BOC, while Article II was about the consideration for those assets. Moreover, it was explicitly stated that liabilities not included in the Consolidated Statement of Condition were excluded from the liabilities BOC was to assume. x x x 2. Article III of the Purchase and Sale Agreement enumerated in no uncertain terms the effects and consequences of such agreement. x x x Moreover, the second whereas clause, which served as the premise for the subsequent terms in the agreement, stated that the sale of TRB's assets to

BOC were in consideration of BOC's assumption of some of TRB's liabilities. x x x The clear terms of the above agreement did not escape the CIR itself when it issued BIR Ruling No. 10-2006, wherein it was concluded that the Purchase and Sale Agreement did not result in a merger between BOC and TRB.

2. TAXATION; BIR RULING NO. 10-2006; THE COMMISSIONER OF INTERNAL REVENUE RULED ON THE ISSUE OF MERGER WITHOUT ANY REFERENCE TO TRADERS ROYAL BANK'S SUBJECT TAX LIABILITY; EXPLAINED.— A perusal of BIR Ruling No. 10-2006 will show that the CIR ruled on the issue of merger without any reference to TRB's subject tax liabilities. x x x Clearly, the CIR, in BIR Ruling No. 10-2006, ruled on the issue of merger without taking into consideration TRB's pending tax deficiencies. The ruling was based on the Purchase and Sale Agreement, factual evidence on the status of both companies, and the Tax Code provision on merger. The CIR's knowledge then of TRB's tax deficiencies would not be material as to affect the CIR's ruling. The resolution of the issue on merger depended on the agreement between TRB and BOC, as detailed in the Purchase and Sale Agreement, and not contingent on TRB's tax liabilities. It is worthy to note that in the Joint Stipulation of Facts and Issues submitted by the parties, it was explicitly stated that both BOC and TRB continued to exist as separate corporations with distinct corporate personalities, despite the effectivity of the Purchase and Sale Agreement.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Rodrigo Berenguer & Guno for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by the Commissioner of Internal Revenue (CIR) wherein the September 17, 2007 Amended Decision[2] and November 15, 2007 Resolution[3] of the Court of Tax Appeals *En Banc* (CTA) in C.T.A. EB No. 259, are sought to be nullified and set aside.[4]

The facts of the case, as stipulated by the parties are as follows:

1. [Bank of Commerce (BOC)] is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 12th Floor, Bankers' Centre Building, 6764 Ayala Avenue, Makati City.

2. Respondent is the Commissioner of the Bureau of Internal Revenue [(CIR)], duly appointed to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 244(B) of the Tax Code, as amended by Republic Act ("RA" No.) 8424, otherwise known as the 'Tax Reform Act' ("TRA") of 1997.

3. On November 9, 2001, [BOC] and Traders Royal Bank (TRB) executed a Purchase and Sale Agreement[5] whereby it stipulated the TRB's desire to sell and the BOC's desire to purchase identified recorded assets of TRB in consideration of BOC assuming identified recorded liabilities.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 56-63; penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[3] *Id*. at 64-70.

[4] *Id*. at 13-14.

[5] Records, pp. 11-29.

4. Under the Purchase and Sale Agreement, BOC and TRB shall continue to exist as separate corporations with distinct corporate personalities.

5. On September 27, 2002, [BOC] received copies of the Formal Letter of Demand and Assessment Notice No. DST-99-00-000049 dated September 11, 2002, addressed to "TRADERS ROYAL BANK (now Bank of Commerce)", issued by [the CIR] demanding payment of the amount of ₱41,467,887.51, as deficiency documentary stamp taxes (DST) on Special Savings Deposit (SSD) [account] of TRB for taxable year 1999.

6. On October 11, 2002, [TRB] filed its protest letter contesting the Formal Letter of Demand and Assessment Notice No. DST-99-00-000049 dated September 11, 2002, pursuant to Sec. 228 of the Tax Code.

7. On March 31, 2004, [BOC] received the Decision dated March 22, 2004 denying the protest filed by [TRB] on October 11, 2002. The last two paragraphs of the Decision stated that:

"WHEREFORE, in view of all the foregoing, Assessment Notice No. DST-99-00-000049 demanding payment of the amount of ₱41,467,887.51, as deficiency stamp tax for the taxable year 1999 is hereby **MODIFIED AND/OR REDUCED** to ₱41,442,887.51. Consequently, Traders Royal Bank (now Bank of Commerce) is hereby ordered to pay the above-stated amount, plus interest that have accrued thereon until the actual date of payment, to the Large Taxpayers Service, B.I.R. National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof shall be effected through the summary remedies provided by law.

This constitutes the **Final Decision** of this Office on the matter."[6]

On April 30, 2004, the Bank of Commerce (BOC) filed a Petition for Review,[7] assigned to the CTA 2nd Division, praying

[6] *Rollo*, pp. 135-137.

[7] *Id*. at 108-116.

that it be held not liable for the subject Documentary Stamp Taxes (DST).

As also stipulated by the parties, the issues before the CTA 2nd Division were:

1. Whether [BOC] can be held liable for [TRB]'s alleged deficiency [DST] liability on [its SSD] Account[s] for taxable year 1999 in the amount of ₱41,442,887.51, inclusive of penalties.

2. Whether TRB's [SSD] Account[s] for taxable year 1999 is subject to [DST].[8]

In support of the first issue, BOC called the attention of the CTA 2nd Division to the fact that as stated in Article III of the Purchase and Sale Agreement, it and Traders Royal Bank (TRB) continued to exist as separate corporations with distinct corporate personalities. BOC emphasized that there was no merger between it and TRB as it only acquired certain assets of TRB in return for its assumption of some of TRB's liabilities.[9]

Ruling of the CTA 2nd Division

In a Decision[10] dated August 31, 2006, the CTA 2nd Division dismissed the petition for lack of merit. It held that the Special Savings Deposit (SSD) account in issue is subject to DST because its nature and substance are akin to that of a certificate of deposit bearing interest, which under the then Section 180 of the National Internal Revenue Code (NIRC), is subject to DST.

As for BOC's liability, the CTA 2nd Division said that since the issue of non-merger between BOC and TRB was not raised in the administrative level, it could not be raised for the first time on appeal. The CTA 2nd Division also noted how BOC "actively participated in the proceedings before the administrative body without questioning the legitimacy of the proper party [in] interest."[11]

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[8] *Id.* at 137.

[9] Records, pp. 4-5.

[10] *Rollo*, pp. 84-99.

[11] *Id.* at 97.

When its Motion for Reconsideration[12] was denied[13] on January 8, 2007, BOC filed a Petition for Review[14] before the CTA *En Banc*, adducing the following grounds:

THE HOLDING OF THE HONORABLE SECOND DIVISION THAT [BOC] IS DEEMED TO HAVE ADMITTED THAT IT IS THE PROPER PARTY ASSESSED BY THE [CIR] BECAUSE IT DID NOT RAISE THE ISSUE OF MERGER IN THE LETTER OF PROTEST FILED WITH THE [CIR] IS WITHOUT BASIS AND VIOLATES ELEMENTARY RULES OF DUE PROCESS.

THE HONORABLE SECOND DIVISION ERRED IN HOLDING THAT TRB'S SSD ACCOUNTS FOR TAXABLE YEAR 1999 ARE SUBJECT TO [DST] UNDER THEN SECTION 180 OF THE TAX CODE.[15]

Ruling of the CTA En Banc on BOC's Petition for Review

On June 27, 2007, the CTA *En Banc* affirmed the CTA 2nd Division's Decision and Resolution, ruling that BOC was liable for the DST on TRB's SSD accounts.[16]

Citing this Court's decision in *International Exchange Bank v. Commissioner of Internal Revenue*,[17] the CTA *En Banc* said that the CTA 2nd Division was correct when it deemed TRB's SSD accounts to be certificates of deposit bearing interest, subject to DST under Section 180 of the NIRC, as they involved deposits, which though may be withdrawn anytime, earned a higher rate of interest when kept in the bank for a specified number of days.[18]

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[12] *Id.* at 174-185.

[13] *Id.* at 100-101.

[14] *Id.* at 186-203.

[15] *Id.* at 190.

[16] *Id.* at 82.

[17] 549 Phil. 456 (2007).

[18] *Rollo*, p. 78.

Proceeding then to what it considered to be the pivotal issue, the CTA *En Banc*, agreeing with the decision of the CTA 2nd Division, held that BOC was liable for the DST on the subject SSD accounts. The CTA *En Banc* also noted that BOC was inconsistent in its position, for claiming that it was the one that filed the protest letter with the BIR, in its Petition for Review before the CTA 2nd Division and Pre-Trial Brief, while stating that it was TRB that filed the protest letter, in its Joint Stipulation of Facts and Issues. The CTA *En Banc* added that it would not be unfair to hold BOC liable for the subject DST as TRB constituted an Escrow Fund in the amount of Fifty Million Pesos (₱50,000,000.00) to answer for all claims against TRB, which are excluded from the Agreement.[19]

Undaunted, BOC filed before the CTA *En Banc* a Motion for Reconsideration[20] of its June 27, 2007 Decision, positing the following grounds for reconsideration:

I

There was no merger between [BOC] and [TRB] as already decided by this Honorable Court in a decision dated 18 June 2007; hence [BOC] cannot be held liable for the tax liability of [TRB.]

II

[BOC] could not have raised the issue of non-merger of [BOC] and [TRB] in the proceedings before the [CIR] because it was never a party to the proceedings before the [CIR]. Contrary to the Court's findings, the issue of non-merger is no longer an issue but a fact stipulated by both parties.

III

The [CIR]'s decision holding [BOC] liable for TRB's tax liability is void since [BOC] was not a party to the proceedings before the [CIR].[21]

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[19] *Id.* at 80-81.

[20] *Id.* at 204-221.

[21] *Id.* at 209-210.

Ruling of the CTA En Banc on BOC's Motion for Reconsideration

On September 17, 2007, the CTA *En Banc*, in its Amended Decision, reversed itself and ruled that BOC could not be held liable for the deficiency DST of TRB on its SSD accounts. The dispositive portion of the CTA *En Banc*'s Amended Decision reads:

> **WHEREFORE,** [BOC]'s Motion for Reconsideration is hereby **GRANTED.** The Decision in the case at bar promulgated on June 27, 2007 is **REVERSED.** The appealed Decision in C.T.A. Case No. 6975 is **SET ASIDE** and a new one is hereby **ENTERED** finding petitioner Bank of Commerce **NOT LIABLE** for the amount of ₱41,442,887.51 representing the assessment of deficiency Documentary Stamp Tax on the Special Savings Deposit accounts of Traders Royal Bank for taxable year 1999.[22]

In its Amended Decision, the CTA *En Banc* said that while it did not make a categorical ruling in its June 27, 2007 Decision on the issue of merger between BOC and TRB, the CTA 1st Division **did** in its June 18, 2007 Resolution[23] in C.T.A. Case No. 6392, entitled *Traders Royal Bank v. Commissioner of Internal Revenue*.

The *Traders Royal Bank* case, just like the case at bar, involved a deficiency DST assessment against TRB on its SSD accounts, albeit for taxable years 1996 and 1997. When the CIR attempted to implement a writ of execution against BOC, which was not a party to the case, by simply inserting its name beside TRB's in the motion for execution, BOC filed a Motion to Quash (By Way of Special Appearance) with the CTA 1st Division,[24] which the CTA 1st Division granted in a Resolution on June 18, 2007, primarily on the ground that there was no merger between BOC and TRB.

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[22] *Id*. at 62.

[23] *Id*. at 225-227.

[24] *Id*. at 58.

With the foregoing ruling, the CTA *En Banc* declared that BOC could not be held liable for the deficiency DST assessed on TRB's SSD accounts for taxable year 1999 in the interest of substantial justice and to be consistent with the CTA 1st Division's Resolution in the *Traders Royal Bank* case.[25]

The CTA *En Banc* also gave weight to BIR Ruling No. 10-2006[26] dated October 6, 2006 wherein the CIR expressly recognized the fact that the Purchase and Sale Agreement between BOC and TRB did not result in their merger.[27] Elaborating on this point the CTA *En Banc* said:

> By practice, a BIR ruling contains the official written interpretative opinion of the Commissioner of Internal Revenue addressed to a particular taxpayer regarding his taxability over certain matters. Moreover, well-settled is the rule that the interpretation of an administrative government agency like the BIR, is accorded great respect and ordinarily controls the construction of the courts. The reason behind this rule was explained in *Nestle Philippines, Inc. vs. Court of Appeals,* in this wise: "The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.
>
> Here, We have no reason to disregard the interpretation made by the Commissioner as it is in accord with the aforementioned Resolution of the First Division.[28] (Citation omitted.)

With the reversal of the CTA *En Banc*'s June 27, 2007 Decision, the CIR filed a Motion for Reconsideration[29] praying that BOC be held liable for the deficiency DST of TRB on its

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[25] *Id*. at 58-59.

[26] *Id*. at 228-232.

[27] *Id*. at 59.

[28] *Id*. at 61.

[29] *Id*. at 233-247.

SSD accounts for taxable year 1999. In support of its motion, the CIR presented the following arguments:

[BOC] is estopped from raising the issue that it is not the party held liable for Trader[s] Royal Bank (TRB)'s deficiency DST assessment because it was not a party to the proceeding before [the] Bureau of Internal Revenue (BIR).[30]

Issues not raised in the administrative level cannot be raised for the first time on appeal.[31]

The deficiency Assessment of TRB can be enforced and collected against [BOC].[32]

The Honorable Court *En Banc* erred in considering BIR Ruling No. 10-2006 as basis to justify its conclusion.[33]

The Honorable Court *En Banc* has no sufficient justification for not considering the Escrow fund in its Amended Decision.[34]

On November 15, 2007, the CTA *En Banc* denied the motion for lack of merit.

The CTA *En Banc* said that the rule that no issue may be raised for the first time on appeal is not a hard and fast rule as "jurisprudence declares that the appellate court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case." Thus, in the interest of justice, the CTA *En Banc* found it necessary to consider and resolve issues, even though not previously raised in the administrative level, if it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues they already identified.[35]

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[30] *Id*. at 234.

[31] *Id*. at 235.

[32] *Id*. at 236.

[33] *Id*. at 239.

[34] *Id*. at 243.

[35] *Id*. at 66-68.

The CTA *En Banc* also reiterated its ruling in its Amended Decision, that BOC could not be held liable for the deficiency DST on the SSD accounts of TRB, in consonance with the Resolution of the CTA 1st Division in the *Traders Royal Bank* case; and BIR Ruling No. 10-2006, which has not been shown to have been revoked or nullified by the CIR.[36]

With the foregoing disquisition rendering the issue on the Escrow Fund moot, the CTA *En Banc* found no more reason to discuss it.[37]

Unsuccessful in its Motion for Reconsideration, the CIR is now before this Court, praying for the reinstatement of the CTA 2nd Division's August 31, 2006 Decision, which found BOC liable for the subject DST. The CIR posits the following grounds in its Petition for Review:

I.

THE DEFICIENCY ASSESSMENT OF TRADERS ROYAL BANK (TRB) CAN BE ENFORCED AND COLLECTED AGAINST RESPONDENT BANK OF COMMERCE (BOC) BECAUSE THE LATTER ASSUMED THE OBLIGATIONS AND LIABILITIES OF TRB PURSUANT TO THE PURCHASE AND SALE AGREEMENT EXECUTED BETWEEN THEM AND THE APPLICABLE LAW ON MERGER OF CORPORATIONS (SECTION 80 OF THE CORPORATION CODE).

II.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ERRED IN REVERSING ITS PREVIOUS DECISION WHICH AFFIRMED THE ASSESSMENT AND ENFORCEMENT OF DEFICIENCY TAXES BY PETITIONER AGAINST RESPONDENT, CONTRARY TO LAW AND JURISPRUDENCE.[38]

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[36] *Id*. at 68-69.

[37] *Id*. at 69.

[38] *Id*. at 25.

In response, BOC presented in its Comment,[39] the following grounds in support of its prayer that the CIR's petition be denied:

I. THE PETITION FOR REVIEW DID NOT RAISE QUESTIONS OF LAW.

II. THE COURT OF TAX APPEALS *EN BANC* WAS CORRECT AND DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT FOUND RESPONDENT NOT LIABLE FOR THE SUBJECT TAX BECAUSE:

A. THERE WAS NO MERGER CREATED BETWEEN THE RESPONDENT BANK OF COMMERCE AND TRADERS ROYAL BANK (TRB).

B. THE PETITIONER ITSELF RULED AND RENDERED AN OPINION UNDER BIR REVENUE RULING NO. 10-2006 THAT THERE WAS NO MERGER BETWEEN THE RESPONDENT AND TRB.

III. RESPONDENT IS NOT ESTOPPED FROM RAISING THE ISSUE OF NON-MERGER BETWEEN RESPONDENT AND TRB BECAUSE IT WAS NOT A PARTY TO THE PROCEEDINGS BEFORE THE PETITIONER.

IV. THE PETITIONER'S DECISION HOLDING RESPONDENT LIABLE FOR TRB'S TAX LIABILITY IS VOID SINCE RESPONDENT WAS NOT A PARTY TO [THE] PROCEEDINGS BEFORE THE PETITIONER.[40]

This Court's Ruling

The petition is denied for lack of merit.

As the CTA *En Banc* stated in its Amended Decision, the issue boils down to whether or not BOC is liable for the deficiency DST of TRB for taxable year 1999.

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[39] *Id.* at 265-283.

[40] *Id.* at 269-271.

In resolving this issue, the CTA *En Banc* relied on 1) the Resolution in the *Traders Royal Bank* case, wherein the CTA 1st Division made a categorical pronouncement on the issue of merger based on the evidence at its disposal, which included the Purchase and Sale Agreement; and 2) the CIR's own administrative ruling on the issue of merger in BIR Ruling No. 10-2006 dated October 6, 2006.

Unlike the Decision of the CTA 2nd Division in this case, which focused on the taxability of the SSD accounts, the CTA 1st Division's Resolution in *Traders Royal Bank*, explicitly addressed the issue of merger between BOC and TRB. The CTA 1st Division, relying on the provisions in both the Purchase and Sale Agreement and the Tax Code, determined that the agreement did not result in a merger, to wit:

> In the Motion, [BOC] moves to have the Writ of Execution dated March 09, 2007 issued against it quashed on the ground that it is a separate entity from [TRB]; that there was no merger or consolidation between the two entities. Further, [BOC] claims that the deficiency [DST] amounting to ₱27,698,562.92 for the taxable years 1996 and 1997 of [TRB] was not one of the liabilities assumed by [BOC] in the *Purchase and Sale Agreement.*
>
> After carefully evaluating the records, the [CTA 1st Division] agrees with [BOC] for the following reasons:
>
> *First,* a close reading of the *Purchase and Sale Agreement* shows the following self-explanatory provisions:
>
> a) Items in litigation, both actual and prospective, against [TRB] are excluded from the liabilities to be assumed by the Bank of Commerce (Article II, paragraph 2); and
>
> b) The Bank of Commerce and Traders Royal Bank shall continue to exist as separate corporations with distinct corporate personalities (Article III, paragraph 1).
>
> *Second*, aside from the foregoing, the *Purchase and Sale Agreement* does not contain any provision that the [BOC] acquired the identified assets of [TRB] solely in exchange for the latter's stocks. Merger is defined under Section 40 (C)(6)(b) of the Tax Code as follows:

> "b) The term **"merger"** or **"consolidation"**, when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: *Provided*, [t]hat for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a *bona fide* business purpose and not solely for the purpose of escaping the burden of taxation: x x x."

Since the purchase and sale of identified assets between the two companies does not constitute a merger under the foregoing definition, the Bank of Commerce is considered an entity separate from petitioner. Thus, it cannot be held liable for the payment of the deficiency DST assessed against petitioner.[41] (Citation omitted.)

Thus, when the CTA *En Banc* took into consideration the above ruling in its Amended Decision, it necessarily affirmed the findings of the CTA 1st Division and found them to be correct. This Court likewise finds the foregoing ruling to be correct. The CTA 1st Division was spot on when it interpreted the Purchase and Sale Agreement to be just that and not a merger.

The Purchase and Sale Agreement, the document that is supposed to have tied BOC and TRB together, was replete with provisions that clearly stated the intent of the parties and the purpose of its execution, *viz*:

1. Article I of the Purchase and Sale Agreement set the terms of the assets sold to BOC, while Article II was about the consideration for those assets. Moreover, it was explicitly stated that liabilities not included in the Consolidated Statement of Condition were excluded from the liabilities BOC was to assume, to wit:

> ARTICLE II
>
> CONSIDERATION: ASSUMPTION OF LIABILITIES
>
> In consideration of the sale of identified recorded assets and properties covered by this Agreement, [BOC] shall assume identified

[41] *Id.* at 225-226.

recorded TRB's liabilities including booked contingent liabilities as listed and referred to in its Consolidated Statement of Condition as of August 31, 2001, in the total amount of PESOS: TEN BILLION FOUR HUNDRED ONE MILLION FOUR HUNDRED THIRTY[-]SIX THOUSAND (₱10,401,436,000.00), provided that **the liabilities so assumed shall not include:**

xxx xxx xxx

2. Items **in litigation, both actual and prospective, against TRB** which include but are not limited to the following:

xxx xxx xxx

2.3 Other liabilities not included in said Consolidated Statement of Condition[.][42] (Emphases supplied.)

2. Article III of the Purchase and Sale Agreement enumerated in no uncertain terms the effects and consequences of such agreement as follows:

ARTICLE III

EFFECTS AND CONSEQUENCES

The effectivity of this Agreement shall have the following effects and consequences:

1. [BOC] and TRB shall **continue to exist as separate corporations with distinct corporate personalities**;

2. With the transfer of its branching licenses to [BOC] and upon surrender of its commercial banking license to BSP, **TRB shall exist as an ordinary corporation** placed outside the supervisory jurisdiction of BSP. To this end, TRB shall cause the amendment of its articles and by-laws to delete the terms "bank" and "banking" from its corporate name and purpose.

3. There shall be no employer-employee relationship between [BOC] and the personnel and officers of TRB.[43] (Emphases supplied.)

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[42] Records, pp. 12-13.

[43] *Id.* at 13.

Moreover, the second whereas clause, which served as the premise for the subsequent terms in the agreement, stated that the sale of TRB's assets to BOC were in consideration of BOC's assumption of some of TRB's liabilities, *viz*:

> **WHEREAS**, TRB desires to sell and [BOC] desires to purchase identified recorded assets of TRB in consideration of [BOC] assuming identified recorded liabilities of TRB x x x.[44]

The clear terms of the above agreement did not escape the CIR itself when it issued BIR Ruling No. 10-2006, wherein it was concluded that the Purchase and Sale Agreement did not result in a merger between BOC and TRB.

In this petition however, the CIR insists that BIR Ruling No. 10-2006 cannot be used as a basis for the CTA *En Banc's* Amended Decision, due to BOC's failure, at the time it requested for such ruling, to inform the CIR of TRB's deficiency DST assessments for taxable years 1996, 1997, and 1999.[45]

The CIR's contention is untenable.

A perusal of BIR Ruling No. 10-2006 will show that the CIR ruled on the issue of merger without any reference to TRB's subject tax liabilities. The relevant portions of such ruling are quoted below:

> One distinctive characteristic for a merger to exist under the second part of [Section 40(C)(b) of the 1997 NIRC] is that, it is not enough for a corporation to acquire all or substantially all the properties of another corporation but it is also necessary that such acquisition is solely for stock of the absorbing corporation. Stated differently, the acquiring corporation will issue a block of shares equal to the net asset value transferred, which stocks are in turn distributed to the stockholders of the absorbed corporation in proportion to the respective share.
>
> After a careful perusal of the facts presented as well as the details of the instant case, it is observed by this Office that the transaction

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[44] *Id.* at 11.

[45] *Rollo*, pp. 45-49.

was purely concerning acquisition and assumption by [BOC] of the recorded liabilities of TRB. The [Purchase and Sale] Agreement did not mention with respect to the issuance of shares of stock of [BOC] in favor of the stockholders of TRB. Such transaction is absent of the requisite of a stock transfer and same belies the existence of a merger. As such, this Office considers the Agreement between [BOC] and TRB as one of "a sale of assets with an assumption of liabilities rather than 'merger'."

xxx xxx xxx

In the case at bar, [BOC] purchased identified recorded assets and properties of TRB. In consideration thereof, [BOC] assumed certain liabilities of TRB which were identified in the Consolidated Statement of Condition as of August 31, 2001. In this wise, the liabilities of TRB assumed by [BOC] were limited only to those already identified as of August 31, 2001 amounting in all to Ten Billion Four Hundred One Million Four Hundred Thirty[-]Six Thousand Pesos (₱10,401, 436,000.00) x x x. More so, **liabilities that were not assumed by [BOC] should not be enforced against it.** x x x. (Emphasis supplied.)

xxx xxx xxx

2. Much have been said that the transaction between TRB and [BOC] is not a merger within the contemplation of Section 40(C)(b) of the Tax Code of 1997. To reiterate, this Office has ruled in the foregoing discussion that the transaction is one of sale of assets with assumption of identified recorded liabilities of TRB. As such, the liabilities assumed by [BOC] amounted only to ₱10,401,436,000.00 with some enumerated exclusion in the Agreeement. x x x.[46]

Clearly, the CIR, in BIR Ruling No. 10-2006, ruled on the issue of merger without taking into consideration TRB's pending tax deficiencies. The ruling was based on the Purchase and Sale Agreement, factual evidence on the status of both companies, and the Tax Code provision on merger. The CIR's knowledge then of TRB's tax deficiencies would not be material as to affect the CIR's ruling. The resolution of the issue on merger depended on the agreement between TRB and BOC, as detailed in the

[46] *Id.* at 230-232.

Purchase and Sale Agreement, and not contingent on TRB's tax liabilities.

It is worthy to note that in the Joint Stipulation of Facts and Issues submitted by the parties, it was explicitly stated that both BOC and TRB continued to exist as separate corporations with distinct corporate personalities, despite the effectivity of the Purchase and Sale Agreement.[47]

Considering the foregoing, this Court finds no reason to reverse the CTA *En Banc's* Amended Decision. In reconsidering its June 27, 2007 Decision, the CTA *En Banc* not only took into account the CTA 1st Division's ruling in *Traders Royal Bank*, which, save for the facts that BOC was not made a party to the case, and the deficiency DST assessed were for taxable years 1996 and 1997, is almost identical to the case herein; but more importantly, the CIR's very own ruling on the issue of merger between BOC and TRB, in BIR Ruling No. 10-2006, was dated well after the case at bar had been filed with the CTA in 2004.

WHEREFORE, the petition is hereby **DENIED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[47] *Id.* at 136.

FIRST DIVISION

[G.R. No. 181983. November 13, 2013]

CONSOLIDATED INDUSTRIAL GASES, INC., *petitioner, vs.* **ALABANG MEDICAL CENTER,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; AS A RULE, THE COURT EXAMINES ONLY QUESTIONS OF LAW ON APPEAL AND NOT QUESTIONS OF FACTS; EXCEPTION; WHEN THE FACTUAL FINDINGS OF THE COURTS *A QUO* ARE CONFLICTING; PRESENT IN CASE AT BAR.— It is a settled rule that the Court examines only questions of law on appeal and not questions of facts. However, jurisprudence has recognized several exceptions in which factual issues may be resolved by the Court, such as when the factual findings of the courts *a quo* are conflicting, as in this case. The incongruity in the findings of the RTC and CA is conspicuous. On one hand, the RTC granted CIGI's complaint for sum of money and adjudged AMC as the defaulting party. On the other hand, the CA, while sustaining AMC's liability for CIGI's monetary claim, held the latter as the party who breached the installation contracts. A review of the contradicting findings of the courts *a quo* is thus in order so as to finally settle the conflicting claims of the parties.

2. CIVIL LAW; OBLIGATIONS; RECIPROCAL OBLIGATIONS; DEFINED AND CONSTRUED; ESTABLISHED IN CASE AT BAR.— "Reciprocal obligations are those which arise from the same cause, and [in] which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other." In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfils his obligation, delay by the other begins. Under

the subject contracts, CIGI as contractor bound itself to install a centralized medical oxygen and vacuum pipeline system for the first to fifth floors of AMC, which in turn, undertook to pay the contract price therefor in the manner prescribed in the contract. Being reciprocal in nature, the respective obligations of AMC and CIGI are dependent upon the performance of the other of its end of the deal such that any claim of delay or non-performance can only prosper if the complaining party has faithfully complied with its own obligation. x x x In reciprocal obligations, before a party can demand the performance of the obligation of the other, the former must also perform its own obligation. For its failure to turn over a complete project in accordance with the terms and conditions of the installation contracts, CIGI cannot demand for the payment of the contract price balance from AMC, which, in turn, cannot legally be ordered to pay. Otherwise, AMC will be effectively forced to accept an incomplete performance contrary to Article 1248 of the Civil Code which states that "(u)nless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists." Considering that AMC's obligation to pay the balance of the contract price did not accrue, the stipulated interest thereon also did not begin to run.

3. ID.; CONTRACTS; THE PARTIES TO A CONTRACT ARE BOUND BY THE STIPULATIONS, CLAUSES, TERMS AND CONDITIONS THEY HAVE AGREED UPON WHICH ARE NOT CONTRARY TO LAW, MORALS, PUBLIC ORDER OR PUBLIC POLICY; APPLICATION IN CASE AT BAR.— It is hornbook doctrine in the law on contracts that the parties are bound by the stipulations, clauses, terms and conditions they have agreed to provided that such stipulations, clauses, terms and conditions are not contrary to law, morals, public order or public policy. In the present case, we find no legal proscription infringed by the terms and conditions of the contracts between AMC and CIGI. As such, the said terms and conditions must be held to be the law between them and the parties are bound to fulfill what has been stipulated.

4. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; A WITNESS CAN TESTIFY ONLY TO THOSE FACTS WHICH HE KNOWS OF HIS PERSONAL

KNOWLEDGE, WHICH MEANS THOSE FACTS WHICH ARE DERIVED FROM HIS OWN PERCEPTION.— Settled is the rule that a witness can testify only to those facts which he knows of his personal knowledge, which means those facts which are derived from his own perception. A witness may not testify as to what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.

5. ID.; ID.; ID.; ADMISSIBILITY AND WEIGHT OF EVIDENCE, DISTINGUISHED.— Admissibility of testimony should not be equated with its weight and sufficiency. Admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.

6. ID.; CIVIL PROCEDURE; ACTIONS; PLEADINGS; RELIEFS NOT SPECIFICALLY PLEADED BUT INTENDED IN THE GENERAL PRAYER FOR OTHER EQUITABLE RELIEFS MAY BE THRESHED OUT BY THE COURTS.— The standing rule is that "[t]he prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for." This rule conveys the inference that reliefs not specifically pleaded but included in a general prayer for other equitable reliefs may be threshed out by the courts.

7. CIVIL LAW; CONTRACTS; RESCISSION OF CONTRACT; RESCISION WILL ONLY BE PERMITTED FOR SUCH SUBSTANTIAL AND FUNDAMENTAL VIOLATIONS AS WOULD DEFEAT THE VERY OBJECT OF THE PARTIES IN MAKING THE AGREEMENT.— "[R]escission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement. Whether a breach is substantial is largely determined by the attendant circumstances." The provisions on the test run of and seminar on the medical oxygen system are not essential parts of the installation contracts as they do not constitute a vital fragment/part of the centralized medical oxygen system.

8. ID.; DAMAGES; ACTUAL AND COMPENSATORY DAMAGES CANNOT BE PRESUMED, BUT MUST BE PROVED WITH REASONABLE DEGREE OF CERTAINTY.— AMC is not entitled to actual damages representing interest payments on the loan it obtained from Metrobank in order to fund the installation projects. For damages to be recovered, the best evidence obtainable by the injured party must be presented. Actual or compensatory damages cannot be presumed, but must be proved with reasonable degree of certainty. The Court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered and on evidence of the actual amount. If the proof is flimsy and unsubstantial, no damages will be awarded.

APPEARANCES OF COUNSEL

Uy Clerigo & De Guzman Law Offices for petitioner.

Arturo S. Santos for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Amended Decision[2] dated March 4, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 84988 which, among others, reversed the Decision[3] dated June 30, 2004 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 213, finding respondent Alabang Medical Center (AMC) to have breached its contract with petitioner Consolidated Industrial Gases, Inc. (CIGI).

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[1] *Rollo,* pp. 3-29.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. (now Presiding Justice of the Court of Appeals) and Jose C. Mendoza (now a member of this Court), concurring; *id*. at 49-69.

[3] Issued by Judge Amalia F. Dy; records, pp. 253-271.

The Antecedents

CIGI is a domestic corporation engaged in the business of selling industrial gases (*i.e.*, oxygen, hydrogen and acetylene) and installing centralized medical and vacuum pipeline system. Respondent AMC, on the other hand, is a domestic corporation operating a hospital business.

On August 14, 1995, CIGI, as contractor and AMC, as owner, entered into a contract[4] whereby the former bound itself to provide labor and materials for the installation of a medical gas pipeline system for the first, second and third floors (*Phase 1 installation project*) of the hospital for the contract price of Nine Million Eight Hundred Fifty-Six Thousand Seven Hundred Twenty-Five Pesos and 18/100 (₱9,856,725.18) which AMC duly paid in full.

The herein legal controversy arose after the parties entered into another agreement on October 3, 1996 this time for the continuation of the centralized medical oxygen and vacuum pipeline system in the hospital's fourth & fifth floors *(Phase 2 installation project)* at the cost of Two Million Two Hundred Sixty-Seven Thousand Three Hundred Forty-Four Pesos and 42/100 (₱2,267,344.42). This second contract followed the same terms and conditions of the contract for the *Phase 1 installation project*. CIGI forthwith commenced installation works for Phase 2 while AMC paid the partial amount of One Million Pesos (₱1,000,000.00) with the agreement that the balance shall be paid through progress billing and within fifteen (15) days from the date of receipt of the original invoice sent by CIGI.[5]

On August 4, 1997, CIGI sent AMC Charge Sales Invoice No. 125847 as completion billing for the unpaid balance of ₱1,267,344.42 for the *Phase 2 installation project*. When the sales invoice was left unheeded, CIGI sent a demand letter to AMC on January 7, 1998. AMC, however, still failed to

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[4] *Id*. at 174-184.

[5] *Id*. at 185-189.

pay thus prompting CIGI to file a collection suit before the RTC on September 15, 1998.[6]

CIGI claimed that AMC's obligation to pay the outstanding balance of the contract price for the *Phase 2 installation project* is already due and demandable pursuant to Article II, page 4 of the contract stating that the project shall be paid through progress billing within fifteen (15) days from the date of receipt of original invoice.

In its Answer with Counterclaim,[7] AMC averred that its obligation to pay the balance of the contract price has not yet accrued because CIGI still has not turned over a complete and functional medical oxygen and vacuum pipeline system. AMC alleged that CIGI has not yet tested Phases 1 and 2 which constitute one centralized medical oxygen and vacuum pipeline system of the hospital despite substantial payments already made. As counterclaim, AMC prayed for actual, moral and exemplary damages, and attorney's fees.

During trial, CIGI presented the testimonies of its officers, James Rodriguez Gillego (Gillego), Credit Manager and Marcelino Tolentino (Tolentino), Installation Manager. Gillego confirmed the unpaid balance of AMC as well as its additional liabilities for interest and penalty charges at 17% *per annum* and 2% per month, respectively.[8]

Tolentino, on the other hand, declared that CIGI failed to test the installed system because AMC did not supply the necessary electrical power.[9] He claimed that they finished the installation project in October 1997 or within the period specified in the contract.[10] CIGI verbally notified Dr. Anita Ty (Dr. Ty), AMC's Medical Director, on the need for electrical power

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

[7] *Id*. at 21-23.

[8] TSN, November 8, 1999, pp. 14-19.

[9] TSN, January 24, 2000, pp. 27, 37.

[10] *Id*. at 46.

for the test run but she did not respond. On August 23, 1999, they put the request in writing.[11]

Tolentino also stated that Phase 2 is an extension of the *Phase 1 installation project* such that both phases are not independent of each other. If Phase 2 is not subjected to test run, Phase 1 will not run.[12] It was Mr. Gavino Pineda (Pineda), his supervisor, and not him, who personally informed Dr. Ty that CIGI is ready to conduct a test run.[13]

Tolentino admitted that, contrary to what was agreed in the contract, CIGI has not conducted commissioning and lecture on the proper operation and preventive maintenance of the installed system and that the said seminar/orientation does not require the use of electricity.[14] However, the seminar can only be conducted once they have already fully turned over the system which can only happen after they have performed a test run, which likewise did not materialize because AMC did not supply the necessary electrical power.[15]

AMC presented Dr. Ty and Melinda Constantino (Constantino), account and administrative officer of AMC. Dr. Ty testified that the payment of the unpaid balance is not yet due because the project is incomplete, defective and non-functional.[16] She claimed that CIGI failed to comply with its obligation under paragraph 12 of the October 3, 1996 contract for *Phase 2 installation project* stating that the scope of CIGI's work shall include pressure drop, leak testing, painting/color coding and test run of the installed centralized medical oxygen and vacuum pipeline system.[17] On cross-

[11] *Id*. at 41-43.

[12] *Id*. at 30-34.

[13] *Id*. at 71-73.

[14] *Id*. at 56-57.

[15] *Id*. at 73-77.

[16] TSN, May 27, 2002, p. 7.

[17] *Id*. at 8-9.

examination, Dr. Ty asserted that as agreed, the balance of the contract price shall be paid once CIGI finishes its work under the contract.[18] She denied receiving any request from CIGI regarding the installation of electricity for purposes of test run. She claimed that CIGI brought up the matter on electricity when it was already collecting the unpaid balance but no such request was made prior to their demand for payment.[19] Before the hospital became operational, it was equipped with electrical facilities for construction which can adequately support the power need of a mere test run.[20]

Constantino testified on the total payments already made by AMC to CIGI in the sum of ₱10,856,000.00 as shown by several Metropolitan Bank (Metrobank) checks payable to CIGI marked as Exhibits "5" to "5-I".[21]

CIGI submitted in evidence photographs of allegedly defective and incomplete parts of the installed medical oxygen and vacuum pipeline system, such as: (a) a rusting pendant which is supposed to be stainless and anti-rust; (b) incomplete assembly of alarm system; (c) incomplete assembly of isolation valve; and (d) incomplete electrical wiring of Pegasus and leaking oil.[22]

On June 11, 2003, AMC filed a *Motion for Leave of Court to Admit Amended Answer with Counterclaims*[23] seeking, in addition, the rescission of the subject contracts, return of its payment of ₱10,856,000.00 for an unfinished project. AMC also asked that it be recompensed in the sum of ₱17,220,084.90 for interest expense on the loans obtained from Metrobank which were used to fund the installation projects. It further averred that CIGI's failure to complete the system is shown not only

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[18] TSN, June 24, 2002, pp. 22-23.

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

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

[21] TSN, April 14, 2003, pp. 3-10.

[22] Records, pp. 169-172.

[23] *Id*. at 152-154.

in its failure to conduct the agreed test run and orientation/ seminar but also in the patently defective and incomplete parts of the installation.

In its Order[24] dated September 11, 2003, the RTC denied the motion because its admission will compel CIGI to substantially alter the presentation of its evidence and thus delay the resolution of the case. The RTC further reasoned that AMC's failure to amend its answer will not affect the result of the trial.

Ruling of the RTC

After the parties have submitted their respective memorandum, the RTC rendered its Decision[25] dated June 30, 2004, wherein it adjudged AMC to have breached the contract for failure to perform its obligation of paying the remaining balance of the contract price. CIGI, on the other hand, was found to have faithfully complied with its contractual obligations. In so ruling, the RTC relied on Tolentino's testimony that they were unable to test run the installed system because AMC failed to provide the necessary electrical power despite repeated requests made to Dr. Ty.[26] AMC's counterclaim for damages was dismissed. Accordingly, the decision disposed as follows:

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[24] *Id.* at 226-227.

[25] *Id.* at 253-271.

[26] The following portions of the testimony were quoted in the RTC decision, *viz*:

"COURT: So that you are telling now the court that you have not actually completed the work for which you have been paid?

A: Yes.

Q: And your reason earlier on the direct testimonies that there is no electricity?

A: Yes, your honor.

Q: And you also said that you verbally informed the hospital of the required electricity, am I correct?

A: Yes, your honor.

Q: So that the test-run, the portion of the contract of which you prepared to be conducted. How many times, please recall, how many times you have told the hospital authorities that you need electricity in order to conduct the test-run?

Prescinding from the foregoing considerations, judgment is hereby rendered in favor of the [petitioner] CONSOLIDATED INDUSTRIAL

A: I am very sorry your honor, I can't remember.
Q: Did you personally tell or inform the hospital that you're ready? That you need electricity?
A: No, your honor.
Q: Who did it?
A: Our supervisor.
Q: What is the name of the supervisor?
A: Mr. Gavino Pineda, which [sic] is not now connected at the hospital.
Q: How did you come to know then that Mr. Pineda informed the hospital of the necessity of electricity in order that you could complete the project?
A: Because Mr. Pineda is directly reporting to me.
Q: He reported to you that he told the hospital?
A: Yes.
Q: To whom did he tell this to the hospital? [sic]
A: To Dra. Anita Ty."
[tsn dated January 24, 2000]

xxx xxx xxx

"Q: After you have installed, according to you everything Mr. witness, after that something have been done or to be done after?
A: We need to test-run the system. We have already test-run the system, in order to have…
COURT: You have already?
A: Not yet, your honor.
COURT: Proceed.
Atty. BALMAS: Are those remaining activities dependent upon your department?
A: No, ma'am.
Q: Why?
A: Because the hospital need to supply the electricity or electrical power subject to test-run the system.
Q: Does the defendant Alabang Medical Center able to provide you this power which you have said.
A: To date, no.
Q: Who, where will the power come from exactly? Who is, who costed the production of the power which you have mentioned?
A: The Alabang Medical Center is to supply the power.
Q: Did you know whether Alabang Medical Center have been operational immediately after you have completed the project? To this date, did you know?

GASES, INC., and against the [respondent] ALABANG MEDICAL CENTER represented by its owner/Chairman of the Board Anita Ty. The counterclaim is likewise, accordingly ordered D[IS]MISSED.

As PRAYED FOR, the [respondent] is hereby ordered[:]

[a] To pay the amount of ONE MILLION TWO HUNDRED SIXTY[-]SEVEN THOUSAND THREE HUNDRED FORTY[-]FOUR AND 42/100 [Php 1,267,344.42] Philippine Currency, representing the balance of the principal obligations.

[b] To pay the corresponding legal interest until said obligation shall have been paid and settled and cost of suit.

SO ORDERED.[27]

Ruling of the CA

AMC appealed to the CA which in its Decision[28] dated September 14, 2007 granted the appeal and reversed the RTC judgment. The CA ruled that it was CIGI who breached the contract when it failed to complete the project and to turn over a fully functional centralized medical oxygen and vacuum pipeline system. Consequently, the CA declared the complaint dismissed and ordered CIGI to correct/replace the defective parts installed. AMC was adjudged entitled to attorney's fees for CIGI's unfounded action. AMC's counterclaim for ₱17,220,084.90 as actual damages representing alleged interest payments on the loans it obtained from Metrobank was denied for lack of factual and legal basis. The decretal portion of the Decision reads:

WHEREFORE, the decision of the Regional Trial Court dated June 30, 2004 is hereby ***REVERSED*** and ***SET ASIDE***. The complaint is hereby dismissed and CIGI is hereby ordered to pay AMC the sum of ₱50,000.00 by way of attorney's fees plus costs.

A: I really don't know.

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[tsn, January 24, 2000, Direct-examination] *Id.* at 264-268.

[27] *Id.* at 270-271.

[28] *Rollo*, pp. 33-47.

SO ORDERED.[29]

AMC moved for partial reconsideration raising the propriety of its counterclaim for the refund of the ₱10,856,725.18 paid to CIGI since the project never became operational.[30]

In its Comment[31] and own Motion for Reconsideration[32], CIGI countered that a refund will amount to rescission, an issue which was denied deliberation by the RTC. As such, the same cannot be raised and threshed out for the first time on appeal. CIGI shifted the blame to AMC and claims that it could have easily conducted a test run on the system if the latter supplied the electricity needed in accordance with the contract. Anent the alleged defective parts, CIGI asserted that it is highly suspect for AMC to raise the same four years after the filing of the complaint. CIGI also stated that being idle and exposed to various elements, the condition of certain parts of the system will definitely deteriorate.

The CA re-examined its earlier decision and issued an Amended Decision[33] dated March 4, 2008. It took into consideration AMC's manifestation that it is willing to pay the balance of ₱1,267,344.42 on the condition that CIGI will turn over a fully functional centralized medical oxygen and vacuum pipeline system.[34] The CA found that CIGI reneged on its obligation under the contract when it failed to test run the installed system. The Amended Decision disposed as follows, *viz*:

WHEREFORE, this Amended Decision is rendered [PARTIALLY] GRANTING AMC's Partial Motion for Reconsideration dated 25 September 2007. Accordingly, CIGI is given a reasonable period of sixty (60) days from the finality of this Decision to correct and/or

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[29] *Id*. at 47.

[30] *Id*. at 185-192.

[31] *Id*. at 194-205.

[32] *Id*. at 171-183.

[33] *Id*. at 49-69.

[34] *Id*. at 193.

replace the defective parts mentioned in this Decision and turn over a fully functional centralized medical oxygen and vacuum pipeline system. AMC, in turn, is directed to provide the required facilities such as water and electricity during installation free of charge and to pay within five (5) days from the turn over the unpaid balance in the sum of ₱1,267,344.42 to CIGI. Failure of CIGI to turn over a fully functional centralized medical oxygen and vacuum pipeline system will result to the rescission of the contract. As a legal consequence, within ten (10) days from the rescission of the contract CIGI should return the sum of ₱10,856,725.18 to AMC and remove the materials and equipments it installed at AMC within ninety (90) days from the rescission of the contract, at its own expense.

The motion for reconsideration dated 08 October 2007 filed by CIGI is ***DENIED*** for lack of merit.

The Decision dated 30 June 2004 of the Regional Trial Court is hereby ***REVERSED*** and ***SET ASIDE***. The complaint is dismissed and CIGI is ordered to pay AMC the sum of ₱50,000.00 by way of attorney's fees plus costs.

SO ORDERED.[35]

Dismayed, CIGI interposed the present recourse alleging, in the main, that the CA committed misapprehension of facts. CIGI maintained that AMC refused to provide the necessary electrical facilities for the test run and that under the contract, CIGI was merely required to provide labor and materials. CIGI averred that the CA erred in relying on the testimony of Tolentino because he never specifically declared that CIGI did not complete the project. CIGI prayed that the decision of the RTC ordering AMC to pay the balance of the contract price be reinstated.

The Issue

The core issue for resolution is whether or not CIGI's demand for payment upon AMC is proper.

Ruling of the Court

Primarily, the arguments proffered by CIGI involve questions of fact which are beyond the scope of the Court's judicial review

[35] *Id*. at 68-69.

under Rule 45 of the Rules of Court. It is a settled rule that the Court examines only questions of law on appeal and not questions of facts. However, jurisprudence has recognized several exceptions in which factual issues may be resolved by the Court, such as when the factual findings of the courts *a quo* are conflicting,[36] as in this case.

The incongruity in the findings of the RTC and CA is conspicuous. On one hand, the RTC granted CIGI's complaint for sum of money and adjudged AMC as the defaulting party. On the other hand, the CA, while sustaining AMC's liability for CIGI's monetary claim, held the latter as the party who breached the installation contracts. A review of the contradicting findings of the courts *a quo* is thus in order so as to finally settle the conflicting claims of the parties.

The subject installation contracts bear the features of reciprocal obligations.

"Reciprocal obligations are those which arise from the same cause, and [in] which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other."[37] In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfils his obligation, delay by the other begins.[38]

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[36] *Spouses Yao v. Matela,* 531 Phil. 529, 534-535 (2006).

[37] *Cortes v. Court of Appeals,* 527 Phil. 153, 160 (2006), citing *Asuncion v. Evangelista,* 375 Phil. 328, 356 (1999).

[38] CIVIL CODE OF THE PHILIPPINES, Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

Under the subject contracts, CIGI as contractor bound itself to install a centralized medical oxygen and vacuum pipeline system for the first to fifth floors of AMC, which in turn, undertook to pay the contract price therefor in the manner prescribed in the contract. Being reciprocal in nature, the respective obligations of AMC and CIGI are dependent upon the performance of the other of its end of the deal such that any claim of delay or non-performance can only prosper if the complaining party has faithfully complied with its own obligation.

Here, CIGI complains that AMC refused to abide by its undertaking of full payment. While AMC does not dispute its liability to pay the balance of ₱1,267,344.42 being claimed by CIGI, it asserts, however that the same is not yet due because CIGI still has not turned over a complete and functional medical oxygen and vacuum pipeline system. CIGI is yet to conduct a test run of the installation and an orientation/seminar of AMC employees who will be involved in the operation of the system. CIGI, on the other hand, does not deny that it failed to conduct the agreed orientation/seminar and test run but it blames AMC for such omission and asserts that the latter failed to heed CIGI's request for electrical facilities necessary for the test run. CIGI also contends that its obligation is merely to provide labor and installation.

The Court has painstakingly evaluated the records of the case and based thereon, there can be no other conclusion than that CIGI's allegations failed to muster merit. The Court finds that

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(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis ours)

CIGI did not faithfully complete its prestations and hence, its demand for payment cannot prosper based on the following grounds: (a) under the two installation contracts, CIGI was bound to perform more prestations than merely supplying labor and materials; and (b) CIGI failed to prove by substantial evidence that it requested AMC for electrical facilities as such, its failure to conduct a test run and orientation/seminar is unjustified.

A. Under the installation contracts, CIGI was bound to perform more prestations than merely supplying labor and materials.

It is hornbook doctrine in the law on contracts that the parties are bound by the stipulations, clauses, terms and conditions they have agreed to provided that such stipulations, clauses, terms and conditions are not contrary to law, morals, public order or public policy.[39] In the present case, we find no legal proscription infringed by the terms and conditions of the contracts between AMC and CIGI. As such, the said terms and conditions must be held to be the law between them[40] and the parties are bound to fulfill what has been stipulated.

Both of the installation contracts clearly show that CIGI undertook to carry out more prestations than merely supplying labor and materials for the medical oxygen and vacuum pipeline system. CIGI agreed also: (a) to perform a pressure drop, leak testing, test run, painting/color coding of the installed centralized medical oxygen, vacuum and nitrous oxide pipeline system; and (b) to conduct orientation, seminars and training for the AMC employees who will be involved in the operation of the centralized pipeline system before the formal turnover of the project. This

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[39] *Barredo v. Leaño*, G.R. No. 156627, June 4, 2004, 431 SCRA 106, 113-114.

[40] CIVIL CODE OF THE PHILIPPINES, Article 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

is evident from the herein reproduced provisions of the installation contracts.

Article I of the Phase 1 installation contract enumerates the following undertakings of CIGI, *viz*:

1.1 Preparation and delivery of materials, tools and equipment from CIGI, Mandaluyong, to Alabang Medical Center's site of installation.

1.2 Degreasing and proper cleaning of deoxidized hard seamless copper tubes, fittings, valves and other parts prior to installations.

1.3 Supply, fabrication and installation of necessary brackets and clamps to comply with the standard Medical gas pipeline and other equipment installation.

1.4 Chiseling, boring and re-plastering of affected concrete walls for pipeline route.

[1.5 -1. 23 Supply and installation of various structures and parts of the medical oxygen and vacuum pipeline system].

1.24 **Pressure drop, leak testing, test-run, painting/color coding of the installed centralized medical oxygen, vacuum and nitrous oxide pipeline system**.[41] (Emphasis ours)

Meanwhile, Phase 2 installation contract, which follows the same terms and conditions of the Phase 1 installation contract, itemizes the prestations due from CIGI as follows:

1. Preparation and delivery of materials, tools and equipment from CIGI-Head Office to Alabang Medical Center site of installation.

2. Degreasing and proper cleaning of deoxidized hard seamless copper tubes, fittings, valves and other parts prior to installation.

3. Chiselling, boring and replastering of affected concrete walls for pipeline route.

4. Supply, fabrication and installation necessary brackets and clamps to comply with the standard medical gases pipeline and other equipment installation.

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[41] Records, pp. 175-178.

5. Supply, layout and installation of deoxidized hard seamless copper tubes and fittings and to be tapped from the existing riser of medical oxygen and vacuum pipeline system installed at third floor.

6. Supply and installation of two (2) units OHMEDA flush mount wall type isolation valve panel, each equipped with shut-off valve for oxygen and vacuum pipeline with corresponding pressure indicator.

7. Supply and installation of sixty[-]nine (69) sets OHMEDA flush mount wall type medical Oxygen and Vacuum Outlets, each consist of rough-in and finish assembly.

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8. Supply and installation of sixty[-]nine (69) sets MEDAES DISS III flush mount wall type medical vacuum outlets, each consists of rough in and finish assembly.

9. Supply and installation of sixty[-]nine (69) sets MEDAES stainless steel surface mount wall type vacuum bottle slides each complete with stainless mounting screw.

10. Supply and installation of two (2) sets MEDAES Area Line Pressure Alarm for Oxygen and Vacuum Pipeline System, each equipped with pressure switch, pressure indicator, lights indicator for each gas supply status and necessary electrical wiring materials which are to be installed at the Nurses station of Fourth Floor.

11. Supply of [certain] secondary equipments[.]

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12. **Pressure drop, leak testing, painting/color coding and test run of the installed centralized medical oxygen and vacuum pipeline system**.[42] (Emphasis ours)

Anent the conduct of orientation/seminar on the operation of the centralized medical oxygen and vacuum pipeline system, both contracts state:

Article 10 of Phase 1 installation contract:

10. SEMINARS/TRAINING:

[42] *Id.* at 185-187.

> The **CONTRACTOR** shall conduct orientation, seminars and training to the center's employees involve[d] in the operation of the centralized pipeline system before the formal turn-over of the project. Such training includes proper operation and preventive maintenance of the system.[43]

Articles VI(c) and VII(3) of Phase 2 installation contract:

> c. Seminars/Training
>
> CIGI shall conduct orientation, seminars and training to AMC's empl[o]yees involve[d] in the operation of the centralized pipeline system before the formal turn-over of the project. Such training includes proper operation and preventive[sic]
>
> xxx xxx xxx
>
> 3. CIGI to execute all necessary commissioning and lecture re-proper operation and preventive maintenance of the installed system and shall hand-over to Alabang Medical Center fully operational.[44]

Clearly, CIGI's reciprocal obligation was not merely to supply labor and materials for the project. It is unmistakable from the foregoing contractual provisions that CIGI agreed to carry out a test run of the installation as well as to conduct an orientation/seminar of AMC employees who will be involved in its operation. CIGI cannot be permitted to disregard the binding effect of the contracts it voluntarily assumed by conveniently renouncing its above-mentioned contractual commitments. Otherwise, the sanctity of its contracts with AMC will be defiled.

B. CIGI failed to prove by substantial evidence that it requested AMC for electrical facilities as such, its failure to conduct a test run and orientation/seminar is unjustified.

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[43] *Id*. at 183.

[44] *Id*. at 189.

CIGI failed to amply support its allegation that it requested for electrical facilities from AMC. Tolentino, CIGI's installation manager, testified that on August 23, 1999 they requested in writing for the electrical facilities but no evidence of such document was submitted. It is but a self-serving allegation, which by law is not equivalent to proof.[45] In addition, Pineda, the one who actually sent the request was not presented as witness thereby making Tolentino's statement mere hearsay evidence bearing no probative value.

Settled is the rule that a witness can testify only to those facts which he knows of his personal knowledge, which means those facts which are derived from his own perception. A witness may not testify as to what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.[46]

While Tolentino's testimony may be considered as independently relevant statement and may be admitted as to the fact that Pineda made utterances to him about the request for electricity, it is still inadequate to support the claim that AMC reneged on its obligation to provide electrical facilities. Admissibility of testimony should not be equated with its weight and sufficiency. Admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[47] Here, the Court finds no reason to doubt and overturn the CA's evaluation of Tolentino's testimony.

Even assuming that CIGI indeed made such request, it is unbelievable for AMC not to furnish electrical facilities. As correctly observed by the CA, it is unlikely for AMC not to

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[45] See *Real v. Sangu Philippines, Inc.*, G.R. No. 168757, January 19, 2011, 640 SCRA 67, 85.

[46] *Gulam v. Spouses Santos*, 532 Phil. 168, 178 (2006).

[47] *Id*. at 179, citing *People v. Manhuyod, Jr.*, 352 Phil. 866, 885 (1998) and *People v. Navarro*, 357 Phil. 1010, 1031 (1998).

spend minimal amount for the test run and risk the completion of its multi-million peso medical oxygen and vacuum pipeline system. Further, the language of Article VII(2) of the Phase 2 installation contract, which embodies AMC's duty to provide electrical facilities for the test run, indicates the availability of electrical facilities in the installation site such that AMC needed only to allow CIGI personnel/technicians to use or access the same, *viz*:

> 2. Alabang Medical Center to allow CIGI personnel/technicians to utilize the required facilities such as water and power during installation free of charge.[48]

It is thus highly improbable for AMC to deny CIGI personnel and technicians mere access to already existing electrical facilities and thereby jeopardize the operations of the hospital.

From the foregoing, it is clear that AMC's obligation to pay and CIGI's right to demand the unpaid balance for the *Phase 2 installation project* have not yet accrued.

For failure to prove that it requested for electrical facilities from AMC, the undisputed matter remains – CIGI failed to conduct the stipulated test run and seminar/orientation. Consequently, the dismissal of CIGI's collection suit is imperative as the balance of the contract price is not yet demandable. For having failed to perform its correlative obligation to AMC under their reciprocal contract, CIGI cannot unilaterally demand for the payment of the remaining balance by simply sending an invoice and billing statement to the former. Its right to demand for and collect payment will only arise upon its completion of **ALL** its prestations under the subject contracts.

In reciprocal obligations, before a party can demand the performance of the obligation of the other, the former must also

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[48] Records, p. 189.

perform its own obligation.[49] For its failure to turn over a complete project in accordance with the terms and conditions of the installation contracts, CIGI cannot demand for the payment of the contract price balance from AMC, which, in turn, cannot legally be ordered to pay. Otherwise, AMC will be effectively forced to accept an incomplete performance contrary to Article 1248 of the Civil Code which states that "(u)nless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists."

Considering that AMC's obligation to pay the balance of the contract price did not accrue, the stipulated interest thereon also did not begin to run.

CIGI also failed to fully comply with its prestations under the Phase 1 installation contract.

It must be noted that, although *Phases 1 and 2 installation projects* are covered by separate contracts, they nonetheless comprise one centralized medical oxygen system such that the agreed test run and seminar/orientation under the Phase 1 contract cannot be performed unless and until the *Phase 2 installation project* is finished and completed.[50] In other words, both phases will have to undergo a single and simultaneous test run and orientation on their manner of operation.

As such, while the subject of the herein complaint for sum of money pertained only to the Phase 2 installation contract, the violations committed by CIGI that prevented its cause of action to accrue broadly affected the initially non-issue Phase 1 contract.

It having been established that CIGI's avowed but infringed duty to perform a test run and orientation/seminar was contained in both Phases 1 and 2 installation contracts, it is imperative

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[49] *Subic Bay Metropolitan Authority v. CA*, G.R. No. 192885, July 4, 2012, 675 SCRA 758, 766.

[50] TSN, January 24, 2000, pp. 30-34.

to declare that it is liable not only for the herein subject Phase 2 contract but under the Phase 1 contract as well so as to arrive at an absolute and comprehensive resolution of the impasse between the parties.

Hence, regardless of whether or not the *Phases 1 and 2 installation projects* are independent of each other, CIGI violated the terms of the individual contracts for both.

The foregoing pronouncement notwithstanding, the Court finds that the breach committed by CIGI does not justify the rescission of the installation contracts.

The denial of AMC's amended counterclaim specifically praying for rescission does not bar a discussion of such issue on appeal. Rescission was pleaded in AMC's original Answer with Counterclaim when it implored the RTC for "other reliefs and remedies consistent with law and equity are prayed for."[51] The standing rule is that "[t]he prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for."[52] This rule conveys the inference that reliefs not specifically pleaded but included in a general prayer for other equitable reliefs may be threshed out by the courts.

The Court, however, finds that AMC has no legal basis to demand the rescission of the installation contracts. "[R]escission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement. Whether a breach is substantial is largely determined by the

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[51] Records, p. 23.

[52] *Primelink Properties & Development Corporation v. Lazatin-Magat*, 526 Phil. 394, 414 (2006), citing *Arroyo, Jr. v. Taduran*, 466 Phil. 173, 180 (2004).

attendant circumstances."[53] The provisions on the test run of and seminar on the medical oxygen system are not essential parts of the installation contracts as they do not constitute a vital fragment/part of the centralized medical oxygen system.

Further, the allegedly defective and incomplete parts cannot substantiate rescission. The photographs submitted by AMC are not adequate to establish that certain parts of the installed system are indeed defective or incomplete especially so that the installation never became operational. Unless and until the medical oxygen and vacuum pipeline actually runs, there is no way of conclusively verifying that some of its parts are defective or incomplete. In addition, AMC failed to allege much less show whether the alleged defects and incomplete components were caused by factory defect, negligence on the part of CIGI or ordinary wear and tear.

At any rate, the parties have specified clauses in the subject contracts to answer for such contingency. Article VI(b) of the Phase 2 installation contract provides:

VI. CONDITIONS:

xxx xxx xxx

b. Warranty

CIGI guarantees all materials involved against factory defect for one (1) year period from the date of project completion. CIGI shall also provide maintenance services for this pipeline project after the one (1) year warranty period provided that Alabang Medical Center shall purchase its Medical Gases requirements exclusively to CIGI. [sic]

During the lifetime of the Supply of Medical Gases Contract, CIGI shall undertake the maintenance of the system on a semi-annual basis which shall include visual leak testing and minor repairs and spare parts for replacement shall be "Free of Charge".

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[53] *Viloria v. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012, 663 SCRA 57, 86-87, citing *Barredo v. Leaño*, 431 Phil. 106, 115 (2004) and *Central Bank of the Philippines v. Spouses Bichara*, 385 Phil. 553, 565 (2000).

> Major repairs and spare parts for replacement shall be charged to [A]labang Medical Center on a cost plus basis.[54] [sic]

Article 4.1 of the Phase 1 installation contract contains similar terms, *viz*:

> 4.1 The **CONTRACTOR** guarantees all materials involved against factory defect for one (1) year period from the date of project completion. **CONTRACTOR** shall also provide maintenance services for this pipeline project after the one (1) year warranty period provided that the 'OWNER" shall purchase its Medical gases requirements exclusively to the **CONTRACTOR.** [sic]
>
> During the lifetime of the **SUPPLY CONTRACT,** the **CONTRACTOR** shall undertake the maintenance of the system on semi-annual basis which shall include visual leak testing and minor repairs which shall be **"Free of Charge".** Major repairs and spare parts for replacement shall be charged to Customer on a cost plus basis.[55]

Since, as discussed above, the agreed test run and orientation/seminar for both *Phases 1 and 2 installation projects* were yet to be performed, both projects are not yet complete and the one year warranty period has not yet commenced to run.

In view of the fact that rescission is not permissible, the installation contracts of the parties stand and the terms thereof must be duly fulfilled. CIGI is obliged to comply with its undertakings to conduct a test run and hold a seminar/orientation of concerned AMC employees, after which, turn over the system fully functional and operational to AMC. Simultaneously with the turnover, AMC shall pay the remaining balance of ₱1,267,344.42 to CIGI.

Also, the Court finds it proper that after CIGI has turned over a complete and functional medical oxygen and vacuum pipeline system, it must be given the opportunity to inspect

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[54] Records, p. 188.

[55] *Id*. at 182.

the allegedly defective and incomplete parts. The results of such inspection will in turn determine which part of the aforementioned warranty clauses shall govern.

AMC is not entitled to actual damages.

AMC is not entitled to actual damages representing interest payments on the loan it obtained from Metrobank in order to fund the installation projects. For damages to be recovered, the best evidence obtainable by the injured party must be presented. Actual or compensatory damages cannot be presumed, but must be proved with reasonable degree of certainty. The Court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered and on evidence of the actual amount. If the proof is flimsy and unsubstantial, no damages will be awarded.[56]

AMC failed to prove by substantial evidence any direct correlation between the interest charges on its loan and CIGI's failure to perform a test run of, conduct seminar on and turn over the oxygen system. AMC presented no evidence except bare allegations, which by law, do not amount to competent proof of actual pecuniary loss.[57] What is actually borne out by the records is that the interest charges are imposed on the loan and were payable by AMC regardless of the progress of the installation projects.

Moreover, the CA was correct in finding that such loan was not exclusively devoted to the installation projects but was also utilized in financing the construction and air-conditioning system of AMC. It would be certainly unfair to reimburse AMC for such interest payments absent any factual proof of its fraction that pertains to the installation projects themselves. "[O]ne is

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[56] *Pacific Basin Securities Co., Inc. v. Oriental Petroleum and Minerals Corp.*, 558 Phil. 425, 446 (2007), citing *Development Bank of the Philippines v. CA*, 319 Phil. 447, 457 (1995).

[57] *Macasaet v. R. Transport Corporation,* 561 Phil. 605, 617 (2007).

entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved."[58]

WHEREFORE, all the foregoing considered, the Amended Decision dated March 4, 2008 of the Court of Appeals in CA-G.R. CV No. 84988 is **SET ASIDE**. Consolidated Industrial Gases, Inc. is hereby **ORDERED** to faithfully comply, within a period of sixty (60) days, with **ALL** its obligations under the installation contracts, including but not limited to the following: (a) perform a "pressure drop, leak testing, test run, painting/color coding of the installed centralized medical oxygen, vacuum and nitrous oxide pipeline system"; (b) conduct orientation, seminars and training of Alabang Medical Center employees who will be involved in the operation of the centralized medical oxygen, vacuum and nitrous oxide pipeline system; and (c) turn over a fully functional and fully operational centralized medical oxygen, vacuum and nitrous oxide pipeline system to Alabang Medical Center.

Alabang Medical Center is hereby **ORDERED** to (a) allow the personnel/technicians of Consolidated Industrial Gases, Inc. to access and utilize, free of charge, the hospital's electrical facilities in such a manner and quantity necessary for the complete performance of its above-enumerated undertakings, and (b) pay the balance of ₱1,267,344.42 upon and simultaneously with the turnover of a fully functional and fully operational centralized medical oxygen, vacuum and nitrous oxide pipeline system by Consolidated Industrial Gases, Inc.

The award of attorney's fees in favor of Alabang Medical Center is deleted.

SO ORDERED.

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

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[58] *Financial Building Corporation v. Rudlin International Corporation,* G.R. No. 164186, October 4, 2010, 632 SCRA 18, 47.

THIRD DIVISION

[G.R No. 182314. November 13, 2013]

VIRGINIA Y. GOCHAN, FELIX Y. GOCHAN III, LOUISE Y. GOCHAN, ESTEBAN Y. GOCHAN, JR., and DOMINIC Y. GOCHAN, *petitioners, vs.* **CHARLES MANCAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; JUDGMENT; A FINAL AND EXECUTORY DECISION CAN BE INVALIDATED EITHER THROUGH A PETITION FOR ANNULMENT OF JUDGMENT OR A PETITION FOR RELIEF FROM JUDGMENT.— The general rule is that, except to correct clerical errors or to make *nunc pro tunc* entries, a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it. A final and executory decision can, however, be invalidated via a petition to annul the same or a petition for relief under Rules 47 and 38, respectively, of the 1997 Rules of Civil Procedure *(Rules)*.

2. ID.; ID.; ID.; ID.; ANNULMENT OF JUDGMENTS; GROUNDS.— Sections 1 and 2 of Rule 47 provide for the coverage and grounds for annulment of judgments or final orders and resolutions of the RTCs in civil actions: x x x Although Section 2 of Rule 47 provides that a petition for annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence has recognized denial of due process as an additional ground.

3. ID.; ID.; ID.; ID.; ID.; EXTRINSIC FRAUD; DEFINED AND CONSTRUED.— Intrinsic fraud refers to acts of a party at a trial which prevented a fair and just determination of the case, and which could have been litigated and determined at the trial or adjudication of the case. In contrast, extrinsic or collateral fraud is a trickery practiced by the prevailing party upon the unsuccessful party, which prevents the latter from fully proving his case; it affects not the judgment itself but

the manner in which said judgment is obtained. Fraud is regarded as extrinsic "where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court."

4. CIVIL LAW; SALES; EXTINGUISHMENT OF SALE; LEGAL REDEMPTION; THE RIGHT TO REDEEM THE PROPERTY BY A CO-OWNER EXISTS WHEN A CO-OWNER HAS ALIENATED HIS *PRO-INDIVISO* SHARES TO A THIRD PARTY OR STRANGER.— To be clear, the governing law with respect to redemption by co-owners in case the share of a co-owner is sold to a third person is Article 1620 of the New Civil Code. x x x Article 1620 contemplates of a situation where a co-owner has alienated his *pro-indiviso* shares to a third party or stranger to the co-ownership. Its purpose is to provide a method for terminating the co-ownership and consolidating the dominion in one sole owner.

5. ID.; ID.; ID.; ID.; IN AN ACTION FOR LEGAL REDEMPTION, ONLY THE REDEEMING CO-OWNER AND THE BUYER ARE THE INDISPENSABLE PARTIES; APPLICATION IN CASE AT BAR.— We already held that only **the redeeming co-owner and the buyer** are the indispensable parties in an action for legal redemption, to the exclusion of the seller/co-owner. Thus, the mere fact that respondent was not impleaded as a party in Civil Case No. CEB-22825 is not in itself indicative of extrinsic fraud. If a seller/co-owner is not treated as an indispensable party, how much more is a third person who merely alleged that his lots are affected thereby? Truly, the exclusion of respondent (or other alleged subdivision lot owners who are equally affected) from the legal redemption case does not entitle him to the right to ask for the annulment of the judgment under Rule 47 of the Rules, because he does not even have any legal standing to participate or intervene therein. Assuming *arguendo* that respondent has the personality to be impleaded in Civil Case No. CEB-22825 since it is settled that a person need not be a party to the judgment sought to be annulled, still, he failed to

prove with sufficient particularity the allegation that petitioners practiced deceit or employed subterfuge that precluded him to fully and completely present his case to the trial court. Like in other civil cases, the allegation of extrinsic fraud must be fully substantiated by a preponderance of evidence in order to serve as basis for annulling a judgment. Extrinsic fraud has to be definitively established by the claimant as mere allegation does not instantly warrant the annulment of a final judgment. *Ei incumbit probotio qui dicit, non qui negat.* He who asserts, not he who denies, must prove. Unfortunately, respondent failed to discharge the burden.

APPEARANCES OF COUNSEL

Pepito and Ventura Law Offices for petitioners.
Balorio & Pintor Law Office for respondents.

D E C I S I O N

PERALTA, ***J.*:**

Assailed in this petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the June 28, 2007 Decision[1] and March 10, 2008 Resolution,[2] of the Court of Appeals (CA) in CA-G.R. SP No. 71312, which annulled and set aside the judgment based on compromise[3] dated November 27, 1998 of the Cebu City Regional Trial Court Branch (RTC) 17.

The factual antecedents are as follows:

Felix Gochan (Gochan), Amparo Alo (Alo), and Jose A. Cabellon were co-owners of Lot Nos. 1028 and 1030 of Subdivision Plan Psd-21702 located in Cebu City, Cebu.[4]

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Antonio L. Villamor concurring; *rollo*, pp. 7-19.

[2] *Id*. at 21-24.

[3] *Id*. at 127-129.

[4] *Id*. at 201.

Petitioners are successors-in-interest of Gochan, while respondent bought Lot Nos. 1028-D-1, 1028-D-3, 1028-D-4, and 1028-E covered by Transfer Certificate of Title (TCT) Nos. 139161-139164[5] from the children of Angustias Velez and Eduardo Palacios,[6] who, together with Jose, Jesus, Carmen, and Vicente, all surnamed Velez,[7] acquired Lot Nos. 1028-D and 1028-E from Alo.

Sometime in 1998, petitioners, including Mae Gochan, filed a case for legal redemption of Lot Nos. 1028-DD, 1028-EE, 1028-FF, 1028-GG, 1028-HH, 1028-II, 1028-JJ, 1028-KK, 1028-LL, 1028-MM, 1028-NN, 1028-OO, 1028-PP, 1028-QQ, 1028-RR, 1028-SS, 1028-TT, 1028-UU, 1028-VV, 1030-I of Subdivision Plan Psd-21702 covered by TCT Nos. 2318 to 2337.[8] The TCTs are registered under the names of Gochan (married to Tan Nuy), Alo (married to Patricio Beltran), and Genoveva S. De Villalon (married to Augusto P. Villalon), who is the successor-in-interest of Cabellon. The case, which was docketed as Civil Case No. CEB-22825 and raffled before Cebu City RTC Branch 17, was brought against the spouses Bonifacio Paray, Jr. and Alvira Paray (sister of respondent),[9] who purchased the lots from the heirs of Alo. On November 20, 1998, the parties executed a Compromise Agreement,[10] whereby, for and in consideration of the amount of Php650,000.00, the Spouses Paray conveyed to petitioners and Mae Gochan all their shares, interests, and participation over the properties. On November 27, 1998, the court approved the agreement and rendered judgment in accordance with its terms and conditions.[11] The decision was annotated on December 29, 1999 in the subject TCTs as Entry No. 188688.

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[5] *Id.* at 121-124.

[6] *Id.* at 198-200.

[7] *Id.* at 196-197.

[8] *Id.* at 133-192.

[9] *Id.* at 34, 213, 256.

[10] *Id.* at 125-126.

[11] *Id.* at 130-132.

Claiming that the legal redemption adversely affected Lot Nos. 1028-D-1, 1028-D-3, 1028-D-4, and 1028-E, respondent filed a suit before the CA for "Declaration of Nullity of Final Decision and Compromise Agreement and the Registration of the Same Documents with the Register of Deeds." The petition, which impleaded as respondents the petitioners, Mae Gochan, and RTC Br. 17, alleged:

> 4. The subject matter in Civil Case No. CEB-22825 sought to be redeemed by the [petitioners] Gochans from the x x x Parays were all ROAD LOTS serving Subdivision Psd-21702 located in Lahug, Cebu City. [Respondent's] standing to question the subject compromise agreement, the decision incorporating the same, and the registration of said decision with the Register of Deeds of Cebu City, arises from the fact that [respondent] is one of the subdivision lot owners in the same Subdivision Psd-21702, (LRC) Rec. No. 5988, prejudiced by the issuance and consequent registration of the said decision. x x x
>
> xxx xxx xxx
>
> 6. The compromise agreement, the questioned decision and the registration of the same are most respectfully submitted to be null and void *ab initio* for the following reasons:
>
> (a) The cause of action raised and settled in said Civil Case No. CEB-22825 is the alleged ownership or co-ownership by the [petitioners] of 20 lots, 1028: DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, and I all of which are ROAD LOTS serving the residents and lot owners of Subdivision Psd- 21702. x x x;
>
> (b) The face of all the certificates of title covering the lots appropriated by the [petitioners] as owned or co-owned by them per the questioned compromise agreement and decision, clearly indicate the same to be road lots. The certification issued by the Department of Environment and Natural Resources Land Management Services x x x shows that the same lots are road lots;

(c) Although these road lots had been registered in the name of private individuals (who were the original registrants and who are now all deceased) the same could still not be appropriated or owned by any individual or entity as the same is beyond the commerce of men. This is provided for and/or supported among others by the following:

(c.1) Art. 420 of the Civil Code x x x;

(c.2) Sec. 44 of the Land Registration [Act No.] 496 x x x;

(c.3) Section 4, PD No. 957 x x x;

(c.4) Section 17 of PD No. 957 x x x;

(c.5) Section 21 of PD No. 957 x x x;

(c.6) PD 1216 amending Sec. 31 of PD 957 x x x;

(c.7) Established jurisprudence on the matter including the cases of White Plains Association, Inc. *vs*. Legaspi, 193 SCRA 765 and in G.R. Case No. 55868 mentioned therein and Claudio M. Anonuevo, *et al. vs*. Court of Appeals, *et al*., G.R. No. 113739, May 2, 1995 holding that road and open spaces for public use are beyond the commerce of men.

xxx xxx xxx

7. One of the primary considerations why [respondent] himself bought the subdivision lots mentioned herein is the existence and perpetual passage offered by the subdivision owners respecting the subdivision road lots. As early as May 23, 1950, Amparo Alo, one of the original lot owners who caused its subdivision, had this warranty in her Deed of Absolute Sale: "I further bind myself, by these presents, not to alienate, encumber or otherwise dispose of my rights and interests in all the road lots or the subdivision roads of subdivision plan Psd-21702 and to allow the herein VENDEES, their heirs, successors and assigns the perpetual use thereof as part of the consideration of this sale." [Respondent] is a successor-in-interest of one of the vendees in said sale having bought the same from Eduardo Palacios, Jr., one of the vendees in the May 23, 1950 sale herein mentioned. x x x.

8. The historical facts of the creation of subdivision Psd-21702 indicated the lots the ownership of which was made the subject matter of the questioned decision as Road Lots as early as August 5, 1947. x x x. The predecessors of the [petitioners] themselves indicated on the last paragraph of page 2 of [the three-page Motion dated August 5, 1947 that they filed] that the subject lots as Road lots;

9. On January 21, 1948, the Hon. Felix Martinez issued an Order respecting the motion of the predecessors of the [petitioners] for the approval of the subdivision plan 1028 and 1030 Psd-21702 pursuant to Article 44 of Act No. 496. The English translation of the Order by Hon. Judge Antonio Paraguya is quoted hereunder:

"xxx xxx xxx

Pursuant to Article 44 of Act No. 496, let the subdivision plan of Lot [Nos.] 1028 and 1030-Psd-21702 and all other documents pertaining to said subdivision be remitted to the General Land Registration Office."

xxx xxx xxx

10. The approval of the subdivision plan 21702 on July 12, 1948, the appropriated road lots of which are part of, was in conformity with the report/recommendation of the Chief Surveyor of the General Land Registration Office dated February 5, 1948. And the second page of the Chief Surveyor's report upon which the decision was based said:

"It is respectfully recommended further that, in granting what is prayed for by the above-petitioners in the instant case, they should be required to keep always open all the road lots within the above-said subdivision [so] that they will serve as thoroughfare or exit to and from every subdivision lot included therein."

xxx xxx xxx

11. On July 12, 1948, the Hon. Judge Felix Martinez rendered a decision on the motion of the predecessors of [petitioners] to approve the subdivision plan of lot 1028 and 1030 Psd-21702 in Spanish. Said decision followed the recommendation of the Chief Surveyor quoted above. As translated by the

Hon. Judge Antonio Paraguya, said decision in English, stated:

"In conformity with the report/recommendation of the Chief Surveyor of the General Land Registration Office dated February 5, 1948, subdivision plan Psd-21702 and the corresponding technical descriptions are hereby approved."

xxx xxx xxx

12. [Respondent] most respectfully emphasizes the urgent and grave necessity that the questioned compromise agreement, the final decision and its registration be declared null and void. As it is now, [petitioners] are using the same decision and compromise agreement as tools to deny other lot owners, including the [respondent] herein, from free access to and from the subdivision lots. [Petitioners] are wantonly erecting and/or placing barriers on these lots, in the guise of owning the same, in the process effectively denying [respondent] and other lot owners from using said road lots.[12]

Respondent's Reply to Answer with Counterclaim further averred:

7. In fact, the estate and inheritance tax return on the late Felix Gochan (answering [petitioners'] grandfather) from where answering [petitioners] derive their alleged rights over these road lots, filed in 1959, never include these lots now as their private property. Several road lots are indicated in this return but never the subject road lots. This would prove that even historically, these road lots had already been separated from the properties of the [petitioners]. The present [petitioners] could not arrogate unto themselves as their own things which their forefathers no longer owned. x x x

8. In fact too, when the questioned decision was presented to the Register of Deeds for annotation on the covering certificates of title, [petitioners] failed to present any of their supposed owner's duplicate copies of said certificates. Therefore, from which does [petitioners'] supposed ownership of these road lots emanate? x x x

9. Even the estate tax return on the estate of answering [petitioners'] father Esteban Gochan filed in 1997 does not include as part of his

[12] *Id.* at 111-117.

supposed estate the road lots made subject matter of the questioned compromise agreement and the resultant decision. The records of the City Assessor of Cebu City on the late Esteban Gochan's property holdings likewise do not show these road lots to be part of *(sic)*. For this, and the above mentioned indications, [petitioners] should do well in disclaiming ownership than appropriating the road lots as their own. x x x[13]

Petitioners and Mae Gochan countered that the petition states no cause of action on the grounds that: (1) respondent is not a co-owner of the properties subject matter of the legal redemption case, hence, not a real party-in-interest required to be impleaded therein; and (2) the reasons relied upon by him constitute neither extrinsic fraud nor lack of jurisdiction. Petitioners also noted that respondent is already a defendant-intervenor in *Felix Gochan and Sons Realty Corporation v. City of Cebu*, an injunction case docketed as Civil Case No. CEB-22996 and pending before Cebu RTC Branch 10. They argued that the filing of the petition is in violation of the rule on forum shopping and *litis pendentia,* because respondent's ultimate objective in CA-G.R. SP No. 71312 and in Civil Case No. CEB-22996 is the same — to use the alleged road lots and bar petitioners from using the same. Petitioners further contended that respondent is estopped to declare that the subject lots are beyond the commerce of men, considering that he was the highest bidder when the City of Cebu levied and sold at public auction Lot Nos. 1028-LL and 1028-NN due to non-payment of real estate taxes.[14] Moreover, petitioners asserted that respondent should have impleaded the "other lot owners" as co-petitioners because he considered them as indispensable parties based on paragraph 12 of the Petition. Finally, petitioners claimed that the petition serves no useful purpose, since to declare the nullity of the compromise agreement and the decision would not change the private character of the subject lots as the owners thereof would still be the Spouses Parays and the heirs of Beltran, who are private individuals.

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[13] *Id*. at 257-259.

[14] Petitioners, however, timely redeemed Lot Nos. 1028-LL and 1028-NN.

Despite petitioners' defenses, the CA ruled in favor of respondent. The *fallo* of the June 28, 2007 Decision reads:

> **WHEREFORE,** judgment is hereby rendered GRANTING the instant petition. The Compromise Agreement dated November 20, 1998 signed by the parties and counsel in Civil Case No. CEB-22825, which is Annex "G" to the Petition and the Decision dated November 27, 1998 of the Court *a quo* in Civil Case No. CEB-22825, entitled *"Virginia Y. Gochan, et al., vs. Bonifacio Paray, Jr., et al."* are hereby ANNULLED and SET ASIDE and the Compulsory Counterclaim is hereby DISMISSED for lack of merit.
>
> Consequently, the registration of the said decision on December 29, 1998 with the Register of Deeds of Cebu City per Entry No. 188688 is likewise declared null and void.
>
> The Register of Deeds of the City of Cebu is hereby ordered to forthwith cancel the registration of the Decision done on December 29, 1998, per Entry No. 188688.
>
> No costs.
>
> **SO ORDERED**.[15]

The CA, subsequently, denied petitioners' motion for reconsideration; hence, this petition raising the grounds as follows:

> I. THE COURT OF APPEALS ERRED IN FINDING THAT EXTRINSIC FRAUD WAS PRESENT WHEN THE RESPONDENT WAS NOT IMPLEADED IN THE REDEMPTION CASE AND WHEN PETITIONERS ENTERED INTO A COMPROMISE AGREEMENT WITH BONIFACIO PARAY.
>
> II. THE COURT OF APPEALS ERRED IN ASSUMING THAT THE ROAD LOTS ARE WITHIN A RESIDENTIAL SUBDIVISION.
>
> III. THE COURT OF APPEALS ERRED IN APPLYING THE RULING IN *WHITE PLAINS ASSOCIATION, INC. VS. LEGASPI, G.R. NO. 95522, FEBRUARY 7, 1991*, WHICH [HAD] LONG BEEN MODIFIED BY THE MORE RECENT

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[15] *Rollo*, p. 18. (Emphasis in the original)

CASE OF *WHITE PLAINS HOMEOWNERS ASSOCIATION, INC. VS. CA, 297 SCRA 547, OCTOBER 8, 1998*.

IV. THE COURT OF APPEALS ERRED IN APPLYING PD 957 AND PD 1216 WHICH ARE INAPPLICABLE IN DECIDING THE CASE AND WHICH LAWS DO NOT HAVE RETROACTIVE EFFECT.

V. THE OTHER GROUNDS RELIED UPON BY RESPONDENT ARE EQUALLY UNAVAILING.[16]

The petition is impressed with merit.

The general rule is that, except to correct clerical errors or to make *nunc pro tunc* entries, a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it.[17] A final and executory decision can, however, be invalidated via a petition to annul the same or a petition for relief under Rules 47 and 38, respectively, of the 1997 Rules of Civil Procedure *(Rules)*.[18]

Specifically, Sections 1 and 2 of Rule 47 provide for the coverage and grounds for annulment of judgments or final orders and resolutions of the RTCs in civil actions:

SECTION 1. ***Coverage.*** – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

SEC. 2. ***Grounds for annulment.*** – The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

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[16] *Id.* at 43.

[17] *Salting v. Velez*, G.R. No. 181930, January 10, 2011, 639 SCRA 124, 131.

[18] *Id.*

Although Section 2 of Rule 47 provides that a petition for annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence has recognized denial of due process as an additional ground.[19] In this case, extrinsic fraud was the basis of the CA in annulling the trial court's judgment; thus, there is a need to examine the concept, as established by a plethora of jurisprudence and, thereafter, to determine whether the CA, in the exercise of its original jurisdiction, correctly applied the same.

We begin by restating that an action to annul a final judgment on the ground of fraud will lie only if the fraud is extrinsic or collateral in character.[20] In *Ancheta v. Guersey-Dalaygon*,[21] the Court elaborated:

> Fraud takes on different shapes and faces. In *Cosmic Lumber Corporation v. Court of Appeals*, the Court stated that "man in his ingenuity and fertile imagination will always contrive new schemes to fool the unwary."
>
> There is extrinsic fraud within the meaning of Sec. 9 par. (2), of B.P. Blg. 129, where it is one the effect of which prevents a party from hearing a trial, or real contest, or from presenting all of his case to the court, or where it operates upon matters, not pertaining to the judgment itself, but to the manner in which it was procured so that there is not a fair submission of the controversy. In other words, extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case by fraud or deception practiced on him by his opponent. Fraud is extrinsic where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from

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[19] See *Diona v. Balangue*, G.R. No. 173559, January 7, 2013, 688 SCRA 22, 35; *Benatiro v. Heirs of Evaristo Cuyos*, G.R. No. 161220, July 30, 2008, 560 SCRA 478, 495; *Biaco v. Phil. Countryside Rural Bank*, 544 Phil. 45, 53 (2007); and *Intestate Estate of the late Nimfa Sian v. Philippine National Bank*, 542 Phil. 648, 654 (2007).

[20] *Benatiro v. Heirs of Evaristo Cuyos*, *supra* note 19, at 495.

[21] 523 Phil. 516 (2006).

court, a false promise of a compromise; or where the defendant never had any knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing.[22]

Similarly, *City Government of Tagaytay v. Guerrero*[23] distinguished:

x x x [F]raud may also be either extrinsic or intrinsic. There is intrinsic fraud where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. Fraud is regarded as extrinsic where the act prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured, so that there is not a fair submission of the controversy. Extrinsic fraud is also actual fraud, but collateral to the transaction sued upon.

xxx xxx xxx

Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. The fraud or deceit cannot be of the losing party's own doing, nor must such party contribute to it. The extrinsic fraud must be employed against it by the adverse party, who, because of some trick, artifice, or device, naturally prevails in the suit. It affects not the judgment itself but the manner in which the said judgment is obtained.[24]

Intrinsic fraud refers to acts of a party at a trial which prevented a fair and just determination of the case, and which could have

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[22] *Ancheta v. Guersey-Dalaygaon, supra,* at 530-531.

[23] G.R. Nos. 140743 & 140745, and G.R. Nos. 141451-52, September 17, 2009, 600 SCRA 33.

[24] *City Government of Tagaytay v. Guerrero, supra,* at 60-61. (Citations omitted)

been litigated and determined at the trial or adjudication of the case.[25] In contrast, extrinsic or collateral fraud is a trickery practiced by the prevailing party upon the unsuccessful party, which prevents the latter from fully proving his case; it affects not the judgment itself but the manner in which said judgment is obtained.[26] Fraud is regarded as extrinsic "where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court."[27]

In this case, the CA concluded that petitioners committed extrinsic fraud, since they "employed schemes which effectively excluded [respondent] and other co-owners from participating in the trial."[28] It opined that while the subject lots may have been registered in the name of petitioners, they could not be the subject of any contract or compromise because they are road lots which are for public use and, therefore, beyond the commerce of men. Cited as basis were *White Plains Association, Inc. v. Legaspi*,[29] the preambulatory clauses of Presidential Decree (P.D.) No. 1216, and Sections 17 and 22 of P.D. No. 957. The CA observed:

x x x [T]he Court finds that the filing of Civil Case No. CEB-22825, and the subsequent compromise agreement which immediately

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[25] *Hermano v. Alvarez, Jr.*, G.R. No. 188778, June 27, 2012 (2nd Division Resolution) and *Judge Carillo v. Court of Appeals*, 534 Phil. 154, 167 (2006).

[26] *People v. Bitanga*, 552 Phil. 686, 693 (2007).

[27] *Castigador v. Nicolas*, G.R. No. 184023, March 4, 2013 (1st Division Resolution); *Bulawan v. Aquende*, G.R. No. 182819, June 22, 2011, 652 SCRA 585, 594; *Benatiro v. Heirs of Evaristo Cuyos*, *supra* note 19, at 495-496; and *Judge Carillo v. Court of Appeals*, *supra* note 25, at 166-167.

[28] June 28, 2007 CA Decision pp. 5-6; *rollo*, pp. 11-12.

[29] 271 Phil. 806 (1991).

terminated the same were only ploys to give legality to the occupation by [petitioners] of the subject road lots which are clearly beyond the commerce of man. They filed a case in court in order to give legal color to their occupation. Then they conveniently entered into a compromise agreement in order to shorten the proceedings and foreclose any intervention or opposition from petitioner and from other lot owners in the subdivision who were purposely excluded therefrom and to their damage and prejudice.

Furthermore, [petitioners] already erected structures on the road lots which can be considered as alteration that requires the permission of the National Housing Authority and the conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the affected lot buyers in the subdivision under Presidential Decree 957. These requirements were not complied with by [petitioners] in the instant case.

If only [respondent] and other subdivision lot owners were notified of the filing of the case involving the subject lots, they could have intervened and protected their rights against the unscrupulous acts of [petitioners] and the issues raised by [respondent] in the instant petition could have been properly resolved by the court *a quo*.[30]

In denying petitioners' motion for reconsideration, the CA additionally held:

To reiterate, this Court finds that extrinsic fraud exists in the instant case based on the following facts: (a) that the ownership of the subject road lots were conveniently vested to the Gochans when Civil Case No. CEB-22825 was commenced and terminated without notifying [respondent] and other subdivision lot owners about the case; and (b) that the November 20, 1998 Compromise Agreement was consciously and deliberately entered into by [petitioners] to foreclose [respondent] and other subdivision lot owners from intervening and participating in the trial of the case.

It must be emphasized that the instant case does not involve the entire property of [petitioners] but only the road lots therein leading to the subdivision where [respondent] resides. It must be emphasized further that said road lots were the subjects of the warranty given by [respondent's] predecessor-in-interest, Amparo Alo, which reads:

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[30] *Rollo,* p. 99.

> **"I further bind myself, by these presents, not to alienate, encumber or otherwise dispose of my rights and interest in all the road lots or the subdivision roads, of subdivision plan Psd-21702 and to allow said vendees, their heirs, successors and assigns the perpetual use thereof as part of the consideration of this sale."**

Verily, [petitioners] cannot claim that there is no extrinsic fraud in the instant case because "the case was only between [petitioners] and Bonifacio Paray and it was not at all necessary to inform, notify or implead [respondent] in CEB-22825." This claim would have been totally correct if Civil Case No. CEB-22825 did not include the subject road lot. Hence, [petitioners] clearly violated [respondent's] right when they filed Civil Case No. CEB-22825 and subsequently entered into a Compromise Agreement which fraudulently and effectively vested upon them absolute ownership of the road lots, totally and flagrantly disregarding the abovementioned warranty.

It is also in this regard that this Court ruled that [respondent] has the legal personality to file the instant petition, being a real party-in-interest as defined under Section 7, Rule 3, of the Revised Rules of Court x x x[31]

Based on the foregoing, are petitioners guilty of committing extrinsic fraud? We think not.

To be clear, the governing law with respect to redemption by co-owners in case the share of a co-owner is sold to a third person is Article 1620 of the New Civil Code, which provides:

Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.

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[31] *Id.* at 107-108. (Emphasis in the original)

Article 1620 contemplates of a situation where a co-owner has alienated his *pro-indiviso* shares to a third party or stranger to the co-ownership.[32] Its purpose is to provide a method for terminating the co-ownership and consolidating the dominion in one sole owner.[33] In *Basa v. Aguilar*,[34] the Court stated:

> Legal redemption is in the nature of a privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has been thrust. (10 Manresa, 4th Ed., 317.) It is intended to minimize co-ownership. The law grants a co-owner the exercise of the said right of redemption when the shares of the other owners are sold to "a third person." A third person, within the meaning of this Article, is anyone who is not a co-owner. (Sentencia of February 7, 1944 as cited in Tolentino, Comments on the Civil Code, Vol. V, p. 160.)[35]

We already held that only **the redeeming co-owner and the buyer** are the indispensable parties in an action for legal redemption, to the exclusion of the seller/co-owner.[36] Thus, the mere fact that respondent was not impleaded as a party in Civil Case No. CEB-22825 is not in itself indicative of extrinsic fraud. If a seller/co-owner is not treated as an indispensable party, how much more is a third person who merely alleged that his lots are affected thereby? Truly, the exclusion of respondent (or other alleged subdivision lot owners who are equally affected) from the legal redemption case does not entitle him to the right to ask for the annulment of the judgment under Rule 47 of the Rules, because he does not even have any legal standing to participate or intervene therein.

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[32] *Reyes v. Concepcion*, 268 Phil. 174, 183 (1990).

[33] *Aguilar v. Aguilar*, 514 Phil. 376, 381 (2005).

[34] 202 Phil. 452 (1982). See also *Fernandez v. Spouses Tarun*, 440 Phil. 334, 344 (2002).

[35] *Base v. Aguilar, supra*, at 455.

[36] *Fidel Lagman, et al. v. Lydia Data, et al.*, G.R. No. 168171, March 21, 2007 (3rd Division Resolution), citing *Robles v. Court of Appeals*, 172 Phil. 540, 543 (1978).

Assuming *arguendo* that respondent has the personality to be impleaded in Civil Case No. CEB-22825 since it is settled that a person need not be a party to the judgment sought to be annulled,[37] still, he failed to prove with sufficient particularity the allegation that petitioners practiced deceit or employed subterfuge that precluded him to fully and completely present his case to the trial court. Like in other civil cases, the allegation of extrinsic fraud must be fully substantiated by a preponderance of evidence in order to serve as basis for annulling a judgment.[38] Extrinsic fraud has to be definitively established by the claimant as mere allegation does not instantly warrant the annulment of a final judgment.[39] *Ei incumbit probotio qui dicit, non qui negat.* He who asserts, not he who denies, must prove.[40] Unfortunately, respondent failed to discharge the burden.

We reverse the CA findings as it is grounded entirely on speculation, surmises or conjectures.[41] Upon examination of

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[37] *Judge Carillo v. Court of Appeals*, *supra* note 25, at 166.

[38] See *Metropolitan Bank & Trust Company v. Hon. Alejo*, 417 Phil. 303, 314 (2001).

[39] *Espinosa v. Court of Appeals*, G.R. No. 128686, May 28, 2004, 430 SCRA 96, 103.

[40] *Alba v. Court of Appeals*, 503 Phil. 451, 464 (2005).

[41] While the findings of facts of the CA are, as a rule, conclusive, it is still subject to certain exceptions, to wit: (1) the factual findings of the CA and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the CA from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the CA, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the CA is premised on a misapprehension of facts; (7) the CA fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the CA are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the CA are premised on the absence of evidence but are contradicted by the evidence on record. (See *Alcazar v. Arante*, G.R. No. 177042, December 10, 2012, 687 SCRA 507, 516-517)

the records, the evidence presented by respondent are plainly wanting to show any specific trick, artifice, or device employed by petitioners that caused them to prevail over the Spouses Paray. In fact, when petitioners contended that extrinsic fraud must be present in an action to annul judgment, respondent erroneously countered that it is "immaterial" and even admitted that "[t]he present case is based on the illegality of the acts of the [petitioners] arising from the nature of the lots dealt with and the resultant violation by the [petitioners] of the law declaring the act to be so."[42]

Of equal importance, aside from respondent's failure to prove the presence of extrinsic fraud, a petition to annul the RTC judgment under Rule 47 of the Rules is not the correct legal remedy, because there are other options clearly available to him to protect his alleged right over the road lots. Certainly, the issues raised by respondent – on whether the subject lots are road lots by nature; whether the subject lots are subdivision lots within a subdivision project; whether a right of way had been granted him by his predecessors-in-interest; whether the laws and jurisprudence he cited are applicable to the case; and many other incidental matters – are not proper subjects of, as these would effectively muddle the proper issues for determination in, a suit for legal redemption. A full-blown trial – either via a proceeding directly attacking the certificates of title of petitioners, or in an easement case, or even before Civil Case No. CEB-22996 pending before Cebu RTC Br. 10 – is proper where these factual and legal issues could be completely threshed out.

The Court has repeatedly stressed that an action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately.[43] It is a recourse equitable in character, allowed only in exceptional cases as where there is no adequate

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[42] *Rollo,* p. 259.

[43] *Republic v. Technological Advocates for Agro-Forest Programs Association, Inc. (TAFPA, INC.)*, G.R. No. 165333, February 9, 2010, 612 SCRA 76, 85 and *Nudo v. Caguioa*, G.R. No. 176906, August 4, 2009, 595 SCRA 208, 212.

or appropriate remedy available (such as new trial, appeal, petition for relief) through no fault of petitioner.[44] It is an equitable principle as it enables one to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.[45] Yet, more importantly, the relief it affords is equitable in character because it strikes at the core of a final and executory judgment, order or resolution,[46] allowing a party-litigant another opportunity to reopen a judgment that has long lapsed into finality. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.[47]

x x x The underlying reason is traceable to the notion that annulling final judgments goes against the grain of finality of judgment. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[48]

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[44] See *Antonino v. Register of Deeds of Makati City*, G.R. No. 185663, June 20, 2012, 674 SCRA 227, 236; *Moral, Jr. v. Chua*, G.R. No. 191199, April 16, 2012 (2nd Division Resolution); *Philippine Tourism Authority v. Philippine Golf Development & Equipment, Inc.*, G.R. No. 176628, March 19, 2012, 668 SCRA 406, 412; *Biaco v. Phil. Countryside Rural Bank*, 544 Phil. 45, 53 (2007); and *Judge Carillo v. Court of Appeals*, *supra* note 25, at 169.

[45] See *Antonino v. Register of Deeds of Makati City*, *supra* note 44, at 237, citing *Barco v. Court of Appeals*, 465 Phil. 39, 64 (2004).

[46] See *Mandy Commodities Co., Inc. v. The International Commercial Bank of China*, G.R. No. 166734, July 3, 2009, 591 SCRA 579, 588.

[47] *Moral, Jr. v. Chua*, *supra* note 44; *Nudo v. Caguioa*, *supra* note 43; and *Mandy Commodities Co., Inc. v. The International Commercial Bank of China*, *supra* note 46, at 588.

[48] *Antonino v. Register of Deeds of Makati City*, *supra* note 44, at 236, citing *Ramos v. Judge Combong, Jr.*, 510 Phil. 277, 281-282 (2005); and *Barco v. Court of Appeals*, *supra* note 45, at 54.

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The June 28, 2007 Decision and March 10, 2008 Resolution, of the Court of Appeals in CA-G.R. SP No. 71312, which annulled and set aside the judgment based on compromise dated November 27, 1998 of the Regional Trial Court, Branch 17, Cebu City, are **REVERSED AND SET ASIDE**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188260. November 13, 2013]

LUZON HYDRO CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (REPUBLIC ACT NO. 8424); VALUE ADDED TAX; CLAIM FOR TAX REFUND, REQUISITES.— A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (*a*) the taxpayer is VAT-registered; (*b*) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (*c*) the input taxes are due or paid; (*d*) the input taxes are not transitional input taxes; (*e*) the input taxes have not been applied against output taxes during and in the succeeding quarters; (*f*) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (*g*) for zero-rated sales under Sections 106(A)(2)(1) and (2);

106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (*h*) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (*i*) the claim is filed within two years after the close of the taxable quarter when such sales were made.

2. ID.; COURT OF TAX APPEALS; PURPOSE OF REMANDING THE CASE TO THE COURT OF TAX APPEALS, EXPLAINED.— Ordinarily, the concept of newly discovered evidence is applicable to litigations in which a litigant seeks a new trial or the re-opening of the case in the trial court. Seldom is the concept appropriate when the litigation is already on appeal, particularly in this Court. The absence of a specific rule on newly discovered evidence at this late stage of the proceedings is not without reason. The propriety of remanding the case for the purpose of enabling the CTA to receive newly discovered evidence would undo the decision already on appeal and require the examination of the pieces of newly discovered evidence, an act that the Court could not do by virtue of its not being a trier of facts. Verily, the Court has emphasized in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* that a judicial claim for tax refund or tax credit brought to the CTA is by no means an original action but an appeal by way of a petition for review of the taxpayer's unsuccessful administrative claim; hence, the taxpayer has to convince the CTA that the quasi-judicial agency *a quo* should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place.

3. REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; NEW TRIAL MAY BE ALLOWED ON THE GROUND OF NEWLY DISCOVERED EVIDENCE; REQUISITES.— In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (*a*) the evidence

is discovered after the trial; (*b*) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (*c*) such evidence is material, not merely cumulative, corroborative, or impeaching; and *(d)* such evidence is of such weight that it would probably change the judgment if admitted.

APPEARANCES OF COUNSEL

Balmeo and Go Law Offices for petitioner.
Wilmer B. Dekit for respondent.

D E C I S I ON

BERSAMIN, *J.*:

This case involves a claim for refund or tax credit to cover petitioner Luzon Hydro Corporation's unutilized Input Value-Added Tax (VAT) worth ₱2,920,665.16 corresponding to the four quarters of taxable year 2001.

The Case

The petitioner brought this action in the Court of Tax Appeals (CTA) after the Commissioner of Internal Revenue (respondent) did not act on the claim (CTA Case No. 6669). The CTA 2nd Division denied the claim on May 2, 2008 on the ground that the petitioner did not prove that it had zero-rated sales for the four quarters of 2001.[1] The CTA *En Banc* denied the petitioner's motion for reconsideration, and affirmed the decision of the CTA 2nd Division through its decision dated May 5, 2009.[2] Hence, the petitioner appeals the decision of the CTA *En Banc*.

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[1] *Rollo*, pp. 84-96; penned by Associate Justice Erlinda P. Uy, with the concurrence of Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez (retired).

[2] *Id*. at 44-54; penned by Presiding Justice Ernesto D. Acosta (retired), with the concurrence of Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, and Associate Justice Olga Palanca-Enriquez (retired).

Antecedents

The petitioner, a corporation duly organized under the laws of the Philippines, has been registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Taxpayer Identification No. 004-266-526. It was formed as a consortium of several corporations, namely: Northern Mini Hydro Corporation, Aboitiz Equity Ventures, Inc., Ever Electrical Manufacturing, Inc. and Pacific Hydro Limited.

Pursuant to the Power Purchase Agreement entered into with the National Power Corporation (NPC), the electricity produced by the petitioner from its operation of the Bakun Hydroelectric Power Plant was to be sold exclusively to NPC.[3] Relative to its sale to NPC, the petitioner was granted by the BIR a certificate for Zero Rate for VAT purposes in the periods from January 1, 2000 to December 31, 2000; February 1, 2000 to December 31, 2000 (Certificate No. Z-162-2000); and from January 2, 2001 to December 31, 2001 (Certificate No. 2001-269). [4]

The petitioner alleged herein that it had incurred input VAT in the amount of ₱9,795,427.89 on its domestic purchases of goods and services used in its generation and sales of electricity to NPC in the four quarters of 2001;[5] and that it had declared the input VAT of ₱9,795,427.89 in its amended VAT returns for the four quarters on 2001, as follows:[6]

Exhibit	Date Filed	Period Covered	Input VAT (₱)
F	May 25, 2001	1st quarter- 2001	1,903,443.96
I	July 23, 2001	2nd quarter- 2001	2,166,051.96
L	July 23, 2002	3rd quarter- 2001	1,598,482.39
O	July 24, 2002	4th quarter- 2001	4,127,449.58
		Total	9,795,427.89

[3] *Id.* at 85.

[4] *Id.* at 86.

[5] *Id.*

[6] *Id.*

On November 26, 2001, the petitioner filed a written claim for refund or tax credit relative to its unutilized input VAT for the period from October 1999 to October 2001 aggregating ₱14,557,004.38.[7] Subsequently, on July 24, 2002, it amended the claim for refund or tax credit to cover the period from October 1999 to May 2002 for ₱20,609,047.56.[8]

The BIR, through Revenue Examiner Felicidad Mangabat of Revenue District Office No. 2 in Vigan City, concluded an investigation, and made a recommendation in its report dated August 19, 2002 favorable to the petitioner's claim for the period from January 1, 2001 to December 31, 2001.[9]

Respondent Commissioner of Internal Revenue (Commissioner) did not ultimately act on the petitioner's claim despite the favorable recommendation. Hence, on April 14, 2003, the petitioner filed its petition for review in the CTA, praying for the refund or tax credit certificate (TCC) corresponding to the unutilized input VAT paid for the four quarters of 2001 totalling ₱9,795,427.88.[10]

Answering on May 29, 2003,[11] the Commissioner denied the claim, and raised the following special and affirmative defenses, to wit:

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7. The petitioner has failed to demonstrate that the taxes sought to be refunded were erroneously or illegally collected;

8. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

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[7] *Id.*

[8] *Id.* at 87.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 67-69.

9. It is incumbent upon petitioner to show compliance with the provisions of Section 112 and Section 229, both of the National Internal Revenue Code, as amended;

10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such they are looked upon [with] disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121);

11. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable.[12]

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On October 30, 2003, the parties submitted a Joint Stipulation of Facts and Issues,[13] which the CTA in Division approved on November 10, 2003. The issues to be resolved were consequently the following:

1. Whether or not the input value added tax being claimed by petitioner is supported by sufficient documentary evidence;

2. Whether petitioner has excess and unutilized input VAT from its purchases of domestic goods and services, including capital goods in the amount of ₱9,795,427.88;

3. Whether or not the input VAT being claimed by petitioner is attributable to its zero-rated sale of electricity to the NPC;

4.Whether or not the operation of the Bakun Hydroelectric Power Plant is directly connected and attributable to the generation and sale of electricity to NPC, the sole business of petitioner; and

5. Whether or not the claim filed by the petitioner was filed within the reglementary period provided by law.[14]

While the case was pending hearing, the Commissioner, through the Assistant Commissioner for Assessment Services, informed

[12] *Id*. at 68.

[13] *Id*. at 70-74.

[14] *Id*. at 73-74.

the petitioner by the letter dated March 3, 2005 that its claim had been granted in the amount of ₱6,874,762.72, net of disallowances of ₱2,920,665.16. Accompanying the letter was the TCC for ₱6,874,762.72 (TCC No. 00002618).[15]

On May 3, 2005, the petitioner filed a Motion for Leave of Court to Amend Petition for Review in consideration of the partial grant of the claim through TCC No. 00002618. The CTA in Division granted the motion on May 11, 2005, and admitted the Amended Petition for Review, whereby the petitioner sought the refund or tax credit in the reduced amount of ₱2,920,665.16. The CTA in Division also directed the respondent to file a supplemental answer within ten days from notice.[16]

When no supplemental answer was filed within the period thus allowed, the CTA in Division treated the answer filed on May 16, 2003 as the Commissioner's answer to the Amended Petition for Review.[17]

Thereafter, the petitioner presented testimonial and documentary evidence to support its claim. On the other hand, the Commissioner submitted the case for decision based on the pleadings.[18] On May 2, 2007, the case was submitted for decision without the memorandum of the Commissioner.[19]

Ruling of the CTA in Division

The CTA in Division promulgated its decision in favor of the respondent denying the petition for review, *viz*:

> In petitioner's VAT returns for the four quarters of 2001, no amount of zero-rated sales was declared. Likewise, petitioner did not submit any VAT official receipt of payments for services rendered to NPC. The only proof submitted by petitioner is a letter from Regional Director Rene Q. Aguas, Revenue Region No. 1, stating that the

[15] *Id*. at 89.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

financial statements and annual income tax return constitute sufficient secondary proof of effectively zero-rated and that based on their examination and evaluation of the financial statements and annual income tax return of petitioner for taxable year 2000, it had annual gross receipts of PhP187,992,524.00. This Court cannot give credence to the said letter as it refers to taxable year 2000, while the instant case refers to taxable year 2001.

Without zero-rated sales for the four quarters of 2001, the input VAT payments of PhP9,795,427.88 (including the present claim of PhP2,920,665.16) allegedly attributable thereto cannot be refunded. It is clear under Section 112 (A) of the NIRC of 1997 that the refund/tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

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For petitioner's non-compliance with the first requisite of proving that it had effectively zero-rated sales for the four quarters of 2001, the claimed unutilized input VAT payments of PhP 2,920,665.16 cannot be granted.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.[20]

On May 21, 2008, the petitioner moved to reconsider the decision of the CTA in Division.[21] However, the CTA in Division denied the petitioner's motion for reconsideration on September 5, 2008.[22]

Decision of the CTA *En Banc*

On October 17, 2008, the petitioner filed a petition for review in the CTA *En Banc* (CTA E.B No. 420), posing the main issue whether or not the CTA in Division erred in denying its claim for refund or tax credit upon a finding that it had not established its having effectively zero-rated sales for the four quarters of 2001.

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[20] *Id*. at 94-95.

[21] *Id*. at 97-114.

[22] *Id*. at 115-117.

On May 5, 2009, the CTA *En Banc* promulgated the assailed decision affirming the Division, and denying the claim for refund or tax credit, stating:

> The other argument of petitioner that even if the tax credit certificate will not be used as evidence, it was able to prove that it has zero-rated sale as shown in its financial statements and income tax returns quoting the letter opinion of Regional Director Rene Q. Aguas that the statements and the return are considered sufficient to establish that it generated zero-rated sale of electricity is bereft of merit. As found by the Court *a quo*, the letter opinion refers to taxable year 2000, while the instant case covers taxable year 2001; hence, cannot be given credence. Even assuming for the sake of argument that the financial statements, the return and the letter opinion relates to 2001, the same could not be taken plainly as it is because there is still a need to produce the supporting documents proving the existence of such zero-rated sales, which is wanting in this case.
>
> Considering that there are no zero-rated sales to speak of for taxable year 2001, petitioner is, therefore, not entitled to a refund of PhP2,920,665.16 input tax allegedly attributable thereto since it is basic requirement under Section 112 (A) of the NIRC that there should exists a zero-rated sales in order to be entitled to a refund of unutilized input tax.
>
> It is settled that tax refunds, like tax exemptions, are construed strictly against the taxpayer and that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Failure in this regard, petitioner's claim must therefore, fail.
>
> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[23]

On June 10, 2009, the CTA *En Banc* also denied the petitioner's motion for reconsideration.[24]

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

[24] *Id*. at 52-54.

Issue

Aggrieved, the petitioner has appealed, urging as the lone issue: —

WHETHER THE CTA *EN BANC* COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE CTA.

In its August 3, 2009 petition for review,[25] the petitioner has argued as follows:

(1) Its sale of electricity to NPC was automatically zero-rated pursuant to Republic Act No. 9136 (EPIRA Law); hence, it need not prove that it had zero-rated sales in the period from January 1, 2001 to December 31, 2001 by the presentation of VAT official receipts that would contain all the necessary information required under Section 113 of the National Internal Revenue Code of 1997, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95. Evidence of sale of electricity to NPC other than official receipts could prove zero-rated sales.

(2) The TCC, once issued, constituted an administrative opinion that deserved consideration and respect by the CTA *En Banc*.

(3) The CTA *En Banc* was devoid of any authority to determine the existence of the petitioner's zero-rated sales, inasmuch as that would constitute an encroachment on the powers granted to an administrative agency having expertise on the matter.

(4) The CTA *En Banc* manifestly overlooked evidence not disputed by the parties and which, if properly considered, would justify a different conclusion.[26]

The petitioner has prayed for the reversal of the decision of the CTA *En Banc*, and for the remand of the case to the CTA for the reception of its VAT official receipts as newly discovered evidence. It has supported the latter relief prayed for by representing that the VAT official receipts had been misplaced

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[25] *Id.* at 9-40.

[26] *Id.* at 18.

by Edwin Tapay, its former Finance and Accounting Manager, but had been found only after the CTA *En Banc* has already affirmed the decision of the CTA in Division. In the alternative, it has asked that the Commissioner allow the claim for refund or tax credit of ₱2,920,665.16.

In the comment submitted on December 3, 2009,[27] the Commissioner has insisted that the petitioner's claim cannot be granted because it did not incur any zero-rated sale; that its failure to comply with the invoicing requirements on the documents supporting the sale of services to NPC resulted in the disallowance of its claim for the input tax; and the claim should also be denied for not being substantiated by appropriate and sufficient evidence.

In its reply filed on February 4, 2010,[28] the petitioner reiterated its contention that it had established its claim for refund or tax credit; and that it should be allowed to present the official receipts in a new trial.

Ruling of the Court

The petition is without merit.

Section 112 of the National Internal Revenue Code 1997 provides:

SEC. 112. Refunds or Tax Credits of Input Tax.—

(A) *Zero-rated or Effectively Zero-rated Sales*—Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in

[27] *Id.* at 281-303.

[28] *Id.* at 307-315.

accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (*a*) the taxpayer is VAT-registered; (*b*) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (*c*) the input taxes are due or paid; (*d*) the input taxes are not transitional input taxes; (*e*) the input taxes have not been applied against output taxes during and in the succeeding quarters; (*f*) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (*g*) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (*h*) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (*i*) the claim is filed within two years after the close of the taxable quarter when such sales were made.[29]

The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity. Had there been zero-rated sales, it would have reported them in

[29] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009, 605 SCRA 536,555.

the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division.[30]

Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136,[31] its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns cannot be upheld. It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements.

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[30] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007, 518 SCRA 425, 431.

[31] Section 6. Generation Sector. – Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements.

We further find to be lacking in substance and bereft of merit the petitioner's insistence that the CTA *En Banc* should not have disregarded the letter opinion by BIR Regional Director Rene Q. Aguas to the effect that its financial statements and its return were sufficient to establish that it had generated zero-rated sale of electricity. To recall, the CTA *En Banc* rejected the insistence because, *firstly*, the letter opinion referred to taxable year 2000 but this case related to taxable year 2001, and, *secondly*, even assuming for the sake of argument that the financial statements, the return and the letter opinion had related to taxable year 2001, they still could not be taken at face value for the purpose of approving the claim for refund or tax credit due to the need to produce the supporting documents proving the existence of the zero-rated sales, which did not happen here. In that respect, the CTA *En Banc* properly disregarded the letter opinion as irrelevant to the present claim of the petitioner.

We further see no reason to grant the prayer of the petitioner for the remand of this case to enable it to present before the CTA newly discovered evidence consisting in VAT official receipts.

Ordinarily, the concept of newly discovered evidence is applicable to litigations in which a litigant seeks a new trial or the re-opening of the case in the trial court. Seldom is the concept appropriate when the litigation is already on appeal, particularly in this Court. The absence of a specific rule on newly discovered evidence at this late stage of the proceedings is not without reason. The propriety of remanding the case for the purpose of enabling the CTA to receive newly discovered evidence would undo the decision already on appeal and require the examination of the pieces of newly discovered evidence, an act that the Court could not do by virtue of its not being a trier of facts. Verily, the Court has emphasized in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[32] that a judicial claim for tax refund or tax credit brought to the CTA is by no means an original action but an appeal by way

[32] *Supra* note 29, at 430-431.

of a petition for review of the taxpayer's unsuccessful administrative claim; hence, the taxpayer has to convince the CTA that the quasi-judicial agency *a quo* should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place.

Nonetheless, on the proposition that we may relax the stringent rules of procedure for the sake of rendering justice, we still hold that the concept of newly discovered evidence may not apply herein. In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (*a*) the evidence is discovered after the trial; (*b*) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (*c*) such evidence is material, not merely cumulative, corroborative, or impeaching; and (*d*) such evidence is of such weight that it would probably change the judgment if admitted.[33]

The first two requisites are not attendant. To start with, the proposed evidence was plainly not newly discovered considering the petitioner's admission that its former Finance and Accounting Manager had misplaced the VAT official receipts. If that was true, the misplaced receipts were forgotten evidence. And, secondly, the receipts, had they truly existed, could have been sooner discovered and easily produced at the trial with the exercise of reasonable diligence. But the petitioner made no convincing demonstration that it had exercised reasonable diligence. The Court cannot accept its tender of such receipts and return now, for, indeed, the non-production of documents as vital and material as such receipts and return were to the success of its claim for refund or tax credit was improbable, as it goes against the sound business practice of safekeeping relevant documents precisely

[33] *Custodio v. Sandiganbayan*, G.R. Nos. 96027-28, March 8, 2005, 453 SCRA 24, 33.

to ensure their future use to support an eventual substantial claim for refund or tax credit.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for its lack of merit; **AFFIRMS** the decision dated May 5, 2009 of the Court of Tax Appeals *En Banc*; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192941. November 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANIEL ALCOBER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE REVISED PENAL CODE; RAPE; SWEETHEART THEORY AS A DEFENSE; THE BURDEN OF EVIDENCE SHIFTS TO THE ACCUSED TO ADDUCE SUFFICIENT EVIDENCE TO PROVE THE RELATIONSHIP; NOT PRESENT IN CASE AT BAR.— We must emphasize that when the accused in a rape case claims, as in the case at bar, that the sexual intercourse between him and the complainant was consensual, the burden of evidence shifts to him, such that he is now enjoined to adduce sufficient evidence to prove the relationship. Being an affirmative defense, it must be established with convincing evidence, such as by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like. Thus, in *People v.*

Mirandilla, Jr., we held: x x x This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual. x x x Other than his self-serving testimony, however, accused-appellant failed to adduce evidence of his supposed relationship with AAA.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FAILURE OF THE RAPE VICTIM TO TAKE ADVANTAGE OF AN OPPORTUNITY TO ESCAPE DOES NOT AUTOMATICALLY VITIATE THE CREDIBILITY OF HER ACCOUNT; RATIONALE.— Contrary to the assertions of accused-appellant, the fact that AAA was not able to escape when she had the opportunity to do so, her continued visit to their home after the incident, and her delay in filing the complaint does not at all contradict her credibility. As discussed by the Court of Appeals, when a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. Her failure to take advantage of an opportunity to escape does not automatically vitiate the credibility of her account. Similarly, in *People v. Lazaro*, we propounded on the impropriety of judging the actions of child rape victims by the norms of behavior that can be expected from adults under similar circumstances.

3. ID.; ID.; ID.; AGE OF RAPE VICTIM; IN THE ABSENCE OF DOCUMENTS TO PROVE AGE OF THE VICTIM, HER TESTIMONY WILL SUFFICE PROVIDED THAT IT IS EXPRESSLY AND CLEARLY ADMITTED BY THE ACCUSED; APPLICATION IN CASE AT BAR.— In *People v. Pruna*, the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. x x x **4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. x x x** In the case at bar, no birth or baptismal certificate or school record showing the date of birth of AAA was presented. Pursuant to

number 4 of the guidelines, however, in the absence of the foregoing documents (certificate of live birth or authentic document), the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. In the case at bar, AAA testified that she was 13 years old on July 20, 1999 and that her birthday was in February. Accused-appellant, who insists that the incident occurred on October 20, 1999, expressly and clearly admitted that AAA was still 13 years old on that date, which was three months later.

4. CRIMINAL LAW; THE REVISED PENAL CODE; RAPE; AGGRAVATING CIRCUMSTANCES; NOCTURNITY IS NOT APPRECIATED WHEN NOT DELIBERATELY SOUGHT TO PREVENT RECOGNITION OR TO ENSURE THE ESCAPE OF THE ACCUSED.— [T]his Court observes that nocturnity cannot be appreciated in this case since there was no showing that it was deliberately sought to prevent the accused from being recognized or to ensure his escape.

5. ID.; ID.; ID.; ID.; THE USE OF A DEADLY WEAPON AS AGGRAVATING CIRCUMSTANCE IS APPRECIATED UPON CLEAR SHOWING THAT IT WAS USED TO MAKE THE VICTIM SUBMIT TO THE WILL OF THE OFFENDER.— The Court of Appeals, however, affirmed the appreciation of the aggravating circumstance of use of a deadly weapon. We agree with this assessment. As discussed by the Court of Appeals, this circumstance was sufficiently alleged in the Information and proven during the trial through AAA's credible testimony, which clearly showed that the *sundang* was used to make the victim submit to the will of the offender.

6. ID.; ID.; ID.; IMPOSABLE PENALTY.— The proper penalty for qualified rape is *reclusion perpetua* pursuant to Republic Act No. 9346 which prohibited the imposition of the death penalty. Consistent with prevailing jurisprudence, we modify the amount of exemplary damages for qualified rape by increasing the same from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00) following established jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal[1] from the Decision[2] of the Court of Appeals dated May 29, 2009 in CA-G.R. CR.-H.C. No. 00063, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Carigara, Leyte finding accused-appellant Daniel Alcober guilty beyond reasonable doubt of the crime of rape.

Accused-appellant Alcober was charged in an Information dated February 12, 2001, as follows:

> That on or about the 20th day of July, 1999, in the municipality of Tuñga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation then armed with a long bolo (*sundang*), taking advantage of the minority of the victim and their relationship, the accused being [the] common-law spouse of the victim's mother, did then and there wilfully, unlawfully and feloniously had (sic) carnal knowledge with AAA,[4] against her will and to her damage and prejudice.[5]

Accused-appellant pleaded not guilty to the offense charged.

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[1] CA *rollo*, pp. 144-147.

[2] *Rollo*, pp. 5-16; penned by Associate Justice Edgardo L. de los Santos with Associate Justices Franchito N. Diamante and Rodil V. Zalameda, concurring.

[3] CA *rollo*, pp. 13-28.

[4] The real names of the victim and her family, with the exception of accused-appellant, are withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[5] Records, p. 1.

During the pre-trial, accused-appellant admitted that the incident happened on the 20th day of July 1999 in the municipality of Tunga, Leyte, and that he is "the common-law spouse of the victim's mother." The prosecution furthermore proposed to have the accused-appellant admit that AAA was a minor at the time of the incident, but the court insisted that it be proven with a Birth Certificate.[6]

AAA testified that she was around 10 years old and was in Grade 5 when accused-appellant and her mother started living together as husband and wife. She considered accused-appellant to be her father and calls him "*Tatay*." Her mother is the one earning for the family, by selling bananas in Carigara, Leyte.[7]

On July 20, 1999, at around 2:00 a.m., AAA was in their house in Tunga, Leyte. Her mother was away, selling bananas in Carigara, while her younger siblings were upstairs, sleeping. At that time, AAA was in second year high school and was thirteen years old. After working on her school assignment, AAA cooked rice downstairs in the kitchen. While she was busy cooking rice, she did not notice the arrival of accused-appellant, who suddenly embraced her from her back. She identified accused-appellant as the person who embraced her since she immediately turned around and the place was illuminated by a kerosene lamp. AAA resisted and was able to release herself from accused-appellant's hold. Accused-appellant unsheathed the long bolo, locally called a *sundang*, from the scabbard on his waist and ordered her to go upstairs. Poking the *sundang* at AAA's stomach, he then ordered AAA to take off her shorts, and told her he will kill her, her siblings and her mother if she does not do as she was told.[8]

AAA complied with accused-appellant's orders. When she was lying on the floor, already undressed, accused-appellant placed the *sundang* beside her on her left side. He took off his

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[6] TSN, June 11, 2001, pp. 2-3.

[7] TSN, July 31, 2001, pp. 4-5.

[8] *Id.* at 5-9.

shirt and shorts and went on top of her. AAA did not shout since accused-appellant threatened to kill them all if she did. He held her hair with his right hand and touched her private parts with his left hand. He then "poked" his penis into her vagina and made a push and pull movement. AAA felt pain. Accused-appellant kissed her and said "Ah, you're still a virgin." When accused-appellant was done, he stood and said "If you will tell this to anybody, I will kill you."[9]

AAA did not tell her mother about the incident as she was afraid accused-appellant will execute his threat to kill them all. The sexual advances were thereafter repeated every time AAA's mother sold bananas on Wednesdays and Sundays.[10]

On January 8, 2001, accused-appellant ordered AAA to pack and go with him to Tabontabon, Leyte, threatening once more to kill her siblings if she does not comply. In Tabontabon, accused-appellant once again forced AAA to have sex with him. The following day, AAA's mother, accompanied by police officers of Tunga, Leyte, arrived, searching for AAA and the accused-appellant. AAA was finally able to talk to her mother, which led to AAA's filing a complaint for rape against accused-appellant. Accused-appellant was arrested a few days later on January 11, 2001.[11]

Dr. Rogelio Gariando, Municipal Health Officer IV of the Carigara District Hospital, requested a vaginal smear in the course of his physical examination of AAA. Dr. Gariando testified that the specimen secured from AAA at around 2:00 p.m. of January 10, 2001 was positive for the presence of spermatozoa.[12] Medical Technologist II of Carigara District Hospital, Alicia Adizas, confirmed the finding of Dr. Gariando.[13]

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[9] *Id*. at 9-13.

[10] *Id*. at 14.

[11] *Id*. at 15-20.

[12] TSN, October 9, 2001, pp. 3-4.

[13] TSN, November 16, 2001, pp. 6-8.

BBB, the mother of AAA, testified that she and accused-appellant Alcober lived together from 1989 to 2001. BBB and accused-appellant had three children, who were three, eight and ten years old, as of her testimony on October 30, 2001. AAA, however, was her daughter with a previous live-in partner. AAA was six years old when she and accused-appellant Alcober started living together. BBB was the one who supported their family the entire time they lived together, since accused-appellant was not always gainfully employed. AAA called accused-appellant "*Tatay*."[14]

BBB resided in Tunga, Leyte, while AAA was living with BBB's sister, CCC. The house of CCC was around one kilometer away from her and accused-appellant's house. AAA, however, was frequently in BBB's house since she had lunch there and since it was nearer to her school than CCC's house. BBB remembered AAA crying on July 20, 1999, but when she asked AAA, the latter told her that she was merely fondled by accused-appellant. AAA was 13 years old on July 20, 1999.[15]

On January 8, 2001, when BBB learned that accused-appellant took AAA to Tabontabon, Leyte, she immediately looked for them in Burauen, Leyte. When she failed to find them there, she reported the apparent abduction of AAA to the PNP in Tunga. Together with an uncle of accused-appellant, she reached Tabontabon at around 9:30 in the morning, but found only AAA. She asked AAA why she went with accused-appellant, to which AAA replied that she was threatened by accused-appellant that he would kill them all. AAA also told her that she was actually raped by accused-appellant on July 20, 1999.[16]

For the defense, Tunga resident Ernesto Davocol testified that sometime on July 20, 1999, he saw AAA and accused-appellant, carrying a bag and a bolo, in front of the municipal

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[14] TSN, October 30, 2001, pp. 2-4.

[15] *Id*. at 4-7.

[16] *Id*. at 6-10.

cemetery of Tunga, Leyte. They hailed and boarded a jeep bound for Tacloban.[17]

Accused-appellant Alcober testified that on October 20, 1999,[18] at around 2:00 a.m., he was inside their house in Tunga, Leyte, drinking coffee in the kitchen when AAA unzipped her shirt and told him that "this is the gift that I am offering you that you are longing for too long." They then proceeded to have consensual sexual intercourse. He claimed that this was the only time that they had sexual intercourse. On cross-examination, accused-appellant admitted that AAA sometimes called him Papa and that he did not give her monetary support since she grew up at her uncle's house. Accused-appellant clarified that AAA was not in their house on July 20, 1999 and that their sexual intercourse occurred on October 20, 1999. Accused-appellant categorically admitted that he had sex with his 13-year old stepdaughter on October 20, 1999. Accused-appellant further testified on cross that BBB watched him having sexual intercourse with AAA and that BBB was crying while watching them. To prove that the sexual intercourse was consensual, accused-appellant presented in court what he claimed was the underwear of AAA, alleging that they agreed to exchange underwear with each other.[19]

On March 15, 2002, the RTC of Carigara, Leyte rendered its Decision finding accused-appellant guilty of the crime of rape. The dispositive portion of the Decision is as follows:

WHEREFORE, premises considered, pursuant to paragraph 1(a), Art. 266-A and the second paragraph of Art. 266-B (Rape Law of 1997, R.A. No. 8353) of the Revised Penal Code as amended, and

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[17] TSN, January 30, 2002, pp. 2-6.

[18] Accused-appellant was asked about his whereabouts on July 20, 1999, but he answered using the date October 20, 1999. Later into the testimony, accused-appellant Alcober stated that AAA was not at home on July 20, 1999. Accused-appellant, however, admitted during pre-trial that the incident occurred on July 20, 1999. (TSN, June 11, 2001, p. 2.)

[19] TSN, March 5, 2002, pp. 2-11.

further amended by R.A. No. 7659, (The Death Penalty Law), the Court found DANIEL ALCOBER, GUILTY beyond reasonable doubt of the crime of Rape and sentenced to suffer the maximum penalty of DEATH, and indemnify [AAA] the amount of Seventy[-]Five (₱75,000.00) Thousand Pesos and pay moral damages in the amount of Fifty Thousand (₱50,000.00) Pesos and pay the cost.[20]

On May 29, 2009, the Court of Appeals affirmed the RTC Decision with several modifications:

WHEREFORE, in view of the foregoing premises, the assailed Decision of the Regional Trial Court, Branch 13 in Carigara, Leyte in Criminal Case No. 4025 is hereby AFFIRMED with MODIFICATIONS. Finding accused-appellant Daniel Alcober GUILTY beyond reasonable doubt as principal of the crime of rape qualified by the use of a deadly weapon, the Court sentences him to *reclusion perpetua*. Accused-appellant is further ordered to pay the following sums: Php75,000 as civil indemnity; Php75,000 as moral damages; and Php25,000 as exemplary damages. Costs against accused-appellant.[21]

Accused-appellant appeals to this Court with the following Assignment of Errors:

I

THE COURT A QUO GRAVELY ERRED IN COMPLETELY IGNORING THE SWEETHEART THEORY INTERPOSED BY ACCUSED-APPELLANT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[22]

Accused-appellant asserts that AAA's testimony that the sexual intercourse between them was *not* consensual is "patently incredible." According to accused-appellant, AAA could have

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[20] CA *rollo*, p. 74.

[21] *Rollo*, p. 15.

[22] CA *rollo*, p. 49.

escaped after she was raped for the first time on July 20, 1999. Since AAA was already residing in her aunt's house, she should never have returned to BBB and accused-appellant's house in order to prevent the repeated sexual intercourse after July 20, 1999 and before the incident in Tabontabon.[23] Accused-appellant furthermore claim that the delay in revealing her alleged sexual ordeals from July 20, 1999 up to January 10, 2001 creates serious doubts as to her contention that she was raped.[24]

We must emphasize that when the accused in a rape case claims, as in the case at bar, that the sexual intercourse between him and the complainant was consensual, the burden of evidence shifts to him, such that he is now enjoined to adduce sufficient evidence to prove the relationship. Being an affirmative defense, it must be established with convincing evidence, such as by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like.[25] Thus, in *People v. Mirandilla, Jr.*,[26] we held:

> The sweetheart theory as a defense, however, necessarily admits carnal knowledge, the first element of rape. Effectively, it leaves the prosecution the burden to prove only force or intimidation, the coupling element of rape. x x x.
>
> This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual. (Citations omitted.)

Other than his self-serving testimony, however, accused-appellant failed to adduce evidence of his supposed relationship

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[23] *Id.* at 51-52.

[24] *Id.* at 52.

[25] *People v. Bautista*, G.R. No. 140278, June 3, 2004, 430 SCRA 469, 490.

[26] G.R. No. 186417, July 27, 2011, 654 SCRA 761, 772.

with AAA. The testimony of Davocol as regards seeing AAA and accused-appellant on July 20, 1999 boarding a jeep bound for Tacloban does not in any way suggest a romantic or sexual relationship between them. On the other hand, we are convinced that the sordid version of facts presented by accused-appellant is nothing but a depraved concoction by a very twisted and obnoxious imagination. Accused-appellant's tale of being seduced by his 13-year old stepdaughter who calls him "*Tatay*" or "Papa," and having sexual intercourse with her while her mother was watching and crying is not only nauseatingly repulsive but is likewise utterly incredible. It is unthinkable for BBB, who helped AAA file the complaint and testified against accused-appellant, to just passively endure such an outrage happening before her very eyes. The trial court, which observed the demeanor of AAA, BBB and the accused-appellant on the witness stand, did not find accused-appellant's account plausible, and instead gave full faith and credence to the testimonies of AAA and BBB. The trial court, in fact, described accused-appellant's demeanor as boastful and his narration as a make-believe story:

> While at the witness stand, the accused boastfully testified and took out from the back pocket of his pants a panty of a woman which according to him was given to him by [AAA] after their sexual intercourse to which he exchanged it with his own brief as a proof that [AAA] enjoyed having sexual intercourse with him; *viz*:
>
> xxx xxx xxx
>
> PROS. MERIN:
>
> Q – So, you are telling this court that [AAA] was enjoying?
> A – Yes, sir, and her panty is even here. I brought this to the Court as evidence.
>
> Q – What was then in your mind that you would make your own stepdaughter without a panty after you had sex with her? What was in your mind?
> A – Because this was given to me by her and we exchanged our underwear, she gave me her panty and I gave her my brief.
>
> Q – And it was in the presence of her mother?
> A – Yes sir. TSN p[p]. 10-11. March 5, 2002.)

This make-believe story of the sex escapade of accused Daniel Alcober and the minor [AAA], conveying to the court that the 13 year old [AAA] enjoyed the morbid situation that [befell] on her life is unavailing and deserves no credence. The trauma, the shame and the embarrassment and the public humiliation to which [accused-appellant] has forced the minor child to stop her studies, denying her the proper education and a bright future, all because of the [insatiable] beastful lust of her stepfather who virtually reduced her to a sex slave, a pawn for almost two (2) years, who cannot do anything but obey the whims and caprices of the accused Alcober until he was apprehended and formally charged in court on March 21, 2001. x x x.[27]

Accused-appellant's incredulous testimony appears even more unconvincing in contrast to the believable account of AAA of the incident on July 20, 1999:

Q: After you noticed that it was your stepfather who embraced you, what else transpired, if any?
A: I resisted, but at that time he was always bringing with him a long bolo, locally known as "*sundang*." He took it off from the scabbard.

Q: You mean when he embraced you, he was already holding a long bolo?
A: It was still tucked at his waist, together with the scabbard.

Q: You said that you resisted. When was that time when he unsheathed his bolo then tucked on his waist?
A: When I resisted.

xxx xxx xxx

Q: When you went upstairs, what next transpired, if any?
A: He ordered me to take off my short pants.

Q: What was then your attire that time?
A: I was then wearing shorts and t-shirt.

Q: How about that bolo, what did the accused do with that bolo?
A: It was poked on me.

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[27] CA *rollo*, pp. 72-73.

Q: Where, what portion of your body?
A: Towards my stomach.

Q: Did you comply with his order that you would have to undress yourself and took your attire?
A: Yes sir.

Q: Why did you have to comply to that?
A: Because, he told me that if I will not follow him, he will kill me, my brothers and sisters and my mother.

xxx xxx xxx

Q: After you were already undressed, what next transpired, if any?
A: That was the time that he placed his long bolo "*sundang*" beside me on my left side.

Q: You mean, you were already lying on the floor?
A: Yes sir.

Q: Now, after he placed that bolo beside you, what next transpired, if any?
A: He took off his t-shirt and shorts and thereafter, he placed himself on top of me.

Q: Did you not make any shout that which you would be heard?
A: I did not shout, because he told me not to shout or make any noise.

Q: Did you comply to such order?
A: Yes sir.

Q: Why?
A: Because, he threatened me that if I shout, he will kill me, all of us.

Q: After he placed himself on top of you, what did the accused do, if any?
A: He held every part of my body.

xxx xxx xxx

Q: What portion of your body was touched by the accused?
A: My breast.

Q: What else, if any?
A: Until down.

Q: You mean, to include your vagina?
A: Yes sir.

Q: How did he touch your breast, your vagina and other extremities of your body. Describe that.
A: While he places himself on top of me, his other hands was used in touching other parts of my body.

Q: What hand was touching the other parts of your body?
A: His right hand.

Q: And where was his left hand, then?
A: It was on my hair.

xxx xxx xxx

Q: After he did that touching of your private parts, your breast, vagina and touching your hair gently, what transpired next?
A: He took my womanhood.

Q: How?
A: He poked his penis to my vagina.

xxx xxx xxx

Q: After the accused poked his penis to your vagina, what did the accused then do after poking his penis to your vagina?
A: He did the act of pulling and pushing.

xxx xxx xxx

Q: When this penis of the accused was placed in your vagina as you earlier testified, what else did you feel?
A: I felt the pain.

Q: After he was through with this push and pull movement, what did the accused do next, after he caressed you and told you that statement that you are still a virgin?
A: He stood up and said this things, "if you will tell this to anybody, I will kill you."

Q: Did you tell your mother of what the accused did to you?
A: I did not.

Q: Why?
A: Because I was afraid he will execute his threats to kill us all.[28]

Contrary to the assertions of accused-appellant, the fact that AAA was not able to escape when she had the opportunity to do so, her continued visit to their home after the incident, and her delay in filing the complaint does not at all contradict her credibility. As discussed by the Court of Appeals, when a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. Her failure to take advantage of an opportunity to escape does not automatically vitiate the credibility of her account.[29] Similarly, in *People v. Lazaro*,[30] we propounded on the impropriety of judging the actions of child rape victims by the norms of behavior that can be expected from adults under similar circumstances:

> It is not uncommon for a young girl to conceal for some time the assault on her virtue. Her initial hesitation may be due to her youth and the molester's threat against her. Besides, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. x x x. It is, thus, unrealistic to expect uniform reactions from them. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. x x x. (Citations omitted.)

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[28] TSN, July 31, 2001, pp. 7-13.

[29] CA *rollo*, p. 134.

[30] G.R. No. 186379, August 19, 2009, 596 SCRA 587, 601-602.

Indeed, AAA's explanation for the delay in reporting the crime is more than adequate:

Q: Would you kindly tell the Court the reason why you did not immediately file a case against your stepfather on July 20, 1999?
A: Because I was afraid of his threat that he will kill my mother, my brother and sisters including me.

Q: When was this threat by the way?
A: At the time when I was already at the kitchen.

Q: You mean this date of July 20, 1999?
A: Yes, sir.[31]

In all, we do not find sufficient ground to overturn the guilty verdict rendered by the lower courts. We note, however, that the trial court and the Court of Appeals differed in the penalty imposed and in their appreciation of aggravating circumstances. We proceed to pass upon these matters.

The trial court imposed the death penalty upon accused-appellant on the basis of the fifth paragraph, number 1, of Article 266-B of the Revised Penal Code, which provides:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim[.]

The Court of Appeals, however, found the fifth paragraph of Article 266-B inapplicable. According to the appellate court, although it is undisputed that accused-appellant is the common-law spouse of the victim's mother, the records are bereft of independent evidence to prove that AAA is a minor, apart from the testimonies of AAA and her mother.[32]

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[31] TSN, September 14, 2001, p. 14.

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

We disagree.

In *People v. Pruna*,[33] the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, as follows:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, **the testimony, if clear and credible, of the victim's mother** or a member of the family either by affinity or consanguinity who is qualified to testify on **matters respecting pedigree such as the exact age or date of birth of the offended party** pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

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[33] 439 Phil. 440, 470-471 (2002).

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim. (Emphases supplied, citation omitted.)

In the case at bar, no birth or baptismal certificate or school record showing the date of birth of AAA was presented.

Pursuant to number 4 of the guidelines, however, in the absence of the foregoing documents (certificate of live birth or authentic document), the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. In the case at bar, AAA testified that she was 13 years old on July 20, 1999 and that her birthday was in February.[34] Accused-appellant, who insists that the incident occurred on October 20, 1999, expressly and clearly admitted that AAA was still 13 years old on that date, which was three months later:

Q: I am referring to October 20, 1999 when she accompanied her mother[,] you made sex with your stepdaughter on October 20, 1999 when she was still 13 years of age?
A: Yes, sir.[35]

Several more questions were propounded to accused-appellant to ascertain that he was aware of AAA's minority at the time of the sexual intercourse, and accused-appellant's answers plainly showed that he was fully cognizant of this fact:

Q: But you would admit that you have sexual intercourse with [AAA] while she was still 13 years old?
A: No, sir, it was her uncle who raped her and that was according to [AAA] on that date of July 20, 1999.

Q: I am referring to October 20, 1999 when she accompanied her mother you [had] sex with your stepdaughter on October 20, 1999 when she was still 13 years of age?
A: Yes, sir.

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[34] TSN, July 31, 2001, pp. 5-6.

[35] TSN, March 5, 2002, p. 9.

Q: Is it not a conscious revolting act in your part to have sex with your stepdaughter who was still a minor when your wife was in the premises where you live?
A: The mother of [AAA] knew that sexual intercourse happened to us on that early morning.

Q: You mean to tell this Court that you made sex with a minor daughter of your common-law-wife in her presence?
A: Yes, sir she was by the door.

Q: You mean, she was looking [at] both of you having sex?
A: Yes, sir.

Q: You would like this Court to believe that your own wife was there looking at you having sex with her daughter, her eldest minor daughter?
A: It depends to the Court if the Court will believe to that I have stated but that is the truth.[36]

Furthermore, BBB categorically testified that AAA was 13 years old at the time material to this case. To be sure, there is no disparity between the evidence for the prosecution and the defense on the point that the accused had carnal knowledge of AAA when she was only 13 years old.

Taking into account that the minority of the victim and accused-appellant's being the common-law spouse of the victim's mother, this Court finds it proper to appreciate this qualifying circumstance under the fifth paragraph, item number 1, Article 266-B of the Revised Penal Code.

The Court of Appeals also made several modifications with regard to the appreciation of aggravating circumstances. The trial court considered the aggravating circumstances of dwelling, use of weapon, force and intimidation, nighttime and ignominy.[37] The Court of Appeals correctly modified the RTC Decision in finding the appreciation of force and intimidation improper for being an element of the crime of rape. The Court of Appeals

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[36] *Id*.

[37] Records, p. 69.

likewise correctly reversed the consideration of dwelling, nocturnity and ignominy as these circumstances were not alleged in the Information. Furthermore, this Court observes that nocturnity cannot be appreciated in this case since there was no showing that it was deliberately sought to prevent the accused from being recognized or to ensure his escape.[38]

The Court of Appeals, however, affirmed the appreciation of the aggravating circumstance of use of a deadly weapon. We agree with this assessment. As discussed by the Court of Appeals, this circumstance was sufficiently alleged in the Information and proven during the trial through AAA's credible testimony, which clearly showed that the *sundang* was used to make the victim submit to the will of the offender.

The proper penalty for qualified rape is *reclusion perpetua* pursuant to Republic Act No. 9346 which prohibited the imposition of the death penalty. Consistent with prevailing jurisprudence, we modify the amount of exemplary damages for qualified rape by increasing the same from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00) following established jurisprudence.[39]

WHEREFORE, the Decision of the Court of Appeals dated May 29, 2009 in CA-G.R. CR.-H.C. No. 00063 which affirmed with modifications the finding of the Regional Trial Court of Carigara, Leyte finding accused-appellant Daniel Alcober guilty beyond reasonable doubt of the crime of rape, is further **MODIFIED** as follows: (1) accused-appellant Alcober is hereby found **GUILTY** of the crime of rape qualified by minority and relationship under number 1, fifth paragraph, Article 266-B of the Revised Penal Code for which the penalty of *reclusion perpetua* without eligibility for parole is imposed; (2) aside from the civil indemnity of ₱75,000.00 and moral damages of ₱75,000.00, the liability of accused-appellant for exemplary damages is hereby increased to ₱30,000.00; and (3) accused-

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[38] *See People v. Fortich*, 346 Phil. 596, 617 (1997).

[39] *People v. Galvez*, G.R. No. 181827, February 2, 2011, 641 SCRA 472, 484-485.

appellant Alcober is likewise **ORDERED** to pay AAA interest at the legal rate of six percent (6%) per annum in all amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 193190. November 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARILYN SANTOS and ARLENE VALERA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS; ESTABLISHED IN CASE AT BAR.— *People v. Hernandez* teaches that "[t]o secure a conviction for **illegal sale** of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof." *People v. Nicolas* adds that "[w]hat is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*." x x x Brushing aside the alleged inconsistencies in the testimonies of the prosecution witnesses, the Court finds

that the testimonial evidence of the prosecution duly established the fact that appellants sold to PO2 Aninias, the poseur-buyer, six heat-sealed transparent plastic sachets that contained white crystalline substance that later tested positive for *shabu*. Thus, the elements of the crime charged had been sufficiently established.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; OBJECTIONS REGARDING THE SAFEKEEPING AND THE INTEGRITY OF THE ILLEGAL DRUGS ON ACCOUNT OF FAILURE OF THE POLICE OFFICERS TO MAINTAIN THE UNBROKEN CHAIN OF CUSTODY OF THE SAID DRUGS CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; APPLICATION IN CASE AT BAR.— Verily, Section 21, paragraph 1, Article II of Republic Act No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 provide the procedural guidelines that police officers must observe in the proper handling of seized illegal drugs in order to ensure the preservation of the identity and integrity thereof. x x x On the other hand, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision. x x x The Court notes, however, that appellants raised the issue of the police officers' non-compliance with the above provisions only in their appeal. The memorandum of the appellants before the RTC and the transcript of stenographic notes of this case did not contain any objections regarding the safekeeping and the integrity of the *shabu* seized from appellants on account of the failure of the police officers to maintain an unbroken chain of custody of said drugs. This lapse is fatal to appellants' case. As we have explained in *People v. Sta. Maria*: x x x Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-apellants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The Court reviews the conviction of appellants Marilyn Santos *y* Desamero and Arlene Valera *y* Papera for the crime of illegal sale of *shabu* under Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Regional Trial Court (RTC) of Muntinlupa City, Branch 204, adjudged appellants guilty of the above crime in its Judgment[1] dated June 19, 2008 in Criminal Case No. 06-394. The Court of Appeals affirmed the conviction in its Decision[2] dated November 10, 2009 in CA-G.R. CR.-H.C. No. 03493.

In an Information[3] dated April 21, 2006, appellants were charged with the violation of the first paragraph of Section 5, Article II[4] of Republic Act No. 9165, which was allegedly committed as follows:

That on or about the **20th** day [of] **April, 2006**, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another Methylamphetamine Hydrochloride, a dangerous drug, weighing 297.76 grams contained

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[1] CA *rollo*, pp. 28-49; penned by Presiding Judge Juanita T. Guerrero.

[2] *Rollo*, pp. 2-34; penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Arcangelita M. Romilla-Lontok and Sixto C. Marella, Jr., concurring.

[3] Records, p. 1.

[4] SEC. 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.

in six (6) big heat-sealed transparent plastic sachets, in violation of the above-cited law.

When appellants were arraigned on May 10, 2006, they pleaded not guilty to the offense charged.[5]

At the trial of the case, the prosecution presented the testimonies of (1) Chief Inspector Lorna Ravelas Tria;[6] (2) Senior Police Officer (SPO) 2 Marcelino Perez Male;[7] and (3) Police Officer (PO) 2 Luisito Lopina Aninias.[8] On the other hand, the defense presented the testimonies of (1) appellant Marilyn Santos;[9] (2) appellant Arlene Valera;[10] (3) Maricar D. Olbes;[11] and (4) Editha L. Valenciano.[12]

The relevant portions of the prosecution witnesses' testimonies are as follows:

Chief Inspector Lorna Ravelas Tria first took the witness stand for the prosecution. The parties stipulated that she was an expert forensic chemist and a regular member of the Philippine National Police (PNP) Crime Laboratory, particularly assigned with the Regional Crime Laboratory Office, Camp Vicente Lim, Calamba City, Laguna as of April 20, 2006. She testified that she conducted a qualitative examination of the drug specimens in this case by taking a representative sample of the white crystalline substance from each of the plastic sachets. The same tested positive for methamphetamine hydrochloride.[13]

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[5] Records, p. 20.

[6] TSN, July 6, 2006.

[7] TSN, September 22, 2006; TSN, November 15, 2006.

[8] TSN, December 6, 2006; TSN, February 21, 2007.

[9] TSN, March 22, 2007; TSN, June 7, 2007.

[10] TSN, August 2, 2007.

[11] TSN, November 28, 2007; TSN, February 6, 2008.

[12] TSN, March 5, 2008; TSN, March 26, 2008.

[13] TSN, July 6, 2006, pp. 5-9, 15-16.

PO2 Luisito Lopina Aninias testified that he was a member of the PNP assigned at the Philippine Drug Enforcement Agency (PDEA) CALABARZON Regional Office in Calamba City, Laguna. He stated that on April 19, 2006, a confidential informant came to their office at around 9:00 a.m., telling them that a certain Marilyn and Arlene were going to sell her 300 grams of *shabu* in the amount of ₱750,000.00. The informant stated that she already arranged the deal, which would take place any day along the vicinity of A. Bautista Street, Bayanan, Muntinlupa City. PO2 Aninias said that their team leader, Police Chief Inspector Julius Ceasar V. Ablang, formed a buy-bust team. PO2 Aninias was designated as the poseur-buyer, while SPO2 Male was to act as the back-up arresting officer. Their team leader then ordered them to conduct a casing and surveillance of the area where the buy-bust operation will take place. At 10:00 a.m. of that morning, PO2 Aninias, SPO2 Male and the informant went to A. Bautista Street, Bayanan, Muntinlupa City to survey the area. Upon returning to their office, they reported their findings and made a Pre-Operation Report.[14]

On April 20, 2006, the buy-bust team proceeded to the subject area at 8:45 a.m. Their team leader gave PO2 Aninias four pieces of five hundred peso bills. PO2 Aninias put the bills at the top of the boodle money and placed the same in a paper bag. To authenticate the genuine money, PO2 Aninias put his initials "LLA" on the five hundred peso bills. The team arrived in Bayanan, Muntinlupa City at 10:30 a.m. He, SPO2 Male and the informant rode a Toyota Revo, while the rest of the team rode in another vehicle, a Mitsubishi Adventure. When they reached the area, the police officers instructed the informant to fetch the person who would sell them the *shabu*. The informant alighted from the vehicle. After more or less thirty minutes, the informant returned together with two women. One was wearing a pink blouse and the other was wearing a white T-shirt.[15] The one wearing a pink blouse carried a box. PO2 Aninias later came to know that the woman wearing a pink blouse was appellant

[14] TSN, December 6, 2006, pp. 4-9.

[15] *Id*. at 9-15.

Marilyn Santos, while the woman wearing a white T-shirt was appellant Arlene Valera. The informant invited the two women to go inside their vehicle and the latter obliged. The informant introduced PO2 Aninias as the buyer of drugs then she told the appellants that she would alight from the vehicle to serve as a lookout.[16]

Thereafter, Marilyn asked PO2 Aninias if he had the money and the latter gave a positive reply. PO2 Aninias got the paper bag containing the boodle money and flashed the same to the two women. He asked Marilyn where the drugs were and she immediately showed him the box containing six pieces of plastic sachets of *shabu*. Marilyn gave the box to PO2 Aninias and told him to hand the money to Arlene. PO2 Aninias gave the paper bag to Arlene and then removed his cap to signal to SPO2 Male that the transaction was already consummated. PO2 Aninias drew out his gun and told the women that they were being arrested for selling *shabu*. SPO2 Male gave a "missed call" to their team leader and the other members of the team arrived. PO2 Aninias marked the box containing the *shabu* by placing thereon the wording Exhibit "B", his initials, his signature, and the date April 20, 2006. He also marked the six pieces of plastic sachets as Exhibits "A-1" to "A-6" and he wrote his signature and the date on each of the sachets.[17]

After marking the items confiscated, the team went back to their office in Camp Vicente Lim in Calamba City, Laguna. The two suspects were investigated upon and the team accomplished a Booking Sheet and Arrest Report. They likewise made an inventory of the items recovered.[18] The team also prepared requests for the physical and medical examination of the suspects, as well as a request for drug test. For the drug specimens, they prepared a request for laboratory examination. The drug specimens turned out positive for methylamphetamine hydrochloride. PO2 Aninias stated that he and SPO2 Male brought

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

[17] *Id*. at 26-35.

[18] *Id*. at 37.

the confiscated drug specimens to the crime laboratory and the same were received by the forensic chemist.[19]

SPO2 Marcelino Perez Male also testified on the conduct of the buy-bust operation in this case. He stated that on April 19, 2006, their confidential informant told them that she had a drug deal with two women named Arlene and Marilyn.[20] Said individuals were based in Bayanan, Muntinlupa City. SPO2 Male and his team proceeded to the aforesaid place to conduct surveillance and they found the place suitable for a buy-bust operation. Afterwards, they went back to their office and planned the conduct of a buy-bust operation. He was the designated driver and the back-up arresting officer while PO2 Aninias was the poseur-buyer. The pre-arranged signal to communicate that the transaction was consummated was for PO2 Aninias to remove his bull cap. The marked money was also prepared, which consisted of four pieces of original ₱500.00 bills. PO2 Aninias placed his initials on the original bills.[21]

SPO2 Male related that the actual buy-bust operation took place on April 20, 2006. Aside from him, the buy-bust team was composed of their team leader P/Chief Inspector Ablang, PO2 Aninias, the confidential informant, SPO2 Lapitan, SPO2 Abalos, PO2 Llanes and PO1 Villanueva. They used a Toyota Revo and a Mitsubishi Adventure in going to the target place. Upon arrival at the target place, the informant alighted from the vehicle to contact the suspects. After about thirty minutes, the informant returned with two women. One was wearing a pink blouse, while the other was wearing a white T-shirt.[22]

According to SPO2 Male, the informant and the two women boarded their vehicle. The informant introduced PO2 Aninias to the two women as the buyer of *shabu*. Afterwards, the informant disembarked from the vehicle to serve as a lookout. The two

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

[20] TSN, November 15, 2006, pp. 14-15.

[21] TSN, September 22, 2006, pp. 8-13.

[22] *Id*. at 18-21.

women asked PO2 Aninias if he had the money for the *shabu*. PO2 Aninias was then sitting in the passenger seat of the vehicle beside SPO2 Male, while the two women were in the middle seat. PO2 Aninias showed the women the boodle money placed inside a paper bag. The woman in white shirt showed PO2 Aninias the contents of the box she was carrying, which contained six plastic sachets containing white crystalline substance. She handed over the carton to PO2 Aninias, who, in turn, gave the paper bag containing the boodle money. PO2 Aninias then removed his baseball cap, which act was the pre-arranged signal to indicate that the transaction was consummated.[23]

After the pre-arranged signal was executed, SPO2 Male immediately dialed the number of their team leader so the latter can assist in arresting the suspects. The police officers told the two women that the latter were being arrested for violating the provisions of Republic Act No. 9165. SPO2 Male later learned that the name of the woman wearing a pink blouse was Marilyn Santos, also known as Malyn, and the name of the woman wearing a white T-shirt was Arlene Valera.[24]

After the arrest, the team went back to their office. There, they made an inventory of the items they confiscated. SPO2 Male said that he was present when the inventory was conducted. SPO2 Male and PO2 Aninias also executed their respective affidavits regarding the arrest of the suspects. They also accomplished a booking sheet report.[25]

SPO2 Male stated that PO2 Aninias marked the confiscated evidence inside the vehicle upon the arrival of the backup officers. SPO2 Male said that he saw PO2 Aninias put the latter's initials LLA on the confiscated items that consisted of six pieces of plastic sachets, which contained white crystalline substance. PO2 Aninias was in possession of the said items from the time they were handed over up to the time they were brought to the office. SPO2 Male said that they made a request to the PNP

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

[24] *Id*. at 26-30.

[25] *Id*. at 30-33.

Crime Laboratory for an examination of the drug specimens. Also, they made a request to the PNP Medical Service for the conduct of a physical check-up on the suspects, as well as a urine test for drug dependents. The request for laboratory examination turned out a positive result for methamphetamine hydrochloride.[26]

On cross-examination, SPO2 Male clarified that *both* appellants talked to PO2 Aninias about the payment for the drugs. When PO2 Aninias showed them the boodle money inside the paper bag, appellants opened the carton box to show the contents thereof. After appellants handed over the drugs to PO2 Aninias, the latter removed his cap to indicate that the transaction had already been consummated.[27]

The defense's version of the events, however, was in stark contrast to that of the prosecution's. They vehemently denied that a buy-bust operation was ever conducted by the police in this case. As summarized in their Appellants' Brief,[28] appellants related that:

> In the morning of 20 April 2006, appellant Marilyn Santos was in her house in Bayanan along Bautista Street, Muntinlupa City with her 24[-]year old daughter Maricar and her eight[-]year old grandson Carlo. At 8:00 in the morning of the same day, appellant Arlene Valera visited appellant Marilyn Santos together with the former's mother, brother, two nieces, one nephew and two friends. They were thus 11 in the house at that time. In the meantime, appellant Marilyn Santos asked her daughter Maricar to fetch an acquaintance of hers by the name of Winnie in the corner of Bautista Street and National Road as Winnie had earlier texted appellant Marilyn Santos. Maricar waited for Winnie for about 10 minutes. Winnie then arrived aboard a blue car together with three other persons. Maricar boarded the car to direct them to her house. Upon reaching the house, all of them alighted from the car except for the driver, a male in his thirties wearing a jersey and a baseball cap who Maricar would later learn to be police officer Luisito Aninias.

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[26] *Id*. at 36-41.

[27] TSN, November 15, 2006, pp. 22-24.

[28] CA *rollo*, pp. 64-92.

Maricar invited the driver to go inside but the latter declined. Maricar, Winnie and Winnie's two companions entered the house.

Winnie was carrying two plastic bags. The first bag contained fruits and vegetables which Winnie handed to appellant Marilyn Santos. Appellant Marilyn Santos did not know what was inside the second bag. Then, around 10 to 11 am, (sic) while the people inside the house were talking, somebody bumped/*"bumalya"*/kicked the door. Six male persons wearing civilian clothes armed with long firearms entered the house. Appellant Marilyn Santos asked what they wanted and they replied that drugs were being sold in the house which Santos denied as she was not into that and she was merely entertaining visitors. Two of the six men stood guard and did not allow the people inside the house to move while the other four men, by themselves only, searched the house. The men did not have any search warrant. After ten minutes, the men returned to the sala carrying a box which they allegedly found in the premises and saying that drugs were indeed being sold in the house. The box was opened in their presence and contained therein was a plastic bag which contained white substance that looked like *"tawas."* They were then told to go with the men but appellant Marilyn Santos protested since the things found were not from them and were not even from inside the house. Despite Santos' protest, all the people inside the house were asked to go out and appellants Santos and Valera, together with Santos' daughter Maricar and the latter's eight[-]year old son were boarded inside a vehicle parked outside the house. They were not apprised of their rights.

Appellants Santos and Valera, together with Maricar and Carlo, were brought to the PDEA Office in Camp Vicente Lim, Canlubang, Calamba, Laguna. They were allowed to take a seat for about five minutes. Thereafter, they were taken inside a cubicle where there was a man in front of a computer. Appellant Marilyn Santos was called first to be investigated. She was asked regarding her personal circumstances. She was not asked whether she needed a lawyer. Next to be interviewed were appellant Valera followed by Maricar.

Thereafter, the man left the room and so they just waited inside the cubicle. They were then asked if they wanted to eat which they answered in the negative. So they were told to wait for a media representative and a *barangay* official to arrive. Then, they were told by PO2 Aninias to go to the sala. There, Aninias placed on a table the things that were in the box and also three Php 500.00

bills. Aninias asked for another Php 500.00 bill from a woman, the latter then produced said bill which Aninias marked and placed on the table. Thereafter, appellants were required to change into orange uniforms and they were subsequently photographed. Then Maricar was asked to sign the Certificate of Inventory without the presence of any lawyer.

After the signing of the Certificate of Inventory, appellants, together with Maricar and her son, entered a cubicle near the kitchen where they waited for 30 minutes before SPO2 Male approached them and said that if they wanted to get out of the place then they should produce Php 300,000.00 each. Appellants answered that they could not produce such amount and in fact they had nothing to do with the incident, so Male told them to think about it. Male then left the room and informed Maricar that she could already leave. Eventually, Maricar left with her son. Fifteen minutes from the time Maricar left, PO2 Aninias and Male brought appellants to the laboratory where the urine samples where (sic) taken from them. They spent the night at a cell in PDEA.

The following day, the husband of Marilyn Santos arrived and he was also informed by Male to produce Php 300,000.00 for the release of his wife but Santos' husband replied that they did not have anything to do with what happened and they do not have Php 300,000.00 to produce. Appellants were then brought to the Office of Prosecutor Liban in the City Hall of Muntinlupa. There, Pros. Liban inquired from PO2 Aninias and SPO2 Male whether they had search warrants and warrants of arrest for appellants to which the police officers answered in the negative. Pros. Liban likewise inquired from the police officers why they conducted the operation against the appellants when it was already outside their jurisdiction to which the police officers answered that it was because somebody called them up. Thereafter, appellants were referred to the Public Attorney's Office (PAO), then they were subjected to inquest then finally, they were brought to the Tunasan jail.[29] (Citations omitted.)

On June 19, 2008, the RTC convicted appellants of the crime of selling of illegal drugs in this wise:

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[29] *Id*. at 66-70.

WHEREFORE, premises considered and finding the accused MARILYN SANTOS *y* DESAMERO and ARLENE VALERA *y* PAPERA **GUILTY** of violating Sec. 5 of the Comprehensive Dangerous Drugs Act of 2002 beyond reasonable doubt, they are sentenced to LIFE IMPRISONMENT and to suffer all the accessory penalties provided by law and to pay a fine of ONE MILLION PESOS (Php1,000,000.00) each with subsidiary imprisonment in case of insolvency.

The Branch Clerk of Court is directed to transmit the subject "*shabu*" contained in six (6) big transparent plastic sachets to the Philippine Drug Enforcement Agency for proper disposition.

Accused MARILYN SANTOS and ARLENE VALERA are ordered committed to the National Corrections for Women or the Correctional Institute for Women until further orders.

The preventive imprisonment undergone by the accused shall be credited in their favor.[30]

On appeal,[31] the Court of Appeals, in its Decision dated November 10, 2009, affirmed the ruling of the RTC. The appellate court decreed:

WHEREFORE, the foregoing premises considered, the instant appeal is **DENIED**. The Decision of the Regional Trial Court of Muntinlupa City, Branch 204[,] in Criminal Case No. 06-394 convicting accused-appellants Marilyn Santos and Arlene Valera for violation of Section 5 of R.A. 9165 is **AFFIRMED**.[32]

Appellants appealed their case to this Court.[33] As both parties no longer filed their respective Supplemental Briefs,[34] the Court will now consider the arguments invoked by the parties before the Court of Appeals.

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[30] *Id*. at 49.

[31] *Id*. at 50.

[32] *Rollo*, pp. 33-34.

[33] *Id*. at 35-37.

[34] *Id*. at 43-45 and 51-53.

The Ruling of the Court

Appellants argue that the RTC erred in finding them guilty of violating Section 5, Article II of Republic Act No. 9165 since the prosecution failed to prove all the elements of the crime beyond reasonable doubt.[35]

Appellants contend that there was no proof that a sale of illegal drugs ever took place. They lament the fact that the RTC gave more credence to the prosecution's version of the facts, notwithstanding that the testimonies of PO2 Aninias and SPO2 Male contained purported inconsistencies on the following points:

1) Who between Marilyn Santos and Arlene Valera actually transacted with the poseur-buyer. According to Aninias, it was Marilyn who committed the overt acts constituting the sale of illegal drugs. Arlene's participation as a co-conspirator was her mere presence in the transaction. According to Male, however, it was Arlene who was drug pushing and Marilyn was merely an onlooker.

2) The kinds of vehicles used in the alleged entrapment. According to Aninias, the operatives used a Toyota Revo and a Mitsubishi Adventure while according to Male, the vehicles used were a Revo and an Isuzu Crosswind.

3) The kinds of boodle money used. According to Aninias, the boodle money consisted of photocopies of ₱1,000.00 and ₱500.00 bills as well as paper cut-outs from yellow pages which were already used several times in their operation. On the other hand, Male testified that the boodle money consisted of cut newspapers that had just been prepared for that transaction.

4) Who between Aninias and Male handcuffed the two appellants. According to Aninias, both he and Male had handcuffs but only one was used for both appellants and that it was Male who did the honors because Aninias was holding his gun and the drugs received from Marilyn. Male, on the other hand, claimed that it was Aninias who handcuffed the two appellants as he did not have any handcuff with him.

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[35] CA *rollo*, p. 71.

5) The distance of the parked vehicles from Marilyn's house. According to Aninias, the vehicle was parked 30 meters away while Male testified that it was only parked 10 meters away.

6) The number of officers who brought the confiscated items to the crime laboratory for examination. According to Aninias, both he and Male brought the items to the crime laboratory. Male insisted however that it was only Aninias who brought the items there.[36]

The Court does not find merit in the appeal.

People v. Hernandez[37] teaches that "[t]o secure a conviction for **illegal sale** of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof." *People v. Nicolas*[38] adds that "[w]hat is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*."

In handing down its judgment of conviction against appellants, the RTC gave more credence to the testimonies of PO2 Aninias and SPO2 Male that appellants were caught *in flagrante delicto* of selling illegal drugs in a buy-bust operation. The RTC ruled that the inconsistencies pointed out by appellants did not destroy the credibility of the police officers' testimonies. The inconsistencies merely involved peripheral matters that did not totally cause damage to the declarations of the police officers, which the RTC found to be credible and consistent on material points. The RTC found that appellants acted in conspiracy with each other in the selling of *shabu* to PO2 Aninias as both appellants were present and actively participated in the sale. As regards the testimonies of the defense witnesses, the trial court deemed the same insufficient to refute the affirmative

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[36] *Id*. at 73-75.

[37] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 635.

[38] 544 Phil. 123, 135-136 (2007).

allegations of the police officers and the presumption of regularity in the performance of their official functions.

The Court of Appeals also found credible the testimonies of PO2 Aninias and SPO2 Male, stating that the same corroborated each other on material points and established beyond reasonable doubt that the crime of illegal sale of dangerous drugs was indeed consummated. The appellate court added that, based on the conduct of appellants during the buy-bust operation, their actions collectively could not be interpreted to mean anything other than their eagerness to sell illegal drugs to the poseur-buyer.

The Court emphasized in *People v. Naquita*[39] that:

> The issue of whether or not there was indeed a buy-bust operation primarily boils down to one of credibility. In a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies. 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. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. (Citations omitted.)

We have examined the records of the case and we found no reason to depart from the factual findings of the RTC, as affirmed by the Court of Appeals, as regards the credibility of prosecution witnesses.

Appellants first point out the allegedly irreconcilable statements of PO2 Aninias and SPO2 Male as to who between appellants Marilyn and Arlene actually transacted with PO2 Aninias.

To begin with, PO2 Aninias stated in his direct examination that a confidential informant came to their office on April 19, 2006, informing them that she set up a drug deal involving a

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[39] G.R. No. 180511, July 28, 2008, 560 SCRA 430, 444.

certain Marilyn and Arlene. SPO2 Male, in his cross-examination, stated this very same fact. Thus, at the outset, the police officers were already aware of the fact that they were about to deal with two female drug dealers.

Thereafter, according to PO2 Aninias, it was Marilyn who asked him if he had the money for the drugs and he replied in the affirmative. He then got the paper bag containing the boodle money and showed the same to both Marilyn and Arlene. When PO2 Aninias inquired about the drugs, *Marilyn* gave the box to him and she told him to give the money to Arlene. After PO2 Aninias handed the money to Arlene, he removed his cap to signal that the drug sale had already been completed. Upon the other hand, SPO2 Male testified during his direct examination that both Marilyn and Arlene asked PO2 Aninias if the latter had the money for the drugs. SPO2 Male also said that it was *Arlene* (the woman wearing a white T-shirt) who handed over the box containing the drugs to PO2 Aninias. In his cross-examination, however, SPO2 Male stated that it was "the suspects" that handed the box containing the drugs to PO2 Aninias.

To our mind, the above seemingly incompatible statements of PO2 Aninias and SPO2 Male did not destroy their credibility. Nor are these statements utterly irreconcilable as appellants would like this Court to believe. As to the sale transaction itself, the testimony of PO2 Aninias is of greater relevance considering that he was the poseur-buyer who dealt directly, *i.e.*, face to face, with appellants. PO2 Aninias stated in his cross-examination that he was seated at the passenger seat of their vehicle and his head was turned towards appellants while he was talking to them. On the other hand, SPO2 Male, who was sitting in the driver's seat, merely listened to the conversation between PO2 Aninias and the appellants. SPO2 Male had no actual participation in the exchange of illegal drugs and boodle money.[40] His recollection of events might not be as precise as that of PO2 Aninias. Thus, PO2 Aninias was in a better position to testify

[40] TSN, February 21, 2007, p. 13.

on who handed to him the box containing the *shabu* and to whom he gave the boodle money. The variance in the statements of SPO2 Male as to the role(s) played by appellants does not detract from the fact that both accused were involved in the transaction with the poseur-buyer. Neither did the same mean that the police officers in this case were guilty of prevarication or otherwise in bad faith in their testimonies.

With respect to the other inconsistencies enumerated by appellants, the Court agrees with the rulings of the RTC and the Court of Appeals that the same pertain to insignificant and minor details that had nothing to do with the essential elements of the crime charged. As held in *People v. Madriaga*[41] that:

> Settled is the rule that discrepancies on minor matters do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. These inconsistencies, which may be caused by the natural fickleness of memory, even tend to strengthen rather than weaken the credibility of the prosecution witnesses because they erase any suspicion of rehearsed testimony. What is important is that the testimonies agree on the essential facts and that the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole. (Citations omitted.)

Brushing aside the alleged inconsistencies in the testimonies of the prosecution witnesses, the Court finds that the testimonial evidence of the prosecution duly established the fact that appellants sold to PO2 Aninias, the poseur-buyer, six heat-sealed transparent plastic sachets that contained white crystalline substance that later tested positive for *shabu*. Thus, the elements of the crime charged had been sufficiently established.

Appellants next claim that the procedures for the custody and disposition of the alleged drug specimens, as mandated by Section 21 of Republic Act No. 9165, were not complied with. As such, the identity and integrity of the alleged seized drugs in this case had been seriously compromised. Other than the testimony of PO2 Aninias and SPO2 Male that the drug specimens

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[41] G.R. No. 82293, July 23, 1992, 211 SCRA 698, 712-713.

were marked right after the buy-bust operation, appellants aver that the other requirements under the law were not complied with and the prosecution failed to proffer any valid reason therefor.

This argument likewise fails to persuade us.

Verily, Section 21, paragraph 1, Article II of Republic Act No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 provide the procedural guidelines that police officers must observe in the proper handling of seized illegal drugs in order to ensure the preservation of the identity and integrity thereof.

Section 21, paragraph 1, Article II of Republic Act No. 9165 reads:

> SEC. 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[.]

On the other hand, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated

and/or seized, or his/her representative or counsel, a representative from 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; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The Court notes, however, that appellants raised the issue of the police officers' non-compliance with the above provisions only in their appeal. The memorandum[42] of the appellants before the RTC and the transcript of stenographic notes of this case did not contain any objections regarding the safekeeping and the integrity of the *shabu* seized from appellants on account of the failure of the police officers to maintain an unbroken chain of custody of said drugs. This lapse is fatal to appellants' case. As we have explained in *People v. Sta. Maria*:[43]

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

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[42] Records, pp. 238-272.

[43] 545 Phil. 520, 534 (2007).

All told, appellants failed to convince this Court that the guilty verdict rendered by the RTC was unmerited. Thus, appellants' conviction must be upheld.

WHEREFORE, the Decision dated November 10, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03493 is hereby **AFFIRMED**. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 198338. November 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **P/SUPT. ARTEMIO E. LAMSEN, PO2 ANTHONY D. ABULENCIA, and SPO1 WILFREDO L. RAMOS,** *accused-appellants.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AFFIDAVIT OF DESISTANCE MADE BY A WITNESS AFTER CONVICTION OF THE ACCUSED IS NOT RELIABLE, AND DESERVES ONLY SCANT ATTENTION; RATIONALE; APPLICATION IN CASE AT BAR.— The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be

secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld. It is likewise worthy to mention that their respective testimonies were deemed credible as they withstood extensive cross-examination, and possibly, even re-direct and re-cross examinations. Absent any special circumstances attendant to this case, Reyes' and Marcelo's recantations fail to cast doubt to the truth and veracity of their earlier testimonies, and to the collective statements of all of the prosecution witnesses as a whole. Moreover, it should be noted that Reyes and Marcelo only executed their respective affidavits of recantation after the Court issued its Resolution dated February 20, 2013 upholding accused-appellants' conviction of the crime of robbery with homicide, or more than a decade after they gave their testimonies in open court. These affidavits should be seen as nothing but a last-minute attempt to save accused-appellants from punishment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Carlos M. Taminaya for private complainant.
Bautista & Limbos Law Office for PO2 Anthony Abulencia.
Josefino G. De Guzman for SPO1 Wilfredo Ramos.
Defensor Lantion Briones Villamor & Tolentino Law Offices for P/Supt. Artemio E. Lamsen.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The Court hereby resolves the Motions for Reconsideration[1] filed by accused-appellants SPO1 Wilfredo L. Ramos and PO2

[1] *Rollo*, pp. 135-139 (dated April 1, 2013) and pp. 166-178 (dated April 5, 2013), respectively.

Anthony D. Abulencia and the Motion for New Trial Due to Newly Discovered Evidence and for Reconsideration of the February 20, 2013 Resolution[2] filed by accused-appellant P/Supt. Artemio E. Lamsen (Motions). The foregoing Motions assail the Court's Resolution[3] dated February 20, 2013, which upheld the conviction of accused-appellants of the crime of robbery with homicide and sentenced them to suffer the penalty of *reclusion perpetua*, and to jointly and severally pay: [a] the heirs of victim Fernando Sy the amount of ₱100,000.00 as actual damages, ₱4,968,320.10 as loss of earning capacity, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages; [b] the heirs of victim Arturo Mariado the amount of ₱150,000.00 as stipulated damages; [c] Equitable PCI Bank the amount of ₱2,707,400.77 as the amount taken during the robbery; and [d] costs of suit.[4]

In their respective Motions, accused-appellants state, *inter alia*, that they obtained affidavits from prosecution witnesses Arnel F. Reyes[5] (Reyes) and Domingo Marcelo[6] (Marcelo) whose testimonies implicated accused-appellants of the crime of robbery with homicide. In their affidavits, the aforesaid prosecution witnesses claim that they made their testimonies under duress as they were forced by elements of the Philippine National Police, the National Bureau of Investigation, and the former mayor of San Carlos City, Pangasinan, Julian Resuello, to point at accused-appellants as perpetrators of the aforesaid crime. They equally claim that they did not actually see who committed the crime and that they only testified against accused-appellants out of fear of their own lives.[7]

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[2] *Id*. at 141-152 (dated April 8, 2013).

[3] *Id*. at 126-134. See *People v. Lamsen*, G.R. No. 198338, February 20, 2013, 691 SCRA 498.

[4] *Id*. at 133. See *People v. Lamsen*, *id*. at 509.

[5] *Id*. at 154-157.

[6] *Id*. at 158-163.

[7] *Id*. at 155-156 and 158-159.

The Court is not convinced.

Reyes' and Marcelo's affidavits partake of a recantation which is aimed to renounce their earlier testimonies and withdraw them formally and publicly.[8] Verily, recantations are viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration.[9] Recanted testimony is exceedingly unreliable.[10] There is always the probability that it will later be repudiated.[11] Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.[12] As aptly pointed out by the Court in *Firaza v. People*,[13] *viz.*:

> Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. x x x.
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> This Court has always looked with disfavor upon retraction of testimonies previously given in court. The asserted motives for the repudiation are commonly held suspect, and the veracity of the

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[8] See *People v. Ballabare*, 332 Phil. 384, 396 (1996).

[9] *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 268, citing *Balderama v. People*, G.R. Nos. 147578-85 and G.R. Nos. 147598-605, January 28, 2008, 542 SCRA 423, 432-433.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] 547 Phil. 573 (2007).

statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.

x x x. **Especially when the affidavit of retraction is executed by a prosecution witness after the judgment of conviction has already been rendered, "it is too late in the day for his recantation without portraying himself as a liar." At most, the retraction is an afterthought which should not be given probative value.**

Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. **A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed.** The unreliable character of the affidavit of recantation executed by a complaining witness is also shown by the incredulity of the fact that after going through the burdensome process of reporting to and/or having the accused arrested by the law enforcers, executing a criminal complaint-affidavit against the accused, attending trial and testifying against the accused, the said complaining witness would later on declare that all the foregoing is actually a farce and the truth is now what he says it to be in his affidavit of recantation. And in situations, like the instant case, **where testimony is recanted by an affidavit subsequently executed by the recanting witness, we are properly guided by the well-settled rules that an affidavit is hearsay unless the affiant is presented on the witness stand and that affidavits taken** *ex-parte* **are generally considered inferior to the testimony given in open court.**[14] (Emphases and underscoring supplied)

After a careful scrutiny of the records, the Court sees no sufficient reason to disturb its Resolution dated February 20, 2013. In the case at bar, the trial court gave great weight and credence to the collective statements of the four (4) prosecution

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[14] *Id.* at 584-586. (Citation omitted)

witnesses, including those of Reyes and Marcelo, as their testimonies were candid, straightforward, and categorical. It is likewise worthy to mention that their respective testimonies were deemed credible as they withstood extensive cross-examination, and possibly, even re-direct and re-cross examinations. Absent any special circumstances attendant to this case, Reyes' and Marcelo's recantations fail to cast doubt to the truth and veracity of their earlier testimonies, and to the collective statements of all of the prosecution witnesses as a whole.

Moreover, it should be noted that Reyes and Marcelo only executed their respective affidavits of recantation after the Court issued its Resolution dated February 20, 2013 upholding accused-appellants' conviction of the crime of robbery with homicide, or more than a decade after they gave their testimonies in open court. These affidavits should be seen as nothing but a last-minute attempt to save accused-appellants from punishment.[15]

Finally, the Court need not discuss the other issues raised in the accused-appellants' Motions as they were already exhaustively passed upon in its Resolution dated February 20, 2013.

WHEREFORE, the Court hereby **DENIES** with **FINALITY** the Motions for Reconsideration filed by accused-appellants SPO1 Wilfredo L. Ramos and PO2 Anthony D. Abulencia and the Motion for New Trial Due to Newly Discovered Evidence and for Reconsideration of the February 20, 2013 Resolution filed by accused-appellant P/Supt. Artemio E. Lamsen. Accordingly, the Court's Resolution dated February 20, 2013 is **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

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[15] See *id*. at 586. (Citation omitted)

FIRST DIVISION

[G.R. No. 200029. November 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BASILIO VILLARMEA *Y* ECHAVEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THAT THE ATTACK IS DELIBERATE AND WITHOUT WARNING, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR ESCAPE; PRESENT IN CASE AT BAR.— Under Article 248 of the Revised Penal Code, murder is committed by any person who, not falling within the provisions of Article 246, shall kill another with any of the enumerated qualifying circumstances – including treachery and conspiracy. In a litany of cases, this Court has consistently explained that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. In *People v. Barde*, we stated that the essence of treachery is that the attack is deliberate and without warning, done swiftly and unexpectedly, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. Clearly, there was treachery in the case at bar. The victim was utterly defenseless, unarmed and taken by surprise by the sudden and unexpected attack from his assailants. The numerical superiority of the assailants also gave him no opportunity to retaliate.

2. ID.; ID.; MURDER; CONSPIRACY; CONSPIRACY IS ESTABLISHED WHEN THERE IS UNITY OF MIND AND PURPOSE AS SHOWN BY THE TWELVE STAB WOUNDS AND SEVERAL ABRASIONS FOUND ON THE DIFFERENT PARTS OF THE BODY OF THE VICTIM

THAT LED TO HIS INSTANTANEOUS DEATH.— We also sustain the finding that appellant conspired with his co-accused in killing the victim. They ganged up on the victim and took turns in stabbing and mauling him – animated by the same purpose and criminal intent to kill. Such unity of mind and purpose is shown by the twelve stab wounds and several abrasions found on different parts of the body of the victim that led to his instantaneous death. We agree with the trial court that while there may be no "evidence of an appreciable time that these persons agreed on the criminal resolution prior to the incident, x x x the stabbings were not separate but were geared towards the consummation of the same end – to attack and kill the victim."

3. **ID.; ID.; ID.; DEFENSE OF DENIAL; THE DEFENSE OF DENIAL CANNOT OVERCOME THE POSITIVE IDENTIFICATION MADE BY AN EYEWITNESS THAT THE APPELLANT AND HIS CO-ACCUSED CONSPIRED IN MAULING AND STABBING THE VICTIM.—** Appellant's positive identification by Candelada as one of those persons who stabbed the victim makes him criminally responsible as principal by indispensable cooperation. There is nothing in the evidence on record that can make this Court doubt the credibility of Candelada in his positive identification of appellant as the person who first boxed him, as the one who stabbed the victim, and as one of the persons who attacked him and the victim. The defense of denial interposed by appellant cannot overcome the positive identification made by Candelada, an eyewitness in the case at bar, that he and his co-accused conspired in mauling and stabbing the victim. The attempt of appellant to impute an ulterior motive on the part of Candelada to testify against him was not supported by any concrete evidence. To be sure, Candelada's positive identification was further corroborated by the testimony of PO2 Cabatingan who stated that he saw appellant's swollen right hand, wounded knuckles and bloodied slippers during the investigation conducted at the construction site right after the stabbing incident.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION THEREOF IS ADDRESSED TO THE SOUND DISCRETION OF THE**

TRIAL JUDGE; SUSTAINED.— We have consistently held that in criminal cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not. This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused. This is especially true when the factual findings of the trial court were affirmed by the appellate court. Thus, absent any showing that the trial court in this case had overlooked substantial facts and circumstances, which if considered would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses.

5. CRIMINAL LAW; CIVIL LIABILITY; DAMAGES AWARDED, SUSTAINED.— The award by the trial court of ₱50,000 as civil indemnity for the death of the victim is increased to ₱75,000 which is mandatory and is granted without need of evidence other than the commission of the crime which caused the victim's death. We agree with the appellate court that the award of moral damages by the trial court should be increased from ₱10,000 to ₱50,000. This amount is awarded despite the absence of proof of mental and emotional suffering of the victim's heirs as a violent death necessarily brings about emotional pain and anguish on the part of the victim's family. As to the award of exemplary damages, we increase the award made by the appellate court from ₱25,000 to ₱30,000. The actual damages amounting to ₱25,000 as awarded by the trial court is sustained.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is an appeal from the May 25, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00021 affirming the judgment[2] of the Regional Trial Court (RTC) of Mandaue City, Branch 28, finding appellant Basilio Villarmea *y* Echavez (Villarmea) guilty beyond reasonable doubt for the murder of Arnaldo Diez (Diez). The victim was stabbed to death along a street in Mandaue City during a fistfight that involved several persons who allegedly assaulted and ganged up against the victim and his uncle, Jaime Candelada (Candelada).

Appellant was charged before the RTC of Mandaue City, Branch 28, under the following Amended Information, docketed as Criminal Case No. DU-7540 and dated July 10, 2000:

> That on or about the 13th day of March, 2000 in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously stab one Arnaldo Diez *y* Dadang with a bladed instrument, thereby inflicting upon the latter mortal wounds at his vital portion which caused his death soon thereafter.
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> CONTRARY TO LAW.[3]

Since the original Information[4] only charged appellant, the Amended Information included the following other co-accused: Jonathan Labora, Ronnie Obatay, Florie Aplece and Marlon Canlom. Appellant and Canlom were detained and entered a

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[1] *Rollo*, pp. 6-13. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. concurring.

[2] CA *rollo*, pp. 24-38. Penned by Judge Marilyn Lagura-Yap.

[3] *Id*. at 9. Underscoring in the original.

[4] *Id*. at 7.

plea of Not Guilty upon arraignment. The other co-accused remain at-large.

The following facts were admitted by appellant during the pre-trial conference:

1. A few minutes after the incident[,] the accused was arrested at his place of work at J. King Construction. Accused however claimed that he did not flee.
2. The co-accused of Basilio Villarmea are his co-workers at J. King Construction[.]
3. Jaime Candelada, a prosecution witness, saw accused at the police station immediately after the incident.
4. The Death Certificate[,] as well as the fact and cause of death of the victim[,] is Hemorrhage due to multiple stab wounds on the trunk and lower extremities.[5]

The prosecution presented the testimonies of the following witnesses:

Jingle Diez, the wife of the victim, testified that her husband died from stab wounds on March 13, 2000. At around 9:00 p.m. of that day, she was informed by Candelada that her husband was ganged up. She and her stepfather then proceeded to the crime scene and brought the victim to Don Vicente Sotto Memorial Medical Center but he was declared dead on arrival. They later brought the body to St. Anne's Funeral Parlor.[6]

The witness proceeded to Police Station 2 at Wireless, Mandaue City where she met appellant who told her that her husband had mauled a certain Christopher Alfante (Alfante). Appellant also told the witness that her husband was stabbed because the latter allegedly mauled someone from appellant's group. Appellant further enumerated to her the names of his companions: Marlon Canlom, Ronnie Aplece, Jonathan Obatay and Annie Aplece. While appellant denied to the witness that he was involved in

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[5] *Id*. at 24.

[6] *Id.*, TSN, May 15, 2001, pp. 5-8.

the killing of her husband, she saw blood on appellant's foot. Lastly, the witness testified that she spent the following amounts upon her husband's death: ₱20,000 for the wake and burial; ₱5,000 for the shipment of her husband's body; and ₱8,000 for funeral services.[7]

Jaime Candelada, the victim's companion during the incident, testified that he knew the victim because he is the husband of his niece, Jingle Diez. He also stayed at Semense Compound in Tipolo, Mandaue City where the victim resided. He testified that on the night of the killing, he and the victim were buying something from a store which is located around 30 meters from the place of the incident. When they walked out of the store, seven persons followed them. Candelada testified that he was first boxed by appellant. He fell down with the victim since they had their arms around each other's shoulders. Candelada was again hit several times at the back and was too dazed to get up. When he was finally able to regain his composure, he saw the group ganging up on and stabbing the victim. He ran away after he saw the victim being stabbed by the assailants. He recognized appellant as one of the members of the group who stabbed the victim. He knew that appellant was working at J. King Construction – located about 40 meters from the place of the incident. He had also seen appellant in the area several times in the past.[8]

Candelada informed the wife of the victim about the incident. She then proceeded to the scene of the crime while he remained in the house. Three policemen later arrived and he accompanied them to Police Precinct 2. In the precinct, he identified appellant as the one who boxed him. He also identified appellant in court. He admitted that he did not know Canlom, the other co-accused.[9]

PO2 Rico Cabatingan, the third witness for the prosecution, testified that on the night of the incident, at around 9:50 p.m., he happened to be passing by the area near J. King Construction

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[7] TSN, May 15, 2001, pp. 9-14, 18-19.

[8] TSN, May 22, 2001, pp. 2-6.

[9] *Id*. at 7-8.

at Hernan Cortes Street, Subangdaku, Mandaue City. While he did not see the actual stabbing, he saw people swarming around a bloodied person lying on the ground. He took a cab and brought the unconscious person – the victim in this case – to the hospital. Upon investigation, he later found out from Candelada that the persons responsible for the stabbing were workers of J. King Construction.[10]

PO2 Cabatingan, together with PO2 Fuentes, PO3 Amal and Candelada, proceeded to the construction site. Cabatingan directed the workers to come out of the bunkhouse. When asked to identify who among the workers were involved, Candelada identified appellant who was then placed under arrest by PO2 Cabatingan. The following observations with respect to the appellant were also made by PO2 Cabatingan: his right hand was swollen; there was a fresh wound or laceration on his knuckle; and there was fresh blood on his slippers. PO2 Cabatingan asked appellant to explain the presence of such blood but he did not answer. Appellant, the only one identified and arrested at that time, was immediately brought to the police station.[11]

Dr. Nestor Sator testified on the results of the autopsy conducted on the victim on March 14, 2000. According to Medico-Legal Report No. M-65-00,[12] the victim was found to have suffered 12 stab wounds and several abrasions on various parts of the body. The wounds numbered as 1, 2, 6, 7, 8 and 9 were fatal wounds as they were penetrating wounds that involved internal and vital organs such as the heart and lung. The fatal wound on the left chest could have also caused instantaneous death because it involved the heart. Another fatal wound was found on the left hypochondriac region which perforated the stomach.[13]

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[10] TSN, May 30, 2001, pp. 2-5.

[11] *Id*. at 6-13.

[12] Records, p. 54.

[13] TSN, June 19, 2001, pp. 2-5, 9.

Dr. Sator also testified on the location of the wounds found on the different parts of the victim's body: a lacerated wound on the left foot; eight wounds on the trunk; and, three wounds on the left thigh. He stated that the wounds on the anterior portion of the victim's body could indicate that the victim must have been possibly on a lying position, facing his assailant. The abrasions on the other parts of his body could have been sustained when he fell down on the ground. He believed that more than one person attacked the victim because there were numerous wounds, abrasions and lacerations on his left foot.[14]

The defense presented the testimonies of the following witnesses:

Appellant Basilio Villarmea denied that he participated in the assault. He testified that at around 9:00 p.m. on the night of the incident, he went out of the premises of the construction site where he was a live-in construction worker. He was going to fetch water from the artesian well located across the site. On his way to the well, he saw co-accused Labora and Obatay who are still at-large, and also his fellow live-in construction workers at J. King Construction, playing computer games at a store near the artesian well. At around 10:00 p.m., while he was still at the artesian well, he saw co-accused Labora get into a fight with the victim and Candelada. He claimed that it was Candelada who allegedly kicked Labora. A fight immediately ensued without any heated argument or discussion. At first, the melee only involved the victim, Candelada, Labora and Obatay. The fight ended with Labora and Alfante stabbing the victim while Candelada ran away. The witness recounted that Alfante allegedly joined in the fight as they were grappling for a knife that Candelada pulled out but dropped.[15]

Appellant maintained that it was Labora and Alfante who stabbed the victim to death. He also insisted that Candelada was not able to point out the person responsible for the crime

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[14] *Id.* at 6-8.

[15] TSN, September 10, 2001, pp. 2-8.

when he went to the construction site with the police officers. Besides, at the time that Candelada was asked to identify the alleged perpetrators, the witness stated that co-accused Labora, Aplece and Obatay had already escaped through the back portion of the construction site. Nevertheless, he was brought to the police station for investigation where he informed the police that the fight ensued because Candelada kicked Labora, and that Candelada himself was the owner of the knife that Labora used in stabbing the victim. It was this statement made by appellant that allegedly angered Candelada who retaliated by implicating him in the killing. When the police asked about the swelling on his hand, appellant answered that his right small finger was swollen because a hollow block fell on his hand. Appellant also denied knowledge and ownership of the pair of bloodied slippers that the police asked him to identify on the day following the incident.[16]

Co-accused Marlon Canlom corroborated the testimony of appellant that at around 9:00 p.m. of March 13, 2000, he was at the gate of the construction site waiting for appellant while the latter was fetching water from the artesian well located across the guardhouse. He also narrated the same sequence of events as can be gleaned from appellant's testimony – from the time that Candelada allegedly kicked Labora until the police arrested and brought appellant to the police station. He stated that it was his first time to see the victim during the said incident.[17]

Remegias Umayao, the last witness for the defense, testified that at the time of the incident, he was eating at a restaurant near the place where the fight took place. He said that he knew appellant and co-accused Canlom because they used to be co-workers at V and S Construction. He testified that the fight occurred near the place where there were computer games. He corroborated the allegation of appellant that it was Alfante who first stabbed the victim, while Labora followed to deliver blows

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[16] *Id.* at 8-11.

[17] TSN, October 22, 2001, pp. 2-11; TSN, November 5, 2001, p. 3.

as the victim was slumped down. He admitted not seeing what weapon was exactly used and whether the victim had a companion.[18]

On rebuttal, PO2 Cabatingan refuted the testimony of appellant denying knowledge and ownership of the bloodied pair of slippers that were recovered from him. PO2 Cabatingan identified the bloodied slippers which he had marked as "BV" – the initials for Basilio Villarmea – to have been recovered from appellant. He stated that appellant was wearing the bloodied pair when he was arrested at the compound of J. King Construction. The right slipper was blue with the "Islander" mark, while the left slipper was black without any mark.[19]

On sur-rebuttal, appellant stated that he was wearing "Spartan" slippers when he was arrested and brought to the police station on the night of March 13, 2000. He alleged that the evidence was planted as it was his first time to see the bloodied pair of slippers the following day when PO2 Cabatingan brought the pair to the police station.[20]

On September 17, 2002, the RTC found appellant guilty beyond reasonable doubt of the crime of murder, as follows:

WHEREFORE, this Judgment is hereby rendered finding the **accused Basilio Villarmea *y* Echavez, guilty** beyond reasonable doubt of the crime of Murder. Accordingly, the accused Basilio Villarmea is hereby sentenced to the penalty of imprisonment of ***Reclusion Perpetua*** together with the accessories imposed under the law. Accused is also hereby ordered to pay to the heirs of Arnaldo Diez, the amounts of: ₱50,000.00 as damages *ex delicto*; ₱25,000.00 as actual damages; ₱10,000.00 as moral damages and ₱10,000.00 as exemplary damages.

For lack of evidence, the accused Marlon Canlom is hereby acquitted. The Court hereby orders the immediate release of Marlon Canlom from detention unless he is being held for some other lawful cause.

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[18] TSN, January 23, 2002, pp. 2-8, 18-20.

[19] TSN, March 15, 2002, pp. 2-6, 8.

[20] TSN, June 17, 2002, pp. 2-3, 5.

IT IS SO ORDERED.[21]

The trial court gave full faith and credence to the testimony of eyewitness Candelada who positively identified appellant as one of the assailants who attacked and stabbed the victim. It held that at the time the victim was stabbed, he was unarmed, taken by surprise and had no opportunity to resist or put up any form of defense against the numerical superiority of appellant and his companions. It also held that the results of the medico-legal examination pertaining to the various locations and number of the wounds supported Candelada's testimony, proved that the victim was defenseless at the time of the attack, and showed that the killing was attended with treachery thus qualifying the crime to murder. The trial court also found that conspiracy was proven by positive and conclusive evidence "when the attackers numbering around seven 'ganged up and stabbed Arnaldo'"[22] and the twelve stab wounds corroborated the account of the eyewitness that there were several men who perpetrated the assault with the same criminal intent to kill.[23] The trial court however ruled that the events that transpired before the stabbing did not establish that the persons who attacked the victim had resolved to kill him. Hence the killing could not have been attended by evident premeditation.[24]

Appellant sought to reverse his conviction before the CA. He raised the following errors:

I. THAT THE LOWER COURT ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAD BEEN PROVEN BEYOND REASONABLE DOUBT; and

II. THAT THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS JAIME CANDELADA.[25]

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[21] CA *rollo*, p. 38.

[22] *Id.* at 33.

[23] *Id.*

[24] *Id.*

[25] *Rollo*, p. 9.

The appellate court found no reversible error in the lower court's finding that appellant was guilty beyond reasonable doubt as principal in the murder of the victim, but ordered that the amount of moral and exemplary damages awarded to his heirs be increased to ₱50,000 and ₱25,000, respectively.[26] The CA upheld the finding that treachery attended the killing for the following reasons: the victim was not armed; the attack was sudden and unexpected leaving the victim no opportunity to retaliate; and, the numerical superiority of the assailants left the victim with no means to resist the attack.[27] The appellate court also affirmed the finding of the trial court that appellant conspired with six other persons in ganging up on the victim and taking turns in stabbing and mauling him which caused his instantaneous death. It found that the 12 stab wounds and the nature of the abrasions sustained by the victim supported the claim of the prosecution that the assailants were animated with the same purpose and criminal intent to kill the victim. It did not consider the absence of an appreciable time that the assailants should have spent, prior to the incident, to agree on a common criminal resolution, as a factor negating conspiracy. It considered each assailant's act of stabbing the victim as concerted, and not as individual acts geared towards the consummation of the same end – to attack and kill the victim.[28]

After a careful review of the evidence on record, we affirm the ruling of the appellate court and sustain that the award of moral damages be increased to ₱50,000. We, however, modify the award of civil indemnity to be increased from ₱50,000 to ₱75,000, and the amount of exemplary damages to be increased from ₱25,000 to ₱30,000, to conform with prevailing jurisprudence.

Under Article 248 of the Revised Penal Code, murder is committed by any person who, not falling within the provisions of Article 246, shall kill another with any of the enumerated

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[26] *Id*. at 9, 13.

[27] *Id*. at 9-10.

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

qualifying circumstances – including treachery and conspiracy. In a litany of cases, this Court has consistently explained that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make.[29] In *People v. Barde*,[30] we stated that the essence of treachery is that the attack is deliberate and without warning, done swiftly and unexpectedly, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.

Clearly, there was treachery in the case at bar. The victim was utterly defenseless, unarmed and taken by surprise by the sudden and unexpected attack from his assailants. The numerical superiority of the assailants also gave him no opportunity to retaliate.[31] As succinctly explained by the trial court:

> Based on the testimonies of the eyewitness and the medico-legal officer, treachery attended the killing of the victim. The victim, Arnaldo Diez, was stabbed without warning. There was no showing that the victim was armed. The attack was unexpected and sudden[,] giving the unarmed victim no opportunity to resist the assault. The numerical superiority of the seven persons who attacked Arnaldo Diez left him with zero means of resistance or defense. Before he could fight back or run away, his attackers pounced on him like some prized animal. A total number of twelve wounds, six of which were fatal and penetrating wounds, penetrated the vital organs of the victim. The varying locations of the wounds on the trunk and their number corroborate the testimony of eyewitness Jaime Candelada that more than one person ganged up and stabbed the helpless victim. The wounds located in the trunk are too many to disregard or negate treachery. x x x[32]

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[29] *People v. Tan*, 373 Phil. 990, 1010 (1999); *People v. Mallari*, 369 Phil. 872, 885 (1999).

[30] G.R. No. 183094, September 22, 2010, 631 SCRA 187, 215.

[31] *Rollo*, p. 10.

[32] CA *rollo*, p. 32.

We also sustain the finding that appellant conspired with his co-accused in killing the victim. They ganged up on the victim and took turns in stabbing and mauling him – animated by the same purpose and criminal intent to kill. Such unity of mind and purpose is shown by the twelve stab wounds and several abrasions found on different parts of the body of the victim that led to his instantaneous death. We agree with the trial court that while there may be no "evidence of an appreciable time that these persons agreed on the criminal resolution prior to the incident, x x x the stabbings were not separate but were geared towards the consummation of the same end – to attack and kill the victim."[33] Appellant's positive identification by Candelada as one of those persons who stabbed the victim makes him criminally responsible as principal by indispensable cooperation. There is nothing in the evidence on record that can make this Court doubt the credibility of Candelada in his positive identification of appellant as the person who first boxed him, as the one who stabbed the victim, and as one of the persons who attacked him and the victim.

The defense of denial interposed by appellant cannot overcome the positive identification made by Candelada, an eyewitness in the case at bar, that he and his co-accused conspired in mauling and stabbing the victim. The attempt of appellant to impute an ulterior motive on the part of Candelada to testify against him was not supported by any concrete evidence.[34] To be sure, Candelada's positive identification was further corroborated by the testimony of PO2 Cabatingan who stated that he saw appellant's swollen right hand, wounded knuckles and bloodied slippers during the investigation conducted at the construction site right after the stabbing incident. Lastly, the fact that appellant did not escape from the scene of the crime does not negate his guilt. As correctly observed by the appellate court, it does not lessen the evidence on record that sufficiently proves appellant's guilt beyond reasonable doubt.[35]

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[33] *Id.* at 33.

[34] *Rollo*, p. 12.

[35] *Id.* at 11.

In sum, the Court finds no cogent reason to disturb the decision of the CA when it affirmed the factual findings of the trial court. We have consistently held that in criminal cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not. This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused. This is especially true when the factual findings of the trial court were affirmed by the appellate court.[36] Thus, absent any showing that the trial court in this case had overlooked substantial facts and circumstances, which if considered would change the result of the case,[37] this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses.

As to the award of damages, we make the following modifications to conform with prevailing jurisprudence. The award by the trial court of ₱50,000 as civil indemnity for the death of the victim is increased to ₱75,000 which is mandatory and is granted without need of evidence other than the commission of the crime which caused the victim's death.[38] We agree with the appellate court that the award of moral damages by the trial court should be increased from ₱10,000 to ₱50,000. This amount is awarded despite the absence of proof of mental and emotional suffering of the victim's heirs as a violent death necessarily brings about emotional pain and anguish on the part of the victim's family.[39] As to the award

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[36] *People v. Obina*, G.R. No. 186540, April 14, 2010, 618 SCRA 276, 281.

[37] *Rollo*, p. 12. Citation omitted.

[38] *People v. Laurio*, G.R. No. 182523, September 13, 2012, 680 SCRA 560, 572.

[39] *Id*.

of exemplary damages, we increase the award made by the appellate court from ₱25,000 to ₱30,000.[40] The actual damages amounting to ₱25,000 as awarded by the trial court is sustained.

WHEREFORE, the Decision dated May 25, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00021 affirming the conviction of appellant Basilio Villarmea *y* Echavez is **AFFIRMED with MODIFICATION.** The award of civil indemnity is increased to ₱75,000 and the award of exemplary damages is increased to ₱30,000. Interest at the rate of six percent (6%) per annum on all the damages awarded in this case from the date of finality of this judgment until fully paid shall likewise be paid by appellant to the heirs of Arnaldo Diez.

With costs against the appellant.

SO ORDERED.

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

SECOND DIVISION

[A.C. No. 5239. November 18, 2013]

SPOUSES GEORGE A. WARRINER and AURORA R. WARRINER, *complainants, vs.* **ATTY. RENI M. DUBLIN,** *respondent.*

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[40] *Id.* at 572-573; *People v. Gutierrez,* G.R. No. 188602, February 4, 2010, 611 SCRA 633, 647.

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER IS ALLOWED TO WITHDRAW HIS SERVICES FOR GOOD CAUSE; NOT ESTABLISHED IN CASE AT BAR.— Culled from the pleadings respondent submitted before this Court and the IBP, respondent admitted that he deliberately failed to timely file a formal offer of exhibits because he believes that the exhibits were fabricated and was hoping that the same would be refused admission by the RTC. This is improper. If respondent truly believes that the exhibits to be presented in evidence by his clients were fabricated, then he has the option to withdraw from the case. Canon 22 allows a lawyer to withdraw his services for good cause such as "[w]hen the client pursues an illegal or immoral course of conduct with the matter he is handling" or "[w]hen the client insists that the lawyer pursue conduct violative of these canons and rules."

2. ID.; ID.; AS A LAWYER AND AN OFFICER OF THE COURT, ONE OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT; VIOLATION IN CASE AT BAR.— [I]t has not escaped our notice that respondent is also prone to resorting to contradictions in his effort to exculpate himself. In his Comment filed before this Court, respondent claimed that Warriner was his only witness in Civil Case No. 23,396-95. However, in his Position Paper filed before the IBP, he admitted that aside from Warriner, he also presented as witnesses a former *barangay* official and a representative from DENR. Next, he claimed in his Comment filed before this Court that he had a heated argument with Warriner during which the latter threatened him with a disbarment suit. The Investigating Commissioner took this into account when he submitted his Report and Recommendation. Surprisingly, respondent claimed in his Comment to complainant's Motion for Reconsideration before the IBP that the Investigating Commissioner erred and was inaccurate when he stated in his Report and Recommendation that respondent had a heated argument with the complainants. Moreover, respondent claimed in his Comment before this Court that Warriner authored the damage to his property by draining the soil erosion prevention ditches provided by E.B. Villarosa & Partner Co., Ltd. However,

he again contradicted himself when he claimed in his Position Paper that the natural topography of the place was the cause of the erosion. At this juncture, respondent must be reminded that as a lawyer and an officer of the Court, he "owes candor, fairness and good faith to the court." He "shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice."

3. ID.; ID.; VIOLATION; IMPOSABLE PENALTY.— Under the circumstances, and considering that we had already admonished respondent and had him arrested for his adamant refusal to obey our directives, we find the penalty of suspension from the practice of law for six months, as recommended by the Investigating Commissioner, and as we similarly imposed in *Hernandez v. Padilla* and *Pesto v. Millo*, commensurate to respondent's infractions. Besides, we wish to emphasize that "suspension is not primarily intended as a punishment but a means to protect the public and the legal profession."

R E S O L U T I O N

DEL CASTILLO, *J.*:

This resolves the administrative Complaint[1] filed on March 14, 2000 by complainant-spouses George Arthur Warriner (Warriner) and Aurora R. Warriner against respondent Atty. Reni M. Dublin for gross negligence and dereliction of duty.

In their Complaint filed directly before the Office of the Bar Confidant of this Court, complainants alleged that they secured the services of respondent in the filing of a Complaint for damages captioned as *Aurora M. Del Rio-Warriner and her spouse-husband George Arthur Warriner, plaintiffs, versus E.B. Villarosa & Partner Co., Ltd.* and docketed as Civil Case No. 23,396-95 before the Regional Trial Court (RTC) of Davao City, Branch 16; that during the proceedings in Civil Case No. 23,396-95, respondent requested the RTC for a period of 10 days within which to submit his Formal Offer of Documentary

[1] *Rollo*, pp. 4-6.

Evidence; that despite the lapse of the requested period, respondent did not submit his Formal Offer of Documentary Evidence; that respondent did not file any comment to E.B. Villarosa & Partner Co., Ltd.'s motion to declare complainants to have waived their right to file Formal Offer of Documentary Evidence; that respondent belatedly filed a Formal Offer of Documentary Evidence which the RTC denied; that respondent did not oppose or file any comment to E.B. Villarosa & Partner Co., Ltd.'s move to dismiss the Complaint; and that the RTC eventually dismissed Civil Case No. 23,396-95 to the prejudice of herein complainants.

In a Resolution[2] dated June 26, 2000, we directed respondent to file his Comment to this administrative Complaint. Upon receipt of the Resolution on August 24, 2000,[3] respondent requested for an extension of 30 days which was granted.[4]

However, as of August 5, 2002, or after a lapse of almost two years, respondent had not yet filed his Comment. Thus, we resolved to require respondent to "show cause why he should not be disciplinarily dealt with or held in contempt for such failure and to comply with the resolution requiring said comment, both within ten (10) days from notice."[5] Respondent received our directive but chose to ignore the same.[6] In another Resolution[7] dated August 4, 2003, we imposed a fine of ₱1,000.00 on respondent and reiterated our directives requiring him to file his Comment and to submit an explanation on his failure to file the same. However, respondent again ignored this Court's directive. Thus, on February 15, 2006, we increased the fine to ₱2,000.00 but respondent continued to ignore our Resolutions.[8]

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[2] *Id*. at 35.

[3] *Id*. at 41.

[4] *Id*. at 45.

[5] *Id*. at 46.

[6] *Id*. at 48.

[7] *Id*. at 51.

[8] *Id*. at 54.

Consequently, on March 10, 2008, we resolved to order respondent's arrest and detention until he complies with our Resolutions.[9]

This time, respondent heeded our directives by submitting his Compliance[10] and Comment.[11] Respondent claimed that he failed to file his Comment to the instant administrative case because he lost the records of Civil Case No. 23,396-95 and that he tried to get a copy from the RTC to no avail.

In his Comment belatedly filed eight years after the prescribed period, respondent averred that complainant Warriner is an Australian national who married his Filipino spouse as a convenient scheme to stay in the country; that he rendered his services in Civil Case No. 23,396-95 free of charge; that he accepted the case because he was challenged by Warriner's criticism of the Philippine judicial system; that he doubted the veracity of Warriner's claim that the construction being undertaken by E.B. Villarosa & Partner Co., Ltd. indeed caused the erosion of the soil towards his property; that Warriner was his only witness during the trial; that the reluctance of other witnesses to testify for Warriner strengthened his suspicion of the veracity of Warriner's claim; that upon inquiries, he discovered that the bits of evidence presented by Warriner were fabricated; that the *barangay* officials do not wish to participate in the fraudulent scheme of Warriner; that he visited Warriner's property and saw that Warriner authored the damage to his property by draining the soil erosion prevention ditches provided by E.B. Villarosa & Partner Co., Ltd.; that he had a heated argument with Warriner during which the latter threatened him with a disbarment suit; that based on his discovery, respondent did not wish to submit his Formal Offer of Documentary Evidence; that complainants no longer saw him or inquired about the status of the case; that he did not withdraw from the case because

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[9] *Id*. at 55-57.

[10] Captioned as Manifestation with Compliance and Apologies, *id*. at 60-62.

[11] *Id*. at 63-70.

complainants no longer visited him at his law office; that if he withdraws, Warriner would only hire another lawyer to perpetrate his fraudulent scheme; and that he could not be held administratively liable for filing a belated Formal Offer of Documentary Evidence as he only did the same to protect the legal profession and in accordance with his oath not to do any falsehood or promote unlawful causes.

In a Resolution[12] dated July 16, 2008, we found respondent's explanation for failing to comply with our directives not fully satisfactory hence, we admonished him to be more circumspect in his dealings with the Court. At the same time, we referred the Complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The parties submitted their respective Position Papers before the IBP Commission on Bar Discipline.

In their Position Paper,[13] complainants insisted that respondent mishandled their case before the RTC by filing a motion to admit the formal exhibits almost three months after the prescribed period; that respondent did not present complainants' Marriage Contract and General Power of Attorney that would have allowed Warriner to represent his wife while the latter is out of the country; that complainants' marriage is not for convenience; that complainants have a son out of said marriage; that respondent was paid for his services; that E.B. Villarosa & Partner Co., Ltd. did not secure an Environmental Compliance Certificate (ECC) before undertaking the construction; that Warriner was not the sole witness for the prosecution; that the records of Civil Case No. 23,396-95 would show that a representative from the Department of Environment and Natural Resources (DENR) and the *Barangay* Captain were likewise presented; and that these witnesses proved that Warriner's claim was not a fabrication.

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[12] *Id.* at 84.

[13] *Id.*, unpaginated.

In his Position Paper,[14] respondent contradicted his earlier assertion in his Comment filed before the Court that Warriner was his only witness in Civil Case No. 23,396-95 by claiming this time that aside from Warriner, he also presented as witnesses a former *barangay* official and a representative from DENR. He conceded that E.B. Villarosa & Partner Co., Ltd. indeed failed to secure an ECC but claimed that this alone would not prove that E.B. Villarosa & Partner Co., Ltd. did not institute corrective measures to prevent soil erosion and damages to neighboring houses such as Warriner's. He insisted that it is the natural topography of the place which caused the soil erosion which again contradicted his earlier allegation in his Comment before this Court that it was Warriner who caused the soil erosion by destroying the ditches constructed by the developer. Moreover, he alleged that the estimate of damages provided by *Bening's* Garden which he offered as an exhibit in Civil Case No. 23,396-95 was a fabrication as there is no such entity in Laurel St., Davao City.

In their Supplemental Position Paper,[15] complainants argued, among others, that since more than eight years have lapsed, it is possible that *Bening's* Garden relocated to another address but it does not mean that it never existed.

In his Report and Recommendation,[16] the Investigating Commissioner[17] found respondent guilty of mishandling Civil Case No. 23,396-95 in violation of the Code of Professional Responsibility and thus recommended respondent's suspension from the practice of law for a period of six months.

The IBP Board of Governors, in Resolution No. XIX-2010-442[18] dated August 28, 2010, approved with modification the

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[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] Commissioner Salvador B. Hababag.

[18] *Rollo,* unpaginated.

findings and recommendation of the Investigating Commissioner. The IBP Board of Governors noted that aside from mishandling the case of complainants, respondent also showed his propensity to defy the orders of the court, thus it recommended respondent's suspension from the practice of law for one year.

Respondent moved for reconsideration insisting that the IBP's Resolution is not supported by facts. He maintained that his actuations did not amount to a violation of the Code of Professional Responsibility; and that the filing of the Formal Offer of Documentary Evidence, although belated, exculpated him from any liability. He asserted that the exhibits were fabricated thus he deliberately belatedly filed the Formal Offer of Documentary Evidence in the hope that the same would be refused admission by the RTC. He denied defying lawful orders of the RTC or this Court. He insisted that defiance of lawful orders connotes total, complete or absolute refusal and not mere belated filing. He argued that he did not oppose or file comment to the Motion to Dismiss as he deemed the same proper considering the fabricated allegations of his clients.

Respondent argued that the penalty recommended by the IBP is not commensurate to his infractions. He alleged that the records of this case would show that he did not utterly disregard the orders or processes of the Court or the IBP. He claimed that this Court should have deemed his failure to timely file a Comment as a waiver on his part to file the same, and not as defiance of this Court's orders. Besides, he insisted that the only issue to be resolved by the IBP was the alleged mishandling of Civil Case No. 23,396-95; the IBP should not have delved on whether he disregarded or was disrespectful of the Court's orders because he was not given any opportunity to rebut the same.

Finally, respondent posited that his penalty is oppressive, excessive and disproportionate. He argued that with his suspension, the other cases he is handling would be affected.

Complainants also filed their Motion for Reconsideration insisting that respondent should be disbarred or suspended for

five years from the practice of law. To this, respondent filed his Comment asserting that the Investigating Commissioner erred and was inaccurate when he stated in his Report and Recommendation that respondent had a heated argument with the complainants. He averred that after the filing of the Formal Offer of Documentary Evidence and until the dismissal of Civil Case No. 23,396-95, he had no occasion to meet the complainants. He maintained that he had nothing to be remorseful about and that there is absolutely no evidence that would justify his suspension. He maintained that "being basic and elementary in any legal procedure, a failure or refusal to submit comment is but a waiver to so comment and puts the controversy submitted for resolution based on the evidence available at hand x x x. It is unfortunate that the Supreme Court did not consider respondent's failure or omission as having such effects, but such failure cannot be considered as a contemptuous act x x x."

The IBP Board of Governors, however, was not persuaded hence it denied respondent's Motion for Reconsideration.

On May 6, 2013, respondent filed before this Court An *Ex Parte* Manifestation (Not a Motion for Reconsideration)[19] insisting that his failure to timely file comment on the administrative case does not constitute defiance of the Court's directives but is only "a natural human expression of frustration, distraught and disappointment" when this Court and the IBP entertained a clearly unmeritorious Complaint. In any case, he averred that on April 12, 2013, the IBP Davao City Chapter presented him with a Certificate of Appreciation for his invaluable support to the local chapter. He claims that –

> x x x Even a feeble minded average person will find it ridiculously hilarious and comical that the [IBP] National Office condemns undersigned for his acts allegedly inimical to the profession but will be 'praised to the heavens', so to speak, by the local chapter of the same organization for his invaluable support to that same organization whose object, among others, is to discipline its members

[19] *Id*.

to be respectful and [subservient] to the rule of law by serving justice in an orderly and dignified manner. Weight and credence must be accorded the recognition and appreciation by this local chapter being logically considered as having the first hand observation and, thus, the personal knowledge of undersigned's personal character, integrity, uprightness, reputation and sacrifices in the practice of his legal profession.

As a gesture of meek obedience, respondent will not pray for the reconsideration and setting aside of that resolution adopted by the Honorable Board of Governors suspending him from the practice of law for one (1) year, erroneous, disproportionate and harsh as it may be. Undersigned only prays that, by way of protecting the prestigious image of the [IBP], measures be adopted to prevent it from becoming a laughing stock of professional organizations in the Philippines worthy for the books of wonders by its inconsistent, ridiculous and contradictory stance of disciplining its members exemplified by the predicament of respondent in this instant proceeding on the one hand but on the other hand is extolled by its local chapter to high heavens for his "invaluable support" of the tenets and foundation of that very same organization that condemns him. THIS IS HILARIOUSLY COMICAL AND ABSURDLY ODD.

Our Ruling

Respondent is indeed guilty of mishandling Civil Case No. 23,396-95. Records show that the 10-day period given to respondent to submit his formal offer of documentary evidence pursuant to the RTC Order dated November 11, 1997 lapsed without any compliance from the respondent. Consequently, the RTC, in its January 23, 1998 Order deemed respondent to have waived the submission of his formal offer of exhibits. Instead of asking the RTC to set aside the above Order, respondent filed on February 3, 1998 a Motion to Admit the Belated Formal Exhibits in Evidence. As to be expected, the RTC denied the motion. At the same time, it directed E.B. Villarosa & Partner Co., Ltd. to file its Motion to Dismiss by way of Demurrer to Evidence. Again, respondent failed to comment or oppose the Motion to Dismiss despite the opportunity given by the RTC. As a result, Civil Case No. 23,396-95 was dismissed.

Plainly, respondent violated the Code of Professional Responsibility particularly Canon 18 and Rule 18.03 which provide:

> Canon 18 – A lawyer shall serve his client with competence and diligence.
>
> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Worse, it appears that respondent *deliberately* mishandled Civil Case No. 23,396-95 to the prejudice of herein complainants. Culled from the pleadings respondent submitted before this Court and the IBP, respondent admitted that he deliberately failed to timely file a formal offer of exhibits because he believes that the exhibits were fabricated and was hoping that the same would be refused admission by the RTC. This is improper. If respondent truly believes that the exhibits to be presented in evidence by his clients were fabricated, then he has the option to withdraw from the case. Canon 22 allows a lawyer to withdraw his services for good cause such as "[w]hen the client pursues an illegal or immoral course of conduct with the matter he is handling"[20] or "[w]hen the client insists that the lawyer pursue conduct violative of these canons and rules."[21] Respondent adverted to the estimate of damages provided by *Bening's* Garden as a fabrication as there is no such entity in Laurel St., Davao City. Unfortunately, respondent anchored his claim that *Bening's* Garden does not exist merely on the claim of Rudolph C. Lumibao, a "sympathetic client" and a part-time gardener. Complainants refuted this allegation by claiming that *Bening's* Garden must have relocated its business considering that more than eight years have passed since the estimate was secured. Complainants also pointed out that since the filing of this case, respondent has thrice relocated his office but this does not mean that his practice has ceased to exist.

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[20] Rule 22.01(a), Code of Professional Responsibility.

[21] Rule 22.01(b), *id*.

We also agree with the IBP that respondent has a propensity to disobey and disrespect court orders and processes. Note that we required respondent to submit his Comment to this administrative Complaint as early as year 2000. However, he was only able to file his Comment eight years later, or in 2008 and only after we ordered his arrest. "As an officer of the court, respondent is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely.[22]

Finally, it has not escaped our notice that respondent is also prone to resorting to contradictions in his effort to exculpate himself. In his Comment filed before this Court, respondent claimed that Warriner was his only witness in Civil Case No. 23,396-95. However, in his Position Paper filed before the IBP, he admitted that aside from Warriner, he also presented as witnesses a former *barangay* official and a representative from DENR. Next, he claimed in his Comment filed before this Court that he had a heated argument with Warriner during which the latter threatened him with a disbarment suit. The Investigating Commissioner took this into account when he submitted his Report and Recommendation. Surprisingly, respondent claimed in his Comment to complainant's Motion for Reconsideration before the IBP that the Investigating Commissioner erred and was inaccurate when he stated in his Report and Recommendation that respondent had a heated argument with the complainants. Moreover, respondent claimed in his Comment before this Court that Warriner authored the damage to his property by draining the soil erosion prevention ditches provided by E.B. Villarosa & Partner Co., Ltd. However, he again contradicted himself when he claimed in his Position Paper that the natural topography of the place was the cause of the erosion. At this juncture, respondent must be reminded that as a lawyer and an officer of the Court, he "owes candor, fairness and good faith to the court."[23] He "shall not do any falsehood, nor consent to the doing of any

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[22] *Sibulo v. Ilagan*, 486 Phil. 197, 204 (2004).

[23] Canon 10, Code of Professional Responsibility.

in court; nor shall he mislead, or allow the Court to be misled by any artifice."[24]

Under the circumstances, and considering that we had already admonished respondent and had him arrested for his adamant refusal to obey our directives, we find the penalty of suspension from the practice of law for six months, as recommended by the Investigating Commissioner, and as we similarly imposed in *Hernandez v. Padilla*[25] and *Pesto v. Millo*,[26] commensurate to respondent's infractions. Besides, we wish to emphasize that "suspension is not primarily intended as a punishment but a means to protect the public and the legal profession."[27]

IN VIEW WHEREOF, Atty. Reni M. Dublin is **SUSPENDED** from the practice of law for six months effective upon receipt of this Resolution, with a **WARNING** that a similar violation will be dealt with more severely. He is **DIRECTED** to report to this Court the date of his receipt of this Resolution to enable this Court to determine when his suspension shall take effect.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[24] Rule 10.01, *id.*

[25] A.C. No. 9387, June 20, 2012, 674 SCRA 1, 12.

[26] A.C. No. 9612, March 13, 2013.

[27] *Mr. and Mrs. Saburnido v. Atty. Madroño*, 418 Phil. 241, 248.

SECOND DIVISION

[G.R. No. 173183. November 18, 2013]

SYCAMORE VENTURES CORPORATION and SPOUSES SIMON D. PAZ and LENG LENG PAZ, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; FORECLOSURE PROCEEDINGS; REMEDIES OF A SECURED CREDITOR.— A secured creditor may institute against the mortgage debtor either a personal action for the collection of the debt, a real action to judicially foreclose the real estate mortgage, or an extrajudicial judicial foreclosure of the mortgage. The remedies, however, are alternative, not cumulative, and the election or use of one remedy operate as a waiver of the others.

2. ID.; ID.; EXTRAJUDICIAL FORECLOSURE UNDER ACT NO. 3135, EXPLAINED; REQUISITES BEFORE A CREDITOR CAN PROCEED TO AN EXTRAJUDICIAL FORECLOSURE.— Act No. 3135 recognizes the right of a creditor to foreclose a mortgage upon the mortgagor's failure to pay his/her obligation. In choosing this remedy, the creditor enforces his lien through the sale on foreclosure of the mortgaged property. The proceeds of the sale will then be applied to the satisfaction of the debt. In case of a deficiency, the mortgagee has the right to recover the deficiency resulting from the difference between the amount obtained in the sale at public auction, and the outstanding obligation at the time of the foreclosure proceedings. Certain requisites must be established before a creditor can proceed to an extrajudicial foreclosure, namely: *first*, there must have been the failure to pay the loan obtained from the mortgagee-creditor; *second*, the loan obligation must be secured by a real estate mortgage; and *third*, the mortgagee-creditor has the right to foreclose the real estate mortgage either judicially or extrajudicially. Act No. 3135 outlines the notice and publication requirements and the procedure for the extrajudicial foreclosure which constitute a condition *sine qua non* for its validity.

3. ID.; ID.; ACT NO. 3135 DOES NOT REQUIRE DETERMINATION OF THE MORTGAGED PROPERTIES' APPRAISED VALUE.— Act No. 3135 has no requirement for the determination of the mortgaged properties' appraisal value. Nothing in the law likewise indicates that the mortgagee-creditor's appraisal value shall be the basis for the bid price. Neither is there any rule nor any guideline prescribing the minimum amount of bid, nor that the bid should be at least equal to the properties' current appraised value. What the law only provides are the requirements, procedure, venue and the mortgagor's right to redeem the property. When the law does not provide for the determination of the property's valuation, neither should the courts so require, for our duty limits us to the interpretation of the law, not to its augmentation. Under the circumstances, we fail to see the necessity of determining the mortgaged properties' current appraised value.

4. ID.; ID.; ID.; ISSUE ON THE APPRAISED VALUE OF THE PROPERTY IS NOT A PREJUDICIAL QUESTION THAT WOULD WARRANT THE SUSPENSION OF THE FORECLOSURE PROCEEDINGS.— We likewise do not discern the existence of any prejudicial question, anchored on the mortgaged properties' appraised value, that would warrant the suspension of the foreclosure proceedings. For greater certainty, a prejudicial question is a prior issue whose resolution rests with another tribunal, but at the same time is necessary in the resolution of another issue in the same case. For example, there is a prejudicial question where there is a civil action involving an issue similar or intimately related to the issue raised in a criminal action, and the resolution of the issue in the civil action is determinative of the outcome of the criminal action. As so defined, we do not see how the motion for the appointment of independent commissioners can serve as a prejudicial question. It is not a main action but a mere incident of the main proceedings; it does not involve an issue that is intimately related to the foreclosure proceedings; and lastly, the motion's resolution is not determinative of the foreclosure's outcome.

5. ID.; ID.; ID.; DETERMINATION OF MORTGAGED PROPERTIES' APPRAISAL VALUE IS NOT MATERIAL

TO THE FORECLOSURE'S VALIDITY; PRINCIPLE, APPLIED IN CASE AT BAR.— We have held in a long line of cases that mere inadequacy of price *per se* will not invalidate a judicial sale of real property. It is only when the inadequacy of the price is grossly shocking to the conscience or revolting to the mind, such that a reasonable man would neither directly nor indirectly be likely to consent to it, that the sale shall be declared null and void. This rule, however, does not strictly apply in the case of extrajudicial foreclosure sales where the right of redemption is available. In *Bank of the Philippine Islands v. Reyes,* involving a similar question arising from the correctness of the mortgaged properties' valuation, we held that the inadequacy of the price at which the mortgaged property was sold does not invalidate the foreclosure sale. x x x In *Hulst v. PR Builders, Inc.,* we explained that when there is a right of redemption, the inadequacy of the price becomes immaterial because the judgment debtor may still re-acquire the property or even sell his right to redeem and thus recover the loss he might have suffered by reason of the "inadequate price" obtained at the execution sale. In this case, the judgment debtor even stands to gain rather than be harmed. x x x We find no reason to depart from these sound and established rulings. We also need not rule on the validity of Metrobank's valuation. Whether Metrobank's reduced valuation is valid or not, or whether the valuation is outrageously lower than its current value, has nothing to do with the foreclosure proceedings. From this perspective, we cannot but conclude that the recourses sought in this case have been intended solely to delay the inevitable – the foreclosure sale and the closure of the collection action – and are an abuse of the processes of this Court.

APPEARANCES OF COUNSEL

Morales Rojas & Risos-Vidal for petitioners.

Perez Calima Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

We are once more faced by a petition filed by debtors who could not pay their indebtedness and who, at the point of foreclosure, sought judicial recourse to delay the inevitable. In this case, the issue used as anchor is the valuation of the mortgage property's appraised value – an issue that hardly carries any significant consequence in extrajudicial foreclosure proceedings. How the delay in the foreclosure has affected the parties is a matter that is not in the record before us, but delay, if it had been the objective sought, came as it has come in many other similar cases. To be sure, the Judiciary has been affected by these cases as they have unnecessarily clogged the dockets of our courts, to the detriment of more important cases equally crying for attention.

The petitioners, Sycamore Ventures Corporation (*Sycamore*) and the spouses Simon D. Paz and Leng Leng Paz, challenge the decision[1] dated May 3, 2006 and the resolution[2] dated June 19, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP No. 88463. The CA reversed and set aside the orders[3] dated August 5, 2004 and November 22, 2004 of the Regional Trial Court (*RTC*), Branch 43, San Fernando, Pampanga, in Civil Case No. 12569.

The Factual Antecedents

Sixteen years ago (or sometime in 1997), Sycamore and the spouses Paz obtained from respondent Metropolitan Bank and Trust Company (*Metrobank*) a credit line of ₱180,000,000.00, secured by 10 real estate mortgages[4] over Sycamore's 11 parcels

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[1] *Rollo*, pp. 464-469; penned by Associate Justice Eliezer R. de los Santos, and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

[2] *Id*. at 470-471.

[3] *Id*. at 472-474 and 475.

[4] *Id*. at 10.

of land,[5] together with their improvements.[6] Sycamore and the spouses Paz withdrew from the credit line the total amount of ₱65,694,914.26, evidenced by 13 promissory notes.[7]

Because the petitioners failed to pay their loan obligations and for violations of the terms and conditions of their 13 promissory notes, Metrobank instituted extrajudicial foreclosure proceedings over the six real estate mortgages, pursuant to Act No. 3135, as amended.[8] The public auction sale was set for various dates – March 22, 2000, April 23, 2000 and May 23, 2000 – but the sale did not take place because Sycamore and the spouses Paz asked for postponements.

Metrobank subsequently restructured Sycamore and the spouses Paz's loan, resulting in the issuance of one promissory note denominated as PN No. 751622 736864.92508.000.99, in lieu of the 13 promissory notes[9] previously issued, and the execution of a single real estate mortgage covering the 12 parcels of land.[10]

Application for Extrajudicial Foreclosure

Despite reminders, Sycamore and the spouses Paz still failed to settle their loan obligations, compelling Metrobank to file a second petition for auction sale, which was set for October 25, 2002.

On October 16, 2002, Sycamore and the spouses Paz once again asked for the postponement of the October 25, 2002 public auction sale; they asked that the sale be moved to November 26, 2002, but this time Metrobank refused to give in.[11]

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[5] *Ibid*.

[6] *Id*. at 28.

[7] *Id*. at 10.

[8] Act No. 3135 – An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

[9] *Rollo*, p. 10.

[10] *Id*. at 11.

[11] *Id*. at 12.

Civil Case No. 12569 for Annulment of Contract and Real Estate Mortgage with Temporary Restraining Order and Injunction

On November 25, 2002, Sycamore and the spouses Paz filed before the RTC, Branch 43, San Fernando Pampanga, a complaint for the annulment of the contract and of the real estate mortgage. They likewise asked for the issuance of a temporary restraining order (*TRO*).

The petitioners disputed Metrobank's alleged unilateral and arbitrary reduction of the mortgaged properties' appraisal value from ₱1,200.00 to ₱300.00-₱400.00 per square meter. They likewise sought the maintenance of the status quo, to enjoin Metrobank, and to prevent it from proceeding with the extrajudicial foreclosure.

On the same day, the Executive Judge issued a 72-hour TRO, directing the sheriff to cease and desist from proceeding with the scheduled public auction.[12] After summary hearing, Judge Carmelita S. Gutierrez-Fruelda, RTC, San Fernando Pampanga, ordered the extension of the TRO to its full 20-day term.[13]

On December 17, 2002, Judge Fruelda issued a writ of preliminary injunction which Metrobank unsuccessfully resisted through a motion for reconsideration that was denied.[14] Thus, Metrobank ran to the CA on a petition for *certiorari*[15] to question the RTC orders for grave abuse of discretion.

The CA dismissed Metrobank's petition for lack of merit and upheld the RTC's issued injunction.

Order for Appointment of Independent Commissioners

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[12] *Id.* at 31.

[13] *Id.* at 12.

[14] *Id.* at 31.

[15] Under Rule 65 of the Rules of Court.

Meanwhile, the proceedings in the main case continued. At the trial, Sycamore and the spouses Paz moved for the appointment of independent commissioners to determine the mortgaged properties' appraisal value.[16] They mainly alleged that Metrobank arbitrarily and unilaterally reduced the mortgaged properties' appraisal value; hence, the need for their reappraisal to determine their true value.

In an order dated August 5, 2004, the RTC granted the petitioners' motion, and again Metrobank was unsuccessful in securing a reconsideration.

Metrobank thus again went to the CA on a petition for *certiorari* under Rule 65, imputing grave abuse of discretion on the RTC for issuing the questioned order. The bank alleged that the appraisal value of the mortgaged properties is not an issue in the proceedings because their value is already a matter of record.

On May 3, 2006, the CA this time granted Metrobank's petition for *certiorari* and set aside the RTC's orders. It found that the appraisal value of the mortgaged properties was not an issue since the real estate mortgage and the promissory note already indicated with certainty the amount of the loan obligation.

It was Sycamore and the spouses Paz this time who filed their motion for reconsideration which the CA denied. Significantly, the CA noted that the determination of the properties' appraisal value has nothing to do with the question of whether the foreclosure proceeding will proceed.

The CA's denial gave rise to the present petition for review on *certiorari*.

The Petition

Sycamore and the spouses Paz contend that the CA erred in setting aside the RTC's order granting their motion for appointment of independent commissioners. They argue that it had the effect of preventing the RTC's determination of a **critical**

[16] *Rollo*, p. 12.

question of fact – *i.e.*, the determination of the mortgaged properties' true valuation – which, they insist, is an issue that needs to be resolved prior to the determination of the foreclosure's validity.

They claim that before resolving the said issue, the RTC has to decide the following prejudicial questions, namely:

(1) Whether Metrobank validly reduced the mortgaged properties' valuation; and

(2) Whether Metrobank can validly foreclose the mortgaged properties at a further reduced valuation.[17]

Lastly, Sycamore and the spouses Paz invoke this Court's intervention to prevent an unfair situation where the mortgage foreclosure, based on Metrobank's arbitrary and unilateral reduction of the properties' appraisal value, would deprive them of all their properties and, at the same time, leave a deficiency of ₱500,000,000.00.

The Issue

The core issue for our determination is whether the determination of the mortgaged properties' appraisal value constitutes a prejudicial question that warrants the suspension of the foreclosure proceedings.

Simply put, is the appraisal value of the mortgaged properties material in the mortgage foreclosure's validity?

The Court's Ruling

We deny the petition for lack of merit. The CA did not err when it set aside the RTC's order granting the motion for appointment of independent commissioners.

Remedies of a secured creditor

A secured creditor may institute against the mortgage debtor either a personal action for the collection of the debt, a real

[17] *Id.* at 37.

action to judicially foreclose the real estate mortgage, or an extrajudicial foreclosure of the mortgage. The remedies, however, are alternative, not cumulative, and the election or use of one remedy operate as a waiver of the others.[18]

We discussed these legal points in *Bachrach Motor Co., Inc. v. Icarangal*[19] and ruled that:

> [I]n the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for a deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election.

In the present case, Metrobank elected the third remedy – the extrajudicial foreclosure of the real estate mortgage.

Extrajudicial foreclosure under Act No. 3135

Extrajudicial foreclosure is governed by Act No. 3135, as amended by Act No. 4118.

It provides in its Section 1 that:

> SECTION 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security

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[18] *Bank of America v. American Realty Corp.*, 378 Phil. 1279, 1291 (1999).

[19] 68 Phil. 287, 294 (1939).

for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

In brief, Act No. 3135 recognizes the right of a creditor to foreclose a mortgage upon the mortgagor's failure to pay his/her obligation. In choosing this remedy, the creditor enforces his lien through the sale on foreclosure of the mortgaged property. The proceeds of the sale will then be applied to the satisfaction of the debt. In case of a deficiency, the mortgagee has the right to recover the deficiency resulting from the difference between the amount obtained in the sale at public auction, and the outstanding obligation at the time of the foreclosure proceedings.[20]

Certain requisites must be established before a creditor can proceed to an extrajudicial foreclosure, namely: *first*, there must have been the failure to pay the loan obtained from the mortgagee-creditor; *second*, the loan obligation must be secured by a real estate mortgage; and *third*, the mortgagee-creditor has the right to foreclose the real estate mortgage either judicially or extrajudicially.

Act No. 3135 outlines the notice and publication requirements and the procedure for the extrajudicial foreclosure which constitute a condition *sine qua non* for its validity. Specifically, Sections 2, 3 and 4 of the law prescribe the formalities of the extrajudicial foreclosure proceeding, which we quote:

SECTION 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

SECTION 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property

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[20] *Caltex Philippines, Inc. v. Intermediate Appellate Court*, G.R. No. 74730, August 25, 1989, 176 SCRA 741, 751.

is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

SECTION 4. The sale shall be made at public auction, between the hours or nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

Act No. 3135 does not require determination of appraised value

All the above provisions are quoted *verbatim* to stress that Act No. 3135 has no requirement for the determination of the mortgaged properties' appraisal value. Nothing in the law likewise indicates that the mortgagee-creditor's appraisal value shall be the basis for the bid price. Neither is there any rule nor any guideline prescribing the minimum amount of bid, nor that the bid should be at least equal to the properties' current appraised value. What the law only provides are the requirements, procedure, venue and the mortgagor's right to redeem the property. When the law does not provide for the determination of the property's valuation, neither should the courts so require, for our duty limits us to the interpretation of the law, not to its augmentation.

Under the circumstances, we fail to see the necessity of determining the mortgaged properties' current appraised value. We likewise do not discern the existence of any prejudicial question, anchored on the mortgaged properties' appraised value, that would warrant the suspension of the foreclosure proceedings.

For greater certainty, a prejudicial question is a prior issue whose resolution rests with another tribunal, but at the same time is necessary in the resolution of another issue in the same case.[21] For example, there is a prejudicial question where there is a civil action involving an issue similar or intimately related to the issue raised in a criminal action, and the resolution of

[21] *Spouses Pahang v. Judge Vestil*, 478 Phil. 189, 198 (2004).

the issue in the civil action is determinative of the outcome of the criminal action.

As so defined, we do not see how the motion for the appointment of independent commissioners can serve as a prejudicial question. It is not a main action but a mere incident of the main proceedings; it does not involve an issue that is intimately related to the foreclosure proceedings; and lastly, the motion's resolution is not determinative of the foreclosure's outcome.

On this point alone, the petition should be denied. But even if Metrobank's reduced appraised value were lesser than the mortgaged properties' current valuation, the petition would still fail.

There is no question in this case that Sycamore and the spouses Paz failed to settle their loan obligations to Metrobank as they fell due. (In fact, there were multiple or repeated failures to pay.) There is likewise no dispute on the total amount of their outstanding loan obligation. Sycamore and the spouses Paz also acknowledged Metrobank's right to foreclose when they asked for the sale's postponement, to quote:

> **The undersigned mortgagor(s) hereby acknowledged(s) that the publication and posting of the Notice of Auction Sale have been completely and regularly complied** with the request(s) that republication and reposting of the same be dispensed with at the discretion of the mortgagee bank and agreed that all expenses incurred by the said mortgagee bank in connection herewith shall be chargeable to his/her/their account(s) and secured by the said mortgage(s).
>
> **The undersigned mortgagor(s) likewise stipulate(s) that, in consideration of the mortgagee's having acceded and agreed to this postponement, he/she/they hereby waive(s), forego(es), quitclaim(s) and set(s) over unto the said mortgagee any and all his/her/their cause or causes of action, claims or demands arising out of or necessarily connected with** the Promissory Note(s), **Real Estate Mortgage Contract(s)** and other credit documents mentioned in the above entitled Petition for Foreclosure of Real Estate Mortgage.[22] [emphases supplied]

[22] *Rollo*, p. 11.

What Sycamore and the spouses Paz only assail in the present petition is the validity of Metrobank's appraisal of the mortgaged properties. Even that issue, if the quoted terms above were to be considered, appears to have been waived "**in consideration of the mortgagee's having acceded and agreed to this postponement**."[23]

Under these facts, how and why to petitioners would still insist on the appraisal valuation as an issue boggles the mind and this is a puzzle that only they have a key to. But whatever may that key or answer be, it is not one that is material to the case below or to the present petition.

Determination of mortgaged properties' appraisal value is not material to the foreclosure's validity

We have held in a long line of cases that mere inadequacy of price *per se* will not invalidate a judicial sale of real property. It is only when the inadequacy of the price is grossly shocking to the conscience or revolting to the mind, such that a reasonable man would neither directly nor indirectly be likely to consent to it, that the sale shall be declared null and void. This rule, however, does not strictly apply in the case of extrajudicial foreclosure sales where the right of redemption is available.

In *Bank of the Philippine Islands v. Reyes*,[24] involving a similar question arising from the correctness of the mortgaged properties' valuation, we held that the inadequacy of the price at which the mortgaged property was sold does not invalidate the foreclosure sale.

In that case, the winning bid price was ₱9,032,960.00 or merely 19% of the alleged current appraisal value of the property pegged at ₱47,536,000.00. Despite the relatively sizeable discrepancy, the Court ruled that the level of the bid price is immaterial in a forced sale because a low price is more beneficial to the mortgage debtor.

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[23] *Ibid*.

[24] G.R. No. 182769, February 1, 2012, 664 SCRA 700, 700-711.

We quote from the relevant portion of this decision:

In the case at bar, the winning bid price of ₱9,032,960.00 is nineteen percent (19%) of the appraised value of the property subject of the extrajudicial foreclosure sale that is pegged at ₱47,536,000.00 which amount, notably, is only an arbitrary valuation made by the appraising officers of petitioner's predecessor-in-interest ostensibly for loan purposes only. Unsettled questions arise over the correctness of this valuation in light of conflicting evidence on record.

xxx xxx xxx

xxx. In the case at bar, other than the mere inadequacy of the bid price at the foreclosure sale, respondent did not allege any irregularity in the foreclosure proceedings nor did she prove that a better price could be had for her property under the circumstances.

Thus, **even if we assume that the valuation of the property at issue is correct, we still hold that the inadequacy of the price at which it was sold at public auction does not invalidate the foreclosure sale**."[25] (emphasis ours)

In *Hulst v. PR Builders, Inc.*,[26] we explained that when there is a right of redemption, the inadequacy of the price becomes immaterial because the judgment debtor may still re-acquire the property or even sell his right to redeem and thus recover the loss he might have suffered by reason of the "inadequate price" obtained at the execution sale. In this case, the judgment debtor even stands to gain rather than be harmed.

These rulings were also applied in *Rabat v. Philippine National Bank*,[27] where the Court used the same reasoning and arrived at the same conclusion:

> It bears also to stress that the mode of forced sale utilized by petitioner was an extrajudicial foreclosure of real estate mortgage which is governed by Act No. 3135, as amended. **An examination of the said law reveals nothing to the effect**

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[25] *Id.* at 709-711.

[26] 558 Phil. 683, 710-711 (2007).

[27] G.R. No. 158755, June 18, 2012, 673 SCRA 383, 395.

> **that there should be a minimum bid price or that the winning bid should be equal to the appraised value of the foreclosed property or to the amount owed by the mortgage debtor. What is clearly provided, however, is that a mortgage debtor is given the opportunity to redeem the foreclosed property "within the term of one year from and after the date of sale.**" In the case at bar, other than the mere inadequacy of the bid price at the foreclosure sale, respondent did not allege any irregularity in the foreclosure proceedings nor did she prove that a better price could be had for her property under the circumstances.

At any rate, we consider it notable enough that PNB's bid price of ₱3,874,800.00 might not even be said to be outrageously low as to be shocking to the conscience. As the CA cogently noted in the second amended decision, that bid price was almost equal to both the ₱4,000,000.00 applied for by the Spouses Rabat as loan, and to the total sum of ₱3,517,380.00 of their actual availment from PNB. [emphasis ours]

We find no reason to depart from these sound and established rulings. We also need not rule on the validity of Metrobank's valuation. Whether Metrobank's reduced valuation is valid or not, or whether the valuation is outrageously lower than its current value, has nothing to do with the foreclosure proceedings. From this perspective, we cannot but conclude that the recourses sought in this case have been intended solely to delay the inevitable – the foreclosure sale and the closure of the collection action – and are an abuse of the processes of this Court. Under these circumstances, the maximum allowable triple costs should be imposed on the petitioners for this abuse in accordance with Section 3, Rule 142 of the Rules of Court, to be paid by counsel for the petitioners. Let counsel also be warned that what happened in this case is a practice that, in a proper administrative proceeding, may be found violative of their duties to the Court.

WHEREFORE, the petition is **DENIED** for lack of merit; the appealed decision of the Court of Appeals dated May 3, 2006 is **AFFIRMED**. Let a copy of this Decision be furnished the Board of Governors, Integrated Bar of the Philippines, for its information.

Triple costs against the petitioners, Sycamore Ventures Corporation and the spouses Simon D. Paz and Leng Leng Paz, to be paid by their counsel of record.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179181. November 18, 2013]

ROMAN CATHOLIC ARCHBISHOP OF MANILA, *petitioner, vs.* **CRESENCIA STA. TERESA RAMOS, assisted by her husband, PONCIANO FRANCISCO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; REQUIREMENTS FOR CONFIRMATION AND REGISTRATION OF IMPERFECT AND INCOMPLETE TITLE UNDER C.A. 141 AND P.D. 1525.— [A]pplicants in a judicial confirmation of imperfect title may register their titles upon a showing that they or their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, or earlier (or for at least 30 years in the case of the RCAM) immediately preceding the filing of the application for confirmation of title. The burden of proof in these cases rests on the applicants who must demonstrate clear, positive and convincing evidence that: (1) the property subject of their

application is alienable and disposable land of the public domain; and (2) their alleged possession and occupation of the property were of the length and of the character required by law.

2. ID.; ID.; ID.; PERFORMANCE OF SPECIFIC OVERT ACTS TO SHOW ACTUAL POSSESSION OF THE PROPERTY AT THE TIME OF THE FILING OF THE APPLICATION IS REQUIRED; PETITIONER FAILED TO SHOW ANY SPECIFIC ACT.— [T]o prove its compliance with Section 48(b)'s possession requirement, the RCAM had to show that it performed specific overt acts in the character an owner would naturally exercise over his own property. Proof of **actual possession of the property at the time of the filing of the application** is required because the phrase "adverse, continuous, open, public, and in concept of owner," the RCAM used to describe its alleged possession, is a conclusion of law, not an allegation of fact. "Possession is open when it is patent, visible, apparent [and] notorious x x x continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when [the possession is characterized by acts manifesting] exclusive dominion over the land and an appropriation of it to [the applicant's] own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood." Very noticeably, the RCAM failed to show or point to any specific act characterizing its claimed possession in the manner described above. The various documents that it submitted, as well as the bare assertions it made and those of its witnesses, that it had been in open, continuous, exclusive and notorious possession of the property, hardly constitute the "well-nigh incontrovertible" evidence required in cases of this nature.

3. ID.; ID.; ID.; THAT THE PROPERTY IS ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN MUST BE ESTABLISHED BY THE EXISTENCE OF THE POSITIVE ACT OF THE GOVERNMENT.— [W]e find the RCAM's evidence to be insufficient since it failed to comply with the first and most basic requirement – proof of the alienable and disposable character of the property. Surprisingly, no finding or pronouncement referring to this requirement was ever made in the decisions of the RTC and the CA. To prove that the property is alienable and disposable, the RCAM was bound to

establish "the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute." It could have also secured a certification from the government that the property applied for was alienable and disposable.

4. ID.; ID.; ID.; THE COURT HAS THE AUTHORITY TO CONFIRM THE TITLE OF THE OPPOSITOR IN A LAND REGISTRATION PROCEEDING DEPENDING ON THE EVIDENCE PRESENTED.— Section 29 of P.D. No. 1529 gives the court the authority to confirm the title of either the applicant or the oppositor in a land registration proceeding depending on the conclusion that the evidence calls for. Specifically, Section 29 provides that the court "*x x x after considering the evidence x x x finds that the applicant* ***or the oppositor*** *has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant,* ***or the oppositor****, to the land x x x.* Thus, contrary to the RCAM's contention, the CA has the authority to confirm the title of Cresencia, as the oppositor, over the property. This, of course, is subject to Cresencia's satisfaction of the evidentiary requirement of P.D. No. 1529, in relation with C.A. No. 141 in support of her own claim of imperfect title over the property.

5. ID.; ID.; ID.; ID.; WHERE THE OPPOSITOR FAILED TO COMPLY WITH THE REQUIREMENTS FOR CONFIRMATION OF TITLE.— While we uphold the CA's authority to confirm the title of the oppositor in a confirmation and registration proceedings, we cannot agree, however, with the conclusion the CA reached on the nature of Cresencia's possession of the property. Under the same legal parameters we used to affirm the RTC's denial of the RCAM's application, we also find insufficient the evidence that Cresencia presented to prove her claimed possession of the property in the manner and for the period required by C.A. No. 141. Like the RCAM, Cresencia was bound to adduce evidence that irrefutably proves her compliance with the requirements for confirmation of title. To our mind, she also failed to discharge this burden of proof; thus, the CA erred when it affirmed the contrary findings of the RTC and confirmed Cresencia's title over the property. x x x *First,* the various pieces of documentary evidence that

Cresencia presented to support her own claim of imperfect title hardly proved her alleged actual possession of the property. x x x *Second,* while Cresencia registered in her name the adjoining lot (which they had been occupying at the time the RCAM filed its application and where their La Compania Refreshment Store stood), she never had the property registered in her name. Neither did Cresencia or her predecessors-in-interest declare the property for taxation purposes nor had the property surveyed in their names to properly identify it and to specifically determine its metes and bounds. The declaration for taxation purposes of property in their names would have at least served as proof that she or her predecessors-in-interest had a claim over the property that could be labeled as "possession" if coupled with proof of actual possession. *Finally,* the testimonies of Ponciano and Florencia Francisco Mariano (Cresencia's daughter) on the nature and duration of their family's alleged possession of the property, other than being self-serving, were mere general statements and could not have constituted the factual evidence of possession that the law requires. They also failed to point out specific acts of dominion or ownership that were performed on the property by the parents of Cresencia, their predecessors-in-interest. x x x. At any rate, even if we were to consider these pieces of evidence to be sufficient, which we do not, confirmation and registration of title over the property in Cresencia's name was still improper in the absence of competent and persuasive evidence on record proving that the property is alienable and disposable. For all these reasons, we find that the CA erred when it affirmed the RTC's ruling on this matter and confirmed Cresencia's imperfect title to the property.

APPEARANCES OF COUNSEL

Veronica Gutierrez-De Vera for petitioner.
Amoroso Amoroso and Associates Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court the challenge to the April 10, 2007 decision[2] and the August 9, 2007 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 84646. This CA decision affirmed, with modification, the January 17, 2005 decision[4] of the Regional Trial Court, Branch 156 of Pasig City (*RTC*), in LRC Case No. N-5811 that denied the application for confirmation and registration of title filed by the petitioner, Roman Catholic Archbishop of Manila *(RCAM)*.

The Factual Antecedents

At the core of the controversy in the present petition are two parcels of land — **Lot 1** with an area of 34 square meters and **Lot 2** with an area of 760 square meters — covered by amended Plan PSU-223919[5] *(property)*, both located in what used to be Barrio Bagumbayan, Taguig, Rizal.

On September 15, 1966, the RCAM filed before the RTC, (then Court of First Instance of Rizal, Branch 11), acting as a land registration court, an application for registration of title[6] *(application)* of property, pursuant to Commonwealth Act *(C.A.)* No. 141 (the Public Land Act).[7] On October 4, 1974, the RCAM

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[1] *Rollo*, pp. 9-34.

[2] Penned by Associate Justice Lucenito N. Tagle, and concurred in by Associate Justices Amelita G. Tolentino and Sixto Marella, Jr.; *id.* at 56-74.

[3] *Id.* at 85.

[4] Penned by Judge Alex L. Quiroz; *id.* at 43-54.

[5] Approved on July 14, 1966; Records, Vol. I, p. 75.

[6] *Id.* at 2-3. At the date set for the initial hearing, the Heirs of Hermogenes Rodriguez appeared to oppose the RCAM's application; the RTC, subsequently, dismissed their opposition for failure to appear during the trial (opposition dated March 20, 1967, Records, Vol. I, pp. 22-24).

[7] Enacted on November 7, 1936, but became effective on December 1, 1936.

amended its application[8] by reducing Lot 2 to 760 square meters (from 1,832 square meters).

In its amended application, the RCAM claimed that it owned the property; that it acquired the property during the Spanish time; and that since then, it has been in open, public, continuous and peaceful possession of it in the concept of an owner. It added that to the best of its knowledge and belief, no mortgage or encumbrance of any kind affects the property, and that no person has any claim, legal or equitable, on the property.

The RCAM attached the following documents to support its application: amended plan Psu-223919; technical description of Lots 1 and 2;[9] surveyor's certificate;[10] and Tax Declaration No. 9551 issued on September 6, 1966.[11]

On May 22, 1992, the Republic of the Philippines *(Republic)*, through the Director of Lands, filed an opposition[12] to the

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[8] Per the CA's April 10, 2007 decision, the RCAM's amended application was filed on October 7, 1974; *rollo*, p. 58. See also Records, Vol. I, pp. 142-143.

The RCAM filed the amended application in view of the opposition filed by the Province of Rizal, arguing that: (1) portion of the property was part of the Taguig-Alabang road; and (2) another portion was a salvage zone that includes the area of public land reserved for the Laguna Lake Development Authority (*id*. at 25-26). The RCAM amended its application, deleting from Lot 2 the portion claimed by the Province of Rizal. The Province of Rizal subsequently dropped its opposition.

On January 1, 1978, Maura Garcia filed an opposition to the RCAM's application, claiming ownership of a portion of Lot 2 consisting of 170 square meters. The RCAM subsequently manifested to the trial court that it planned to pursue a compromise agreement with Garcia regarding her claim. The parties, however, failed to pursue the planned agreement. Thus, by an order dated April 4, 1984, the RTC archived the case. On March 20, 1992, the RTC revived the case upon motion of the RCAM (*id*. at 182-185, 196, 205, 209 and 212).

[9] *Id*. at 148-149.

[10] *Id*. at 145-146.

[11] *Id.* at 8.

[12] *Id*. at 220-221. The record is silent as to what happened to the Republic's opposition.

application. The Republic claimed that the property is part of the public domain and cannot be subject to private appropriation.

On August 18, 1992, respondent Cresencia Sta. Teresa Ramos, through her husband Ponciano Francisco, filed her opposition[13] to the RCAM's application. She alleged that the property formed part of the entire property that her family owns and has continuously possessed and occupied from the time of her grandparents, during the Spanish time, up to the present.

Cresencia submitted the following documents,[14] among others, to support her requested confirmation of imperfect title:

1.) the death certificates of Cipriano Sta. Teresa and Eulogia Sta. Teresa *Vda. de* Ramos (Cresencia's parents);

2.) her marriage certificate;

3.) their children's birth certificates;

4.) certificates of ownership covering two *bancas;*

5.) photographs of these two *bancas* with her youngest child while standing on the property and showing the location of the RCAM's church relative to the location of the property;

6.) photographs of a pile of gravel and sand (allegedly for their gravel and sand business) on the property;

7.) photographs of the RCAM's "*bahay ni Maria*" standing on the property;

8.) a photograph of the plaque awarded to Ponciano by ESSO Standard Philippines as sole dealer of its gasoline products in Bagumbayan, Taguig, Rizal;

9.) a photograph of their "La Compania Refreshment Store" standing on their titled lot adjacent to the property;

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[13] Dated August 14, 1992, *rollo*, pp. 151-157.

[14] Records, Vol. II, pp. 389-411.

10.) a photograph of the certificate of dealership given to Ponciano by a Tobacco company for his dealership in Bagumbayan, Taguig, Rizal; and

11.) the registration certificate for their family's sheet manufacturing business situated in Bagumbayan, Taguig,[15] Rizal.

The RCAM presented in evidence the following documents, in addition to those already on record:[16] tax declarations issued in its name in 1948, 1973, 1981, 1990, 1993, and 1999;[17] the certified true copy of Original Certificate of Title No. 0082 covering the lot in the name of Garcia, which adjoins the property on the south; and the affidavit of Garcia confirming the RCAM's ownership of the property.[18] It likewise submitted several testimonial evidence to corroborate its ownership and claim of possession of the property.

The ruling of the RTC

In its decision of January 17, 2005,[19] the RTC denied the RCAM's application for registration of title. The RTC held that the RCAM failed to prove actual possession and ownership of the property applied for. The RTC pointed out that the RCAM's

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[15] As spelled in the certificate of registration; *id.* at 398.

[16] On June 16, 1993, the RTC rendered a decision confirming Cresencia's title over the property (penned by Judge, now Supreme Court Associate Justice, Martin S. Villarama, Jr., attached as Annex "A" to the RCAM's Memorandum; *rollo*, succeeding pages after p. 442). (See also Records, Vol. II, pp. 430-434.)

The RCAM appealed the case before the CA which, by decision dated March 19, 1999, set aside the RTC's June 16, 1993 decision and remanded the case to the court *a quo* for further proceedings (Records, Vol. III, pp. 2-6).

The RCAM submitted these additional supporting pieces of evidence after the case was remanded.

[17] Tax Declaration Nos. 5893, 10111, B-001-01164, C-001-00895, D-001-00766, and EL-001-00655, respectively; Records, Vol. III, pp. 180-186.

[18] *Id.* at 174-175, 177.

[19] *Supra* note 4.

only overt act on the property that could be regarded as evidence of actual possession was its construction of the "*bahay ni Maria*" in 1991. Even this act, according to the RTC, did not sufficiently satisfy the actual possession requirement of the law as the RCAM did not show how and in what manner it possessed the property prior to 1991. The RCAM's tax declarations were also inconclusive since they failed to prove actual possession.

In contrast, the numerous businesses allegedly conducted by Cresencia and her family on the property, the various pieces of documentary evidence that she presented, and the testimony of the RCAM's own witnesses convinced the RTC that she and her family actually possessed the property in the manner and for the period required by law.

This notwithstanding, the RTC refused to order the issuance of the title in Cresencia's name. The RTC held that Cresencia failed to include in her opposition a prayer for issuance of title.

The RCAM assailed the RTC's decision before the CA.

The CA ruling

In its April 10, 2007 decision,[20] the CA affirmed with modification the RTC's January 17, 2005 ruling. The CA confirmed Cresencia's incomplete and imperfect title to the property, subject to her compliance with the requisites for registration of title.

The CA agreed with the RTC that the totality of the evidence on record unquestionably showed that Cresencia was the actual possessor and occupant, in the concept of an owner, of the disputed property. The CA held that Cresencia's use of the property since the Spanish time (through her predecessors-in-interest), as confirmed by the RCAM's witnesses, clearly demonstrated her dominion over the property. Thus, while she failed to register the property in her name or declare it for taxation purposes as pointed out by the RCAM, the CA did not consider this non-declaration significant to defeat her claim. To the CA, Cresencia merely tolerated the RCAM's temporary use of the property

[20] *Supra* note 2.

for lack of any urgent need for it and only acted to protect her right when the RCAM applied for registration in its name. Thus, the CA declared that Cresencia correctly waited until her possession was disturbed before she took action to vindicate her right.

The CA similarly disregarded the additional tax declarations that the RCAM presented in support of its application. The CA pointed out that these documents hardly proved the RCAM's alleged ownership of or right to possess the property as it failed to prove actual possession. Lastly, the CA held that it was bound by the findings of facts and the conclusions arrived at by the RTC as they were amply supported by the evidence.

The RCAM filed the present petition after the CA denied its motion for reconsideration.[21]

Assignment of Errors

The RCAM argues before us that the CA erred and gravely abused its discretion in:[22]

1. confirming the incomplete and imperfect title of the oppositor when the magnitude of the parties' evidence shows that the oppositors merely had pretended possession that could not ripen into ownership;
2. failing to consider that the RCAM had continuous, open and notorious possession of the property in the concept of an owner for a period of thirty (30) years prior to the filing of the application; and
3. confirming the oppositor's incomplete and imperfect title despite her failure to comply with the substantial and procedural requirements of the Public Land Act.

The Issue

In sum, the core issue for our resolution is who — between the RCAM and Cresencia - is entitled to the benefits of C.A.

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[21] *Supra* note 3.

[22] *Rollo,* pp. 20-21.

No. 141 and Presidential Decree (*P.D.*) No. 1529 for confirmation and registration of imperfect title.

The Court's Ruling

Preliminary considerations: nature of the issues; factual-issue-bar rule

In her comment,[23] Cresencia primarily points out that the present petition essentially questions the CA's appreciation of the evidence and the credibility of the witnesses who attested to her actual, public and notorious possession of the property. She argues that these are questions of fact that are not proper for a Rule 45 petition. In addition, the findings of the RTC were well supported by the evidence, had been affirmed by the CA, and are thus binding on this Court.

We are not entirely convinced of the merits of what Cresencia pointed out.

The settled rule is that the jurisdiction of this Court over petitions for review on *certiorari* is limited to the review of questions of law and not of fact. "A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted. A question of fact exists when a doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence x x x as well as their relation to each other and to the whole, and the probability of the situation."[24]

An examination of the RCAM's issues shows that the claimed errors indeed primarily question the sufficiency of the evidence

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[23] Comment dated June 3, 2008; *id* at 104-148.

[24] *Republic v. Vega,* G.R. No. 177790, January 17, 2011, 639 SCRA 541, 547, citing *New Rural Bank of Guimba (N.E.) Inc. v. Fermina S. Abad and Rafael Susan,* G.R. No. 161818, August 20, 2008, 562 SCRA 503. See also *Buenaventura v. Pascual,* G.R. No. 168819, November 27, 2008, 572 SCRA 143, 157.

supporting the lower courts' conclusion that Cresencia, and not the RCAM, had been in possession of the property in the manner and for the period required by law. When the presented question centers on the sufficiency of the evidence, it is a question of fact[25] and is barred in a Rule 45 petition.

Nevertheless, jurisprudence recognizes certain exceptions to the settled rule. When the lower courts grossly misunderstood the facts and circumstances that, when correctly appreciated, would warrant a different conclusion, a review of the lower courts' findings may be made.[26] This, in our view, is the exact situation in the case as our discussions below will show.

Moreover, the RCAM also questions the propriety of the CA's confirmation of Cresencia's title over the property although she was not the applicant and was merely the oppositor in the present confirmation and registration proceedings. Stated in question form — was the CA justified under the law and jurisprudence in its confirmation of the oppositor's title over the property? This, in part, is a question of law as it concerns the correct application of law or jurisprudence to recognized facts.

Hence, we find it imperative to resolve the petition on the merits.

Requirements for confirmation and registration of imperfect and incomplete title under C.A. No. 141 and P.D. No. 1529

C.A. No. 141 governs the classification and disposition of lands of the public domain. Section 11 of C.A. No. 141 provides, as one of the modes of disposing public lands that are suitable for agriculture, the "confirmation of imperfect or incomplete titles." Section 48, on the other hand, enumerates those who

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[25] See *Republic v. Javier,* G.R. No. 179905, August 19, 2009, 596 SCRA 481, 491.

[26] *Republic v. East Silverlane Realty Development Corporation,* G.R. No. 186961, February 20, 2012, 666 SCRA 401, 411. See also *Republic v. Javier, supra,* at 492.

are considered to have acquired an imperfect or incomplete title over public lands and, therefore, entitled to confirmation and registration under the Land Registration Act.

The RCAM did not specify the particular provision of C.A. No. 141 under which it anchored its application for confirmation and registration of title. Nevertheless, the allegations in its application and amended application readily show that it based its claim of imperfect title under Section 48(b) of C.A. No. 141. As amended by P.D. No. 1073 on January 25, 1977, Section 48(b) of C.A. No. 141 currently provides:

> Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance [now Regional Trial Court] of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> xxx xxx xxx
>
> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. [emphases and italics ours]

Prior to the amendment introduced by P.D. No. 1073, Section 48(b) of C.A. No. 141, then operated under the Republic Act *(R.A.)* No. 1942 (June 22, 1957) amendment which reads:

> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, **for at least**

thirty years, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. [emphases and italics ours]

Since the RCAM filed its application on September 15, 1966 and its amended application on October 4, 1974, Section 48(b) of C.A. No. 141, as amended by R.A. No. 1942 (which then required possession of thirty years), governs.

In relation to C.A. No. 141, Section 14 of Presidential Decree *(P.D.)* No. 1529 or the "Property Registration Decree" specifies those who are qualified to register their incomplete title over an alienable and disposable public land under the Torrens system. P.D. No. 1529, which was approved on June 11, 1978, superseded and codified all laws relative to the registration of property.

The pertinent portion of Section 14 of P.D. No. 1529 reads:

Section 14. Who may apply. — The following persons may file in the proper Court of First Instance [now *Regional Trial Court*] an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier. [italics ours]

Under these legal parameters, applicants in a judicial confirmation of imperfect title may register their titles upon a showing that they or their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition or ownership,[27] since

[27] See *Buenaventura v. Pascual, supra* note 24, at 159; *Republic v. Ching*, G.R. No. 186166, October 20, 2010, 634 SCRA 415, 424; and *Llanes v. Republic*, G.R. No. 177947, November 27, 2008, 572 SCRA 258, 267.

June 12, 1945, or earlier (or for at least 30 years in the case of the RCAM) immediately preceding the filing of the application for confirmation of title. The burden of proof in these cases rests on the applicants who must demonstrate clear, positive and convincing evidence that: (1) the property subject of their application is alienable and disposable land of the public domain; and (2) their alleged possession and occupation of the property were of the length and of the character required by law.[28]

On the issue of whether the RCAM is entitled to the benefits of C.A. No. 141 and P.D. No. 1529

Reiterating its position before the RTC and the CA, the RCAM now argues that it actually, continuously, openly and notoriously possessed the property since time immemorial. It points out that its tax declarations covering the property, while not conclusive evidence of ownership, are proof of its claim of title and constitute as sufficient basis for inferring possession.

For her part, Cresencia counters that the RCAM failed to discharge its burden of proving possession in the concept of an owner. She argues that the testimonies of the RCAM's witnesses were replete with inconsistencies and betray the weakness of its claimed possession. Cresencia adds that at most, the RCAM's possession was by her mere tolerance which, no matter how long, can never ripen into ownership. She also points out that the RCAM's tax declarations are insufficient proof of possession as they are not, by themselves, conclusive evidence of ownership.

We do not see any merit in the RCAM's contentions.

The RTC and the CA, as it affirmed the RTC, dismissed the RCAM's application for its failure to comply with the second requirement – possession of the property in the manner and for the period required by law.

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[28] See *Buenaventura v. Pascual, supra,* at 159; and *Republic of the Philippines v. Martin T. Ng,* G.R. No. 182449, March 6, 2013.

We find no reason to disturb the RTC and the CA findings on this point. They had carefully analyzed and weighed each piece of the RCAM's evidence to support its application and had extensively explained in their respective decisions why they could not give weight to these pieces of evidence. Hence, we affirm their denial of the RCAM's application. For greater certainty, we expound on the reasons below.

a. The RCAM failed to prove possession of the property in the manner and for the period required by law

The possession contemplated by Section 48(b) of C.A. No. 141 is actual, not fictional or constructive. In *Carlos v. Republic of the Philippines*,[29] the Court explained the character of the required possession, as follows:

> The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.**

Accordingly, to prove its compliance with Section 48(b)'s possession requirement, the RCAM had to show that it performed specific overt acts in the character an owner would naturally exercise over his own property. Proof of **actual possession of the property at the time of the filing of the application** is

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[29] 505 Phil. 778, 783-784, citing *Republic v. Alconaba*, 427 SCRA 211 (2004); emphasis ours.

required because the phrase "adverse, continuous, open, public, and in concept of owner," the RCAM used to describe its alleged possession, is a conclusion of law,[30] not an allegation of fact. "Possession is open when it is patent, visible, apparent [and] notorious x x x continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when [the possession is characterized by acts manifesting] exclusive dominion over the land and an appropriation of it to [the applicant's] own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood."[31]

Very noticeably, the RCAM failed to show or point to any specific act characterizing its claimed possession in the manner described above. The various documents that it submitted, as well as the bare assertions it made and those of its witnesses, that it had been in open, continuous, exclusive and notorious possession of the property, hardly constitute the "well-nigh incontrovertible" evidence required in cases of this nature.[32] We elaborate below on these points.

First, the tax declarations issued in the RCAM's name in 1948, 1966, 1977, 1984, 1990, 1993 and 1999 did not in any way prove the character of its possession over the property. Note that the settled rule is that tax declarations are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence showing actual, public and adverse possession.[33] The declaration for taxation purposes of property in the names of applicants for registration or of their predecessors-in-interest may constitute collaborating evidence

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[30] *Republic v. East Silverlane Realty Development Corporation, supra* note 26, at 421.

[31] *Tan v. Republic*, G.R. No. 193443, April 16, 2012, 669 SCRA 499, 509.

[32] *Republic of the Phils. v. Court of Appeals*, 398 Phil. 911, 923 (2000).

[33] *Arbias v. Republic*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 593; and *Tan v. Republic, supra* note 32, at 510.

only when coupled with other acts of possession and ownership;[34] standing alone, it is inconclusive.

This rule applies even more strongly in this case since the RCAM's payments of taxes due on the property were inconsistent and random. Interestingly, while the RCAM asserts that it had been in possession of the property since the Spanish time, the earliest tax declaration that it could present was that issued in 1948. Also, when it filed its application in 1966 and its amended application in 1974, the RCAM presented only two tax declarations (issued in 1948 and 1966) covering the property. And since then, up to the issuance of the January 17, 2005 decision of the RTC, the RCAM presented only five other tax declarations – those issued in 1977, 1984, 1990, 1993 and 1999. The case of *Tan v. Republic*[35] teaches us that this type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.

Second, even if we were to consider the RCAM's tax declarations as basis for inferring possession,[36] the RCAM still failed to prove actual possession of the property for the required duration. As already noted, the earliest tax declaration that it presented was for 1948. We are in fact inclined to believe that the RCAM first declared the property in its name only in 1948 as this tax declaration does not appear to have cancelled any previously-issued tax declaration. Thus, when it filed its application in 1966, it was in possession of the property for only eighteen years, counted from 1948. Even if we were to count the possession period from the filing of its amended application in 1974, its alleged possession (which was only for twenty-six years counted from 1948) would still be short of the

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[34] *Republic v. East Silverlane Realty Development Corporation, supra* note 26, at 421.

[35] *Supra* note 32, at 509, citing *Wee v. Republic of the Philippines,* G.R. No. 177384, December 8, 2009, 608 SCRA 72.

[36] *Republic v. Heirs of Doroteo Montoya,* G.R. No. 195137, June 13, 2012, 672 SCRA 576, 586.

thirty-year period required by Section 48(b) of C.A. No. 141, as amended by R.A. No. 1942. The situation would be worse if we were to consider the amendment introduced by P.D. No. 1073 to Section 48(b) where, for the RCAM's claimed possession of the property to give rise to an imperfect title, this possession should have commenced on June 12, 1945 or earlier.

Third, the amended plan Psu-223919, technical description for Lots 1 and 2, and surveyor's certificate only prove the identity of the property that the RCAM sought to register in its name.[37] While these documents plot the location, the area and the boundaries of the property, they hardly prove that the RCAM actually possessed the property in the concept of an owner for the required duration. In fact, the RCAM seemed to be uncertain of the exact area it allegedly possesses and over which it claims ownership. The total area that the RCAM applied for, as stated in its amended application and the amended survey plan, was 794 square meters (34 square meters for Lot 1 and 760 square meters for Lot 2). Yet, in its various tax declarations issued even after it filed its amended application, the total area declared under its name was still 1,832 square meters. Notably, the area stated in its 1948 tax declaration was only 132.30 square meters, while the area stated in the subsequently issued tax declaration (1966) was 1,832 square meters. Significantly, the RCAM did not account for or provide sufficient explanation for this increase in the area; thus, it appeared uncertain on the specific area claimed.

Fourth, the RCAM did not build any permanent structure or any other improvement that clearly announces its claim of ownership over the property. Neither did it account for any act of occupation, development, maintenance or cultivation for the duration of time it was allegedly in possession of it. The "*bahay ni Maria*" where the RCAM conducts its fiesta-related and Lenten activities could hardly satisfy the possession requirement of C.A. No. 141. As found out by the CA, this structure was constructed only in 1991 and not at the time of, or prior to, the filing of its application in 1966.

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[37] *Arbias v. Republic*, *supra* note 34, at 594.

Last, the RCAM's testimonial evidence hardly supplemented the inherent inadequacy of its documentary evidence. While apparently confirming the RCAM's claim, the testimonies were undoubtedly hearsay and were not based on personal knowledge of the circumstances surrounding the RCAM's claimed actual, continuous, exclusive and notorious possession.

b. The RCAM failed to prove that the property is alienable and disposable land of the public domain

Most importantly, we find the RCAM's evidence to be insufficient since it failed to comply with the first and most basic requirement – proof of the alienable and disposable character of the property. Surprisingly, no finding or pronouncement referring to this requirement was ever made in the decisions of the RTC and the CA.

To prove that the property is alienable and disposable, the RCAM was bound to establish "the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute."[38] It could have also secured a certification from the government that the property applied for was alienable and disposable.[39] Our review of the records shows that this evidence is fatally absent and we are in fact disappointed to note that both the RTC and the CA appeared to have simply assumed that the property was alienable and disposable.

We cannot tolerate this kind of approach for two basic reasons. *One,* in this jurisdiction, all lands belong to the State regardless

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[38] *Aranda v. Republic,* G.R. No. 172331, August 24, 2011, 656 SCRA 140, 147. See also *Republic v. Serrano,* G.R. No. 183063, February 24, 2010, 613 SCRA 537, 545-546, citing *Republic of the Philippines v. Court of Appeals and Naguit,* G.R. No. 144507, January 17, 2005, 448 SCRA 442.

[39] See *Aranda v. Republic, supra,* at 147.

of their classification.[40] This rule, more commonly known as the Regalian doctrine, applies with equal force even to private unregistered lands, unless the contrary is satisfactorily shown. *Second,* unless the date when the property became alienable and disposable is specifically identified, any determination on the RCAM's compliance with the second requirement is rendered useless as any alleged period of possession prior to the date the property became alienable and disposable can never be counted in its favor as any period of possession and occupation of public lands in the concept of owner, no matter how long, can never ripen into ownership.[41]

On this ground alone, the RTC could have outrightly denied the RCAM's application.

On the CA's authority to confirm the title of the oppositor in land registration proceedings

The RCAM next argues that the CA's act of confirming Cresencia's title over the property is contrary to law and jurisprudence. The RCAM points out that it filed the application for registration of title under the provisions of C.A. No. 141 or alternatively under P.D. No. 1529; both statutes dictate several substantive and procedural requirements that must first be complied with before title to the property is confirmed and registered. In affirming Cresencia's title without any evidence showing her compliance with these requirements, it claims that the CA, in effect, made Cresencia the applicant entitled to the benefits of the land registration proceedings that it initiated before the lower court.

We differ with this view.

Section 29 of P.D. No. 1529 gives the court the authority to confirm the title of either the applicant or the oppositor in a

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[40] *Republic v. Ching, supra* note 27, at 424; *Buenaventura v. Pascual, supra* note 24, at 160; and *Aranda v. Republic, supra* note 39, at 146.

[41] *Republic of the Philippines v. Lao,* 453 Phil. 189, 199 (2003) (citation omitted); *Buenaventura v. Pascual, supra* note 24, at 160.

land registration proceeding depending on the conclusion that the evidence calls for. Specifically, Section 29 provides that the court *"x x x after considering the evidence x x x finds that the applicant* ***or the oppositor*** *has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant,* ***or the oppositor****, to the land x x x."* (emphases and italics ours)

Thus, contrary to the RCAM's contention, the CA has the authority to confirm the title of Cresencia, as the oppositor, over the property. This, of course, is subject to Cresencia's satisfaction of the evidentiary requirement of P.D. No. 1529, in relation with C.A. No. 141 in support of her own claim of imperfect title over the property.

The issue of whether Cresencia is entitled to the benefits of C.A. No. 141 and P.D. No. 1529

The RCAM lastly argues that the evidence belies Cresencia's claim of continuous, open and notorious possession since the Spanish time. The RCAM points out that, *first,* Cresencia failed to declare for taxation purposes the property in her name, thus effectively indicating that she did not believe herself to be its owner. *Second,* Cresencia did not have the property surveyed in her name so that she could assert her claim over it and show its metes and bounds. *Third,* Cresencia did not register the property in her name although she previously registered the adjoining lot in her name. *Fourth,* Cresencia did not construct any permanent structure on the property and no traces of the businesses allegedly conducted by her and by her family on it could be seen at the time it filed its application. *And fifth,* Cresencia did not perform any act of dominion that, by the established jurisprudential definition, could be sufficiently considered as actual possession

We agree with the RCAM on most of these points.

While we uphold the CA's authority to confirm the title of the oppositor in a confirmation and registration proceedings,

we cannot agree, however, with the conclusion the CA reached on the nature of Cresencia's possession of the property.

Under the same legal parameters we used to affirm the RTC's denial of the RCAM's application, we also find insufficient the evidence that Cresencia presented to prove her claimed possession of the property in the manner and for the period required by C.A. No. 141. Like the RCAM, Cresencia was bound to adduce evidence that irrefutably proves her compliance with the requirements for confirmation of title. To our mind, she also failed to discharge this burden of proof; thus, the CA erred when it affirmed the contrary findings of the RTC and confirmed Cresencia's title over the property.

We arrive at this conclusion for the reasons outlined below.

First, the various pieces of documentary evidence that Cresencia presented to support her own claim of imperfect title hardly proved her alleged actual possession of the property. Specifically, the certificates of marriage, birth and death did not particularly state that each of these certified events, *i.e.*, marriage, birth and death, in fact transpired on the claimed property; at best, the certificates proved the occurrence of these events in Bagumbayan, Taguig, Rizal and on the stated dates, respectively.

Similarly, the certificate of ownership of two *bancas* in the name of Ponciano, the registration certificate for their family's sheet manufacturing business, the photograph of the certificate of dealership in the name of Ponciano given by a tobacco company, and the photograph of the plaque awarded to Ponciano by ESSO Standard Philippines as sole dealer of its gasoline products did not prove that Cresencia and her family conducted these businesses on the disputed property itself. Rather, they simply showed that at one point in time, Cresencia and her family conducted these businesses in Bagumbayan, Taguig, Rizal. In fact, Cresencia's claim that they conducted their gasoline dealership business on the property is belied by the testimony of a witness

who stated that the gas station was located north (or the other side) of Cresencia's titled lot and not on the property.[42]

The presence on the property, as shown by photographs, of Cresencia's daughter, of the two *bancas* owned by her family, and of the pile of gravel and sand they allegedly used in their gravel and sand business also hardly count as acts of occupation, development or maintenance that could have been sufficient as proof of actual possession. The presence of these objects and of Cresencia's daughter on the property was obviously transient and impermanent; at most, they proved that Cresencia and her family used the property for a certain period of time, albeit, briefly and temporarily.

Finally, the records show that the La Compania Refreshment Store business (that they allegedly conducted on the property) actually stood on their titled lot adjoining the property.

Second, while Cresencia registered in her name the adjoining lot (which they had been occupying at the time the RCAM filed its application and where their La Compania Refreshment Store stood), she never had the property registered in her name. Neither did Cresencia or her predecessors-in-interest declare the property for taxation purposes nor had the property surveyed in their names to properly identify it and to specifically determine its metes and bounds. The declaration for taxation purposes of property in their names would have at least served as proof that she or her predecessors-in-interest had a claim over the property[43] that could be labeled as "possession" if coupled with proof of actual possession.

Finally, the testimonies of Ponciano and Florencia Francisco Mariano (Cresencia's daughter) on the nature and duration of their family's alleged possession of the property, other than being self-serving, were mere general statements and could not have constituted the factual evidence of possession that the law requires. They also failed to point out specific acts of dominion

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[42] TSN, November 9, 2000, p. 10.

[43] *Republic v. Guinto-Aldana,* G.R. No. 175578, August 11, 2010, 628 SCRA 210, 225.

or ownership that were performed on the property by the parents of Cresencia, their predecessors-in-interest. They likewise failed to present any evidence that could have corroborated their alleged possession of the property from the time of their grandfather, Cipriano, who acquired the property from its previous owner, Petrona Sta. Teresa. Interestingly, other than Ponciano and Florencia, none of the witnesses on record seemed to have known that Cresencia owns or at least claims ownership of the property.

At any rate, even if we were to consider these pieces of evidence to be sufficient, which we do not, confirmation and registration of title over the property in Cresencia's name was still improper in the absence of competent and persuasive evidence on record proving that the property is alienable and disposable.

For all these reasons, we find that the CA erred when it affirmed the RTC's ruling on this matter and confirmed Cresencia's imperfect title to the property.

WHEREFORE, in light of these considerations, we hereby **DENY** the petition. We **AFFIRM with MODIFICATION** the decision dated April 10, 2007 and the resolution dated August 9, 2007 of the Court of Appeals in CA-G.R. CV No. 84646 to the extent described below:

1. We **AFFIRM** the decision of the Court of Appeals as it affirmed the January 17, 2005 decision of the Regional Trial Court of Pasig City, Branch 156, in LRC Case No. N-5811 that **DENIED** the application for confirmation and registration of title filed by the petitioner, Roman Catholic Archbishop of Manila; and
2. We **REVERSE** and **SET ASIDE** the confirmation made by the Court of Appeals of the title over the property in the name of respondent Cresencia Sta. Teresa Ramos for lack of sufficient evidentiary basis.

Costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

EN BANC

[A.M. No. 14155-Ret. November 19, 2013]

RE: APPLICATION FOR SURVIVORSHIP PENSION BENEFITS UNDER REPUBLIC ACT NO. 9946 OF MRS. PACITA A. GRUBA, SURVIVING SPOUSE OF THE LATE MANUEL K. GRUBA, FORMER CTA ASSOCIATE JUDGE.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; RETIREMENT; REPUBLIC ACT NO. 910 AS AMENDED BY REPUBLIC ACT NO. 9946; RATIONALE FOR RETIREMENT BENEFITS.— Retirement laws are social legislation. In general, retirement laws provide security to the elderly who have given their prime years in employment whether in the private sector or in government. These laws ensure the welfare of individuals who are approaching their twilight years and have limited opportunities for productive employment that give them a steady income stream. In the private sector, retirement packages are usually crafted as "forced savings" on the part of the employee. In government, lucrative retirement benefits are used as an incentive mechanism to encourage competent individuals to have careers in government.

2. ID.; ID.; ID.; ID.; RATIONALE FOR DEATH BENEFITS.— Aside from considering old age retirement benefits, the law also protects the welfare of the heirs and surviving spouses of employees who die before or after retirement. "The law extends survivorship benefits to the surviving and qualified beneficiaries of the deceased member or pensioner to cushion the beneficiaries against the adverse economic effects resulting from the death of the wage earner or pensioner." The law usually takes into account the nature of the employment and the vulnerability of the individual to risks that might lead to an early demise. Therefore, military personnel, by virtue of Republic Acts No. 3056, 5976, and 541, and justices and judges, by virtue of Republic Act No. 910 as amended by Republic Act No. 9946, are given generous death benefits. The law recognizes the threats

these kinds of government employees face because of their positions. In order to minimize the adverse effects of unexpected deaths while in service, the law extends benefits to the deceased employee's loved ones. It is also the law's way of sympathizing with the loss of these families. Death benefits remind the heirs that despite their loss, their departed love one had valuable contributions to society, and the State is grateful for these contributions. These benefits also provide more incentive for the independence of those who serve in the Judiciary. They allow peace of mind since members of the Judiciary know that they could provide for their spouse and their children even beyond their death.

3. ID.; ID.; ID.; ID.; CONCEPTS OF RETIREMENT, DISABILITY RETIREMENT, AND DEATH AS MODES OF TERMINATING EMPLOYMENT, EXPLAINED.— Retirement benefits are usually conditioned on compliance with certain requirements. Common requirements include age and years in service. Upon reaching a certain age and compliance with the years of service, an employee becomes entitled to benefits by operation of law. An exception to compliance with age and service requirements is disability retirement. It is still considered a form of retirement, but the condition for compliance is not usually age or years in service. Disability retirement is conditioned on the incapacity of the employee to continue his or her employment due to involuntary causes such as illness or accident. The social justice principle behind retirement benefits also applies to those who are forced to cease from service due to disabilities beyond their control. In line with the doctrine of liberal interpretation of retirement laws, this Court has often construed death as disability retirement. "[T]here is no more permanent or total physical disability than death." The term "retirement," when used in a strict legal sense, refers to mandatory or optional retirement. However, when used in a more general sense, "retire" may encompass the concepts of both disability retirement and death. ***All of these concepts involve events that happen to an employee beyond his or her control. In case of mandatory or optional retirement, reaching a certain age due to mere passage of time is beyond the control of the individual. In the case of disability retirement and death, acquiring an illness or accident is beyond the control of the individual.***

4. ID.; ID.; ID.; ID.; RETIREMENT BENEFITS UNDER R.A. 910; MAJOR INNOVATIONS INTRODUCED BY R.A. 9946.— Republic Act No. 910 was enacted in 1954 to provide for retirement benefits of justices of the Supreme Court and the Court of Appeals. Through various amendments, the coverage of Republic Act No. 910 now includes justices of the Sandiganbayan and the Court of Tax Appeals, as well as judges of the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, Municipal Circuit Trial Court, Shari'a District Court, Shari'a Circuit Court, and any other court hereafter established. Republic Act No. 910 provides for two basic benefits: retirement and death benefits. The retirement benefits under Republic Act No. 910 may be availed in two ways. One way is through compulsory retirement of a judge or justice by attaining the age of 70 years old and complying with the service requirement of 20 years in the Judiciary or any other government branch. The other way is through optional retirement of a judge or justice by attaining the age of 57 years old and complying with the service requirement of 20 years in government, the last 10 of which must be continuously rendered in the Judiciary. The optional retirement requirements were modified in Republic Act No. 5095. To qualify for optional retirement under that law, a judge or justice must serve at least 20 years in government, and the last five (5) years of service must be continuously rendered in the Judiciary. The death benefits under Republic Act No. 910 entitle the heirs of a deceased justice or judge to a five-year lump sum of the salary the justice or judge was receiving during the period of death. The five-year lump sum is conditioned on the compliance with the service requirement of 20 years. Noncompliance with the service requirement entitles the heirs only to a two-year lump sum. In 2010, Congress enacted Republic Act No. 9946, otherwise known as *An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending for the Purpose Republic Act No. 910*. Republic Act No. 9946 introduced major innovations for retirement of the members of the Judiciary. The first change made was the inclusion of additional allowances in the computation for monthly pensions and gratuity payments. Second, the service requirement for compulsory and optional retirement was modified. Under

Republic Act No. 9946, only 15 years in the Judiciary and any other branch of government are required. For optional retirement, the last three (3) years must be rendered continuously in the Judiciary. The third major innovation of the law is that non-compliance with the service requirement will entitle the retiree to a monthly pension pro-rated to the number of years rendered in government. The fourth major innovation is the benefits given to justices or judges who contracted permanent disability or partial permanent disability during incumbency. x x x The fifth major innovation of Republic Act No. 9946 is the expansion of death benefits given to the heirs of a deceased justice or judge. Finally, the law specifies that pension benefits given under this law will be received by the surviving spouse of the retired justice or judge upon the justice or judge's demise. This last innovation is the most important and the reason why the law was amended in the first place.

5. ID.; ID.; ID.; ID.; R.A. 9946 APPLIES RETROACTIVELY TO THOSE WHO DIED OR WERE KILLED WHILE THEY WERE IN GOVERNMENT SERVICE; LIBERAL CONSTRUCTION OF THE LAW IN FAVOR OF INTENDED BENEFICIARIES, APPLIED.— An initial look at the law might suggest that the retroactivity of Republic Act No. 9946 is limited to those who retired prior to the effectivity of the law. However, a holistic treatment of the law will show that the set of amendments provided by Republic Act No. 9946 is not limited to justices or judges who retired after reaching a certain age and a certain number of years in service. The changes in the law also refer to justices or judges who "retired" due to permanent disability or partial permanent disability as well as justices or judges who died while in active service. In light of these innovations provided in the law, the word "retired" in Section 3-B should be construed to include not only those who already retired under Republic Act No. 910 but also those who retired due to permanent disability. It also includes judges and justices who died or were killed while in service. Providing retroactivity to judges and justices who died while in service conforms with the doctrine that retirement laws should be liberally construed and administered in favor of persons intended to be benefited. "[T]he liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency,

security, and well-being of government employees may be enhanced." Ensuring the welfare of families dependent on government employees is achieved in the changes made in Republic Act No. 9946. It will be consistent with the humanitarian purposes of the law if the law is made retroactive to benefit the heirs of judges and justices who passed away prior to the effectivity of Republic Act No. 9946. Judge Gruba who passed away prior to the effectivity of Republic Act No. 9946 is still covered by the law by virtue of Section 3-B. ***"Retired" here is not construed in the strict dictionary definition but in its more rational sense of discontinuance of service due to causes beyond one's control. It should include the cessation of work due to natural causes such as death.*** Therefore, the death of Judge Gruba produces effects under Republic Act No. 9946 for his family.

6. ID.; ID.; ID.; ID.; HEIRS OF A DECEASED JUDGE ARE ENTITLED TO DEATH GRATUITY BENEFITS UNDER SECTION 24, R.A. 9946 NOTWITHSTANDING PRIOR RECEIPT OF BENEFITS UNDER R.A. 910.— Judge Gruba's death follows the second scenario under Section 2 of Republic Act No. 9946. He died due to natural causes while serving the Judiciary. He rendered 16 years, six (6) months, and 21 days in government service, thereby complying with the 15-year service requirement under the law. His heirs became entitled to a lump sum of 10 years gratuity computed on the basis of the highest monthly salary, plus the highest monthly aggregate of transportation, representation, and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance. ***The fact that the heirs of Judge Gruba received death benefits under Republic Act No. 910 prior to amendments in Republic Act No. 9946 does not preclude the heirs from receiving the 10-year lump sum in full. This is the effect of the retroactivity mentioned in Section 3-B of Republic Act No. 9946. This is also in keeping with a policy declaration under Article XVI, Section 8 of the Constitution stating that "[the] State shall, from time to time, review to upgrade the pensions and other benefits due to retirees of both the government and the private sectors."***

7. ID.; ID.; ID.; ID.; REQUIREMENTS FOR A SPOUSE TO QUALIFY FOR SURVIVORSHIP PENSION BENEFITS; REQUIREMENTS, NOT MET IN CASE AT BAR.— According to Section 3 of Republic Act No. 9946, survivorship pension benefits are given to surviving spouses of retired judges or justices or surviving spouses of judges or justices who are eligible to retire optionally. This means that for the spouse to qualify for survivorship pension, the deceased judge or justice must (1) be at least 60 years old, (2) have rendered at least fifteen years in the Judiciary or in any other branch of government, and in the case of eligibility for optional retirement, (3) have served the last three years continuously in the Judiciary. When the judge or justice is neither retired nor eligible to retire, his or her surviving spouse is not entitled to those benefits. This was the reason behind our Resolution dated November 27, 2012, wherein we revoked the approval of Mrs. Gruba's application for survivorship pension benefits. The Resolution discontinued the payment of Mrs. Gruba's survivorship pension benefits. We no longer required Mrs. Gruba to reimburse survivorship pension benefits received by virtue of the earlier Resolution dated January 17, 2012 considering that she received those payments in good faith. Mrs. Gruba could have been entitled to survivorship pension benefits if her late husband were eligible to optionally retire at the time of his death. However, we are faced with a situation where the justice complied only with two of three requirements for optional retirement. He served government for a total of 16 years, six (6) months, and 21 days. In those years, he rendered service for three (3) years, nine (9) months, and eight (8) days in the Judiciary. Judge Gruba neither retired compulsorily prior to his death nor was he eligible for optional retirement at the time of his death. He would have qualified for the government service requirements. However, his age at the time of his death did not make him qualified for optional retirement. He was only 55 years old, and the law required the age of 60 for eligibility for optional retirement.

R E S O L U T I O N

LEONEN, *J.*:

We stand in awe of death's inevitability and tragic immutability, but we can temper the effects of the law on those it leaves behind.

This case involves a judge of the Court of Tax Appeals[1] who died while in service. He died at the age of 55 years, two (2) months, and six (6) days. He died prior to the enactment of Republic Act No. 9946, which substantially amended the benefits provided in Republic Act No. 910.

We are asked to decide whether the death gratuity benefits and the survivorship pension benefits under Republic Act No. 9946 apply to this case.

We rule to grant death gratuity benefits.

Manuel K. Gruba (Judge Gruba) was born on April 19, 1941. He began his government service on December 3, 1979 as Senior Revenue Executive Assistant I at the Bureau of Internal Revenue. He rose from the ranks at the Bureau of Internal Revenue until he was appointed as an Associate Judge of the Court of Tax Appeals on September 17, 1992.

On June 25, 1996, Judge Gruba passed away. The cause of his death was natural and was reported as brain stem/midbrain stroke, basilar artery thrombosis, embolic event.[2] He was 55 years old when he died. He was in government service for a total of 16 years, six (6) months, and 21 days. In those years, he rendered service for three (3) years, nine (9) months, and eight (8) days in the Judiciary.

The surviving spouse of Judge Gruba, Mrs. Pacita A. Gruba (Mrs. Gruba), applied for retirement/gratuity benefits under Republic Act No. 910.[3]

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[1] The position title "Associate Judge" has been changed to "Associate Justice" by virtue of Republic Act No. 9282 (2004).

[2] The Report of Death was dated June 27, 1996.

[3] At the time of Mrs. Gruba's application, Republic Act No. 910 was amended by Republic Act No. 5095. The case was docketed as A.M. No. 9037-Ret.

In a Resolution dated September 24, 1996, this Court approved the application filed by Mrs. Gruba. Per certification dated October 25, 2012 by the Court of Tax Appeals' Office of Administrative and Finance Services, the five-year lump sum retirement benefit under Republic Act No. 910 was remitted to the Government Service Insurance System effective June 26, 1996. A total of ₱1,486,500.00, representing the five-year lump sum gratuity due to Judge Gruba, was paid to his heirs.[4]

On January 13, 2010, Congress amended Republic Act No. 910 and passed Republic Act No. 9946. Republic Act No. 9946 provided for more benefits, including survivorship pension benefits, among others. The law also provides a retroactivity provision which states:

> SEC. 3-B. The benefits under this Act shall be granted to all those who have retired prior to the effectivity of this Act: *Provided,* That the benefits shall be applicable only to the members of the Judiciary: *Provided, further,* That the benefits to be granted shall be prospective.

On January 11, 2012, Mrs. Gruba applied for survivorship pension benefits under Republic Act No. 9946.[5] In a Resolution dated January 17, 2012, this Court approved the application of Mrs. Gruba. She received ₱1,026,748.00 for survivorship pension benefits from January 1, 2011 to April 2012.[6]

In a Resolution dated November 27, 2012, this Court revoked the Resolution dated January 17, 2012 and directed the Court of Tax Appeals to discontinue the payment of the survivorship

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[4] Comment of the Office of the Chief Attorney dated May 14, 2013, p. 3. This fact was evidenced by a Remittance Letter from the Court of Tax Appeals to the Government Service Insurance System, dated July 4, 1997, GSIS Official Receipt No. 00508062 dated July 3, 1997, and receiving vouchers of the different checks given to the heirs of Judge Gruba.

[5] This subsequent application is now the case at bar, docketed as A.M. No. 14155-Ret.

[6] Certification of the Court of Tax Appeals' Accounting Chief Judicial Staff Officer Hipolito P. Alvarado dated June 1, 2012.

pension benefits to Mrs. Gruba. However, this Court stated that Mrs. Gruba was not required to refund the survivorship pension benefits received pursuant to the Resolution dated January 17, 2012.[7]

This Court required the Office of the Chief Attorney to report on the matter. In a Comment dated May 14, 2013, the Office of the Chief Attorney recommended that the heirs of Judge Gruba be entitled to the 10-year lump sum death benefit under Section 2 of Republic Act No. 910, as amended by Republic Act No. 9946.

This Resolution adopts in part the recommendation of the Office of the Chief Attorney.

The issues for our resolution are the following: (1) whether Republic Act No. 9946 applies to Judge Gruba; (2) whether the heirs of Judge Gruba are entitled to the 10-year lump sum gratuity benefits under Republic Act No. 9946; and (3) whether Mrs. Gruba is entitled to survivorship pension benefits under the same law.

We decide the first two issues in favor of the heirs of Judge Gruba. However, we deny the application for survivorship pension benefits of Mrs. Gruba.

The rationale for retirement benefits

Retirement laws are social legislation. In general, retirement laws provide security to the elderly who have given their prime years in employment whether in the private sector or in government. These laws ensure the welfare of individuals who are approaching their twilight years and have limited opportunities for productive employment that give them a steady income stream. In the private sector, retirement packages are usually crafted as "forced savings" on the part of the employee.

In government, lucrative retirement benefits are used as an incentive mechanism to encourage competent individuals to have careers in government. This Court often states:

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[7] Resolution dated November 27, 2012.

[R]etirement benefits receivable by public employees are valuable parts of the consideration for entrance into and continuation in public office or employment. They serve a public purpose and a primary objective in establishing them is **to induce competent persons to enter and remain in public employment and render faithful and efficient service while so employed.**[8] (Emphasis supplied)

Due to this extraordinary purpose, the Constitution provides guidelines on periodically increasing retirement benefits.[9] On several occasions, this Court has liberally interpreted retirement laws in keeping with its purpose. In *Government Service Insurance System v. De Leon*:[10]

Retirement laws, in particular, are liberally construed in favor of the retiree because their objective is to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security, and well-being of government employees may be enhanced. Indeed, retirement laws are liberally construed and administered in favor of the persons intended to be benefited, and all doubts are resolved in favor of the retiree to achieve their humanitarian purpose.[11]

This general principle for retirement benefits applies to members of the Judiciary. However, Congress made a special law specifically for retiring justices and judges. This law on "retirement pensions of Justices arise from the package of protections given by the Constitution to guarantee and preserve the independence of the Judiciary."[12] Aside from guaranteeing

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[8] *Profeta v. Drilon*, G.R. No. 104139, December 22, 1992, 216 SCRA 777, 782-783 *citing Ortiz v. COMELEC*, G.R. No. 78957, June 28, 1988, 162 SCRA 812, 821. In *Ortiz*, the word "able" was used in lieu of "competent."

[9] CONSTITUTION, Art. XVI, Sec. 8. The State shall, from time to time, review to increase the pensions and other benefits due to retirees of both the government and the private sectors.

[10] G.R. No. 186560, November 17, 2010, 635 SCRA 321.

[11] *Id.* at 330-331. (Citations omitted)

[12] *Bengzon v. Drilon*, G.R. No. 103254, April 15, 1992, 208 SCRA 133, 153.

judicial independence, a separate retirement law for justices and judges is designed to attract intelligent members of the Bar to join the Judiciary. It compensates for the opportunity cost of having profitable private practices.

The rationale for death benefits

Aside from considering old age retirement benefits, the law also protects the welfare of the heirs and surviving spouses of employees who die before or after retirement. "The law extends survivorship benefits to the surviving and qualified beneficiaries of the deceased member or pensioner to cushion the beneficiaries against the adverse economic effects resulting from the death of the wage earner or pensioner."[13]

The law usually takes into account the nature of the employment and the vulnerability of the individual to risks that might lead to an early demise. Therefore, military personnel, by virtue of Republic Acts No. 3056, 5976, and 541, and justices and judges, by virtue of Republic Act No. 910 as amended by Republic Act No. 9946, are given generous death benefits. The law recognizes the threats these kinds of government employees face because of their positions. In order to minimize the adverse effects of unexpected deaths while in service, the law extends benefits to the deceased employee's loved ones. It is also the law's way of sympathizing with the loss of these families. Death benefits remind the heirs that despite their loss, their departed love one had valuable contributions to society, and the State is grateful for these contributions. These benefits also provide more incentive for the independence of those who serve in the Judiciary. They allow peace of mind since members of the Judiciary know that they could provide for their spouse and their children even beyond their death.

Retirement, disability retirement, and death as modes of terminating employment

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[13] *GSIS, Cebu City Branch v. Montesclaros*, 478 Phil. 573, 586 (2004) *citing* Rule VI, Sec. 1 of the Implementing Rules and Regulations of Presidential Decree No. 1146.

Retirement benefits are usually conditioned on compliance with certain requirements. Common requirements include age and years in service. Upon reaching a certain age and compliance with the years of service, an employee becomes entitled to benefits by operation of law.

An exception to compliance with age and service requirements is disability retirement. It is still considered a form of retirement, but the condition for compliance is not usually age or years in service. Disability retirement is conditioned on the incapacity of the employee to continue his or her employment due to involuntary causes such as illness or accident. The social justice principle behind retirement benefits also applies to those who are forced to cease from service due to disabilities beyond their control.

In line with the doctrine of liberal interpretation of retirement laws, this Court has often construed death as disability retirement. "[T]here is no more permanent or total physical disability than death."[14] The term "retirement," when used in a strict legal sense, refers to mandatory or optional retirement. However, when used in a more general sense, "retire" may encompass the concepts of both disability retirement and death. ***All of these concepts involve events that happen to an employee beyond his or her control. In case of mandatory or optional retirement, reaching a certain age due to mere passage of time is beyond the control of the individual. In the case of disability retirement and death, acquiring an illness or accident is beyond the control of the individual.***

In *Re: Resolution Granting Automatic Permanent Total Disability Benefits to Heirs of Justices and Judges*,[15] this Court rejected the Department of Budget and Management's insistence that "death while in actual service" and "retirement due to permanent physical disability" are distinct and separate circumstances. In this case, the Department of Budget and

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[14] *Re: Retirement Benefits of the Late City Judge Galang, Jr.*, 194 Phil. 14, 21 (1981).

[15] 486 Phil. 148 (2004).

Management refused to release additional gratuity benefits to judges on account that they died while in actual service without being able to apply for permanent physical disability benefits. Since this case occurred prior to the issuance of Republic Act No. 9946, there were gaps in the law. Gratuity payments due to permanent physical disability were twice as much as gratuity payments caused by death while in active service. This Court, in order to maximize the benefits given to the heirs, treated death as retirement due to permanent physical disability. Hence, we stated:

> *In Re: Retirement Benefits of the late City Judge Alejandro Galang, Jr.*, this Court has had the occasion to construe Republic Act No. 910, particularly the phrase "permanent physical disability" found in Section 2 thereof. There, this Court considered death "while in actual service" to be encompassed by the phrase "permanent physical disability." For, as aptly pointed out by then Associate Justice Claudio Teehankee in his concurring opinion in that case, "*there is no more permanent or total physical disability than death.*"
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> When the law has gaps which tend to get in the way of achieving its purpose, thus resulting in injustice, this Court is allowed to fill the open spaces therein.[16]

Retiring due to physical disabilities is not far removed from the situation involving death of a judge or justice. This explains why retirement laws necessarily include death benefits. The gaps in the old law prompted Congress to improve death benefits given to the heirs of deceased judges and justices.

Republic Act No. 9946 applies retroactively to those who died or were killed while they were in government service

Republic Act No. 910 was enacted in 1954 to provide for retirement benefits of justices of the Supreme Court and the Court of Appeals. Through various amendments, the coverage of Republic Act No. 910 now includes justices of the

[16] *Id*. at 156.

Sandiganbayan and the Court of Tax Appeals, as well as judges of the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, Municipal Circuit Trial Court, Shari'a District Court, Shari'a Circuit Court, and any other court hereafter established.[17]

Republic Act No. 910 provides for two basic benefits: retirement and death benefits.

The retirement benefits under Republic Act No. 910 may be availed in two ways. One way is through compulsory retirement of a judge or justice by attaining the age of 70 years old and complying with the service requirement of 20 years in the Judiciary or any other government branch. The other way is through optional retirement of a judge or justice by attaining the age of 57 years old and complying with the service requirement of 20 years in government, the last 10 of which must be continuously rendered in the Judiciary.[18]

The optional retirement requirements were modified in Republic Act No. 5095. To qualify for optional retirement under that law, a judge or justice must serve at least 20 years in government, and the last five (5) years of service must be continuously rendered in the Judiciary.[19]

The death benefits under Republic Act No. 910 entitle the heirs of a deceased justice or judge to a five-year lump sum of the salary the justice or judge was receiving during the period of death. The five-year lump sum is conditioned on the compliance with the service requirement of 20 years. Noncompliance with the service requirement entitles the heirs only to a two-year lump sum.

In 2010, Congress enacted Republic Act No. 9946, otherwise known as *An Act Granting Additional Retirement, Survivorship,*

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[17] Republic Act No. 9946 (2010), Sec. 1.

[18] Republic Act No. 910 (1953), Sec. 1.

[19] Republic Act No. 5095 (1967), Sec. 1. This was the law applied in Mrs. Gruba's application for death benefits in 1996.

and Other Benefits to Members of the Judiciary, Amending for the Purpose Republic Act No. 910. Republic Act No. 9946 introduced major innovations for retirement of the members of the Judiciary. The first change made was the inclusion of additional allowances in the computation for monthly pensions and gratuity payments.[20] Second, the service requirement for compulsory and optional retirement was modified. Under Republic Act No. 9946, only 15 years in the Judiciary and any other branch of government are required. For optional retirement, the last three (3) years must be rendered continuously in the Judiciary.[21] The third major innovation of the law is that non-compliance with the service requirement will entitle the retiree to a monthly pension pro-rated to the number of years rendered in government.[22] The fourth major innovation is the benefits given to justices or judges who contracted permanent disability or partial permanent disability during incumbency.[23]

The last two innovations of Republic Act No. 9946 are more relevant to this case at bar. The fifth major innovation of Republic Act No. 9946 is the expansion of death benefits given to the heirs of a deceased justice or judge.[24] Finally, the law specifies that pension benefits given under this law will be received by the surviving spouse of the retired justice or judge upon the justice's or judge's demise.[25] This last innovation is the most important and the reason why the law was amended in the first place.

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[20] Under Republic Act No. 910, retirement benefits are computed on the basis of highest salary received by the justice or judge. Inclusion of allowances in the computation began in the amendments to Republic Act No. 910 introduced in Presidential Decree No. 1438. Now, it includes transportation, representation and other allowances, such as personal economic relief allowance (PERA) and additional compensation allowance. Republic Act No. 9946 (2010), Sec. 1.

[21] Republic Act No. 9946 (2010), Sec. 1.

[22] *Id*.

[23] Republic Act No. 9946 (2010), Sec. 3.

[24] Republic Act No. 9946 (2010), Sec. 2.

[25] *Id*.

Republic Act No. 9946 provides for a retroactivity clause in Section 4, adding Section 3-B to Republic Act No. 910:

> SEC. 3-B. The benefits under this Act shall be granted to all those who have **retired** prior to the effectivity of this Act: *Provided,* That the benefits shall be applicable only to the members of the Judiciary: *Provided, further,* That the benefits to be granted shall be prospective. (Emphasis supplied)

An initial look at the law might suggest that the retroactivity of Republic Act No. 9946 is limited to those who retired prior to the effectivity of the law.[26] However, a holistic treatment of the law will show that the set of amendments provided by Republic Act No. 9946 is not limited to justices or judges who retired after reaching a certain age and a certain number of years in service. The changes in the law also refer to justices or judges who "retired" due to permanent disability or partial permanent disability as well as justices or judges who died while in active service.

In light of these innovations provided in the law, the word "retired" in Section 3-B should be construed to include not only those who already retired under Republic Act No. 910 but also those who retired due to permanent disability. It also includes judges and justices who died or were killed while in service.

Providing retroactivity to judges and justices who died while in service conforms with the doctrine that retirement laws should be liberally construed and administered in favor of persons intended to be benefited.[27] "[T]he liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government employees may be

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[26] The requirements for compulsory retirement under this law is for the judge or justice to be 70 years old and must have rendered 20 years of service in the government, with five (5) years spent in the Judiciary. Republic Act No. 910 (1953), Sec. 1, as amended by Republic Act No. 5095 (1967).

[27] *See In Re: Amount of the Monthly Pension of Judges and Justices Starting from the Sixth Year of their Retirement and After the Expiration of the Initial Five-Year Period of Retirement,* 268 Phil. 312 (1990).

enhanced."[28] Ensuring the welfare of families dependent on government employees is achieved in the changes made in Republic Act No. 9946. It will be consistent with the humanitarian purposes of the law if the law is made retroactive to benefit the heirs of judges and justices who passed away prior to the effectivity of Republic Act No. 9946.

Judge Gruba who passed away prior to the effectivity of Republic Act No. 9946 is still covered by the law by virtue of Section 3-B. ***"Retired" here is not construed in the strict dictionary definition but in its more rational sense of discontinuance of service due to causes beyond one's control. It should include the cessation of work due to natural causes such as death.*** Therefore, the death of Judge Gruba produces effects under Republic Act No. 9946 for his family.

In the past, this Court has liberally granted benefits to surviving heirs of deceased members of the Judiciary despite incomplete compliance with the requisites of Republic Act No. 910.[29] Since there was a gap in the law, this Court's Resolution dated September 30, 2003 in *Re: Resolution Granting Permanent Total Disability Benefits to Heirs of Justices and Judges Who Die In Actual Service* provided for benefits of judges and justices who died in actual service but were not able to comply with the age and service requirements stated in Republic Act No. 910.[30] This Resolution was incorporated in Republic Act No. 9946.

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[28] *Ortiz v. COMELEC*, 245 Phil. 780, 789-790 (1988).

[29] *Re: Retirement Benefits of the late City Judge Alejandro Galang, Jr.*, 194 Phil. 14 (1981) *citing Re: Retirement of District Judge Isaac Puno, Jr.*, A.M. No. 589-Ret., Resolution dated June 28, 1977 (Unreported). With respect to Judge Galang, the main case denied his widow's claim for a 10-year gratuity for not having been able to retire by reasons of permanent disability. However, this Court still gave his heirs a five-year lump sum gratuity despite non-compliance with the length of service in Government Requirement. Justice Teehankee's Concurring Opinion cited Judge Puno's case as the first case wherein this Court disregarded the length of service in Government Requirement in awarding the five (5)-year lump sum gratuity to heirs of a deceased judge.

[30] The Resolution dated September 30, 2003 was the basis of the discussion in a subsequent Resolution under A.M. No. 02-12-01-SC, 486 Phil. 148 (2004).

This Court also applied the survivorship pension benefits to surviving spouses of justices and judges who died *prior* to the enactment of Republic Act No. 9946 in 2010. For example, Chief Justice Enrique M. Fernando passed away in 2004, but his widow, Mrs. Emma Q. Fernando, was given survivorship pension benefits[31] despite the fact that Chief Justice Fernando's death occurred prior to the enactment of Republic Act No. 9946.

Congress has been liberal in according retirement and death benefits to justices and judges. These benefits are incentives for talented individuals to join the Judiciary. For current members, these benefits assure them that the government will continue to ensure their welfare even in their twilight years. These benefits allow the best and the brightest lawyers to remain in the Judiciary despite its risks because they know that their family's welfare will be addressed even in their passing.

The first *proviso* of Section 3-B ("*Provided*, That the benefits shall be applicable only to the members of the Judiciary") should be interpreted to mean individuals who were members of the Judiciary immediately prior to retirement, disability retirement or death. This *proviso* is meant to exclude individuals who were former members of the Judiciary but accepted positions in other branches of government. In other words, former judges or justices who retire from non-judicial positions are excluded.[32] If this *proviso* is interpreted to exclude benefits provided by the law to heirs and surviving members, it will be contrary to the purpose of the law.

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[31] A.M. No. 13940-Ret., Resolution dated May 31, 2011.

[32] *See Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946*, A.M. No. 14061-Ret., June 19, 2012, 673 SCRA 602. This case involves a Regional Trial Court judge who served as such for more than 18 years. Before reaching his optional retirement age, he was appointed by President Gloria Macapagal-Arroyo as Commissioner of the Commission on Elections. His terminal job was with the National Transmission Commission. On retirement, he applied under Republic Act No. 910 but was denied the benefits of the law because he *resigned* from the Judiciary and retired from a position under the Executive branch.

Representative Fredenil H. Castro, one of the sponsors of House Bill No. 1238, the precursor of Republic Act No. 9946, "explained that the bill was aimed to assure justices and judges 'that their surviving spouse[s] are given adequate and substantial benefits through survivorship pension.'"[33] In addition, it will also be contrary to jurisprudence stating "retirement laws should be liberally construed and administered in favor of the persons intended to be benefited and all doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes."[34] Note that this Court referred to "persons intended to be benefited" and not merely "retirees." There is recognition that the retired or deceased judge is not the only beneficiary of retirement and death benefit laws but also his or her family.

The last *proviso* of Section 3-B ("*Provided, further*, That the benefits to be granted shall be prospective) might likewise cause some confusion. To clarify, when the law states "benefits to be granted shall be prospective," it refers to pensions given to justices or judges or survivorship pension benefits given to the surviving spouses. It means that those who have been continuously receiving pension benefits before Republic Act No. 9946 may not demand the differential of the previously paid pension benefits. This "prospectivity" provision does not apply to lump sum payments or one-time gratuity benefits given by reasons of death.

The heirs of Judge Gruba are entitled to death gratuity benefits under Republic Act No. 9946, Section 2

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[33] Comment of the Office of the Chief Attorney, p. 11. The Office of the Chief Attorney cites the explanatory note attached to the bill found at the Archives and Museum Management Service of the House of Representatives.

[34] *In Re: Amount of the Monthly Pension of Judges and Justices Starting from the Sixth Year of their Retirement and After the Expiration of the Initial Five-Year Period of Retirement*, 268 Phil. 312, 317 (1990).

Under Republic Act No. 9946, Section 2 provides for death benefits under varying circumstances:

> SEC. 2. In case a Justice of the x x x Court of Tax Appeals, x x x dies while in actual service, regardless of his/her age and length of service as required in Section 1 hereof, his/her heirs shall receive a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance received by him/her as such Justice or Judge: *Provided, however*, That **where the deceased Justice or Judge has rendered at least fifteen (15) years either in the Judiciary or any other branch of Government, or both, his/her heirs shall instead be entitled to a lump sum of ten (10) years gratuity computed on the same basis as indicated in this provision**: *Provided, further*, That the lump sum of ten (10) years gratuity shall be received by the heirs of the Justice or the Judge who was killed because of his/her work as such: *Provided*, That the Justice or Judge has served in Government for at least five (5) years regardless of age at the time of death. When a Justice or Judge is killed intentionally while in service, the presumption is that the death is work-related. (Emphasis supplied)

This provision provides death benefits to justices or judges who died while in service as well as those who suffered work-related deaths. The presumption is that if a justice or judge was killed intentionally, the death is considered work-related.

The provision contemplates three scenarios. First, if a justice or judge dies while in service, regardless of his or her age and length of service, his or her heirs are entitled to a **five (5)-year lump sum** of gratuity. Second, if a justice or judge dies of *natural causes* while in service, regardless of his or her age, but has rendered at least 15 years in government service, his or her heirs are entitled to a **10-year lump sum** of gratuity. Finally, if a justice or judge is *killed intentionally* and the death is considered work-related, regardless of his or her age, but has rendered at least five (5) years in government service, his or her heirs are entitled to a **10-year lump sum** of gratuity.

In all these scenarios, the law dispenses with the requirement of the judge's or justice's retirement for the surviving heirs to receive benefits upon the judge's or justice's demise. This is an improvement from the benefits given under Republic Act No. 910. The law became more attuned to the reality that death can occur anytime during the tenure of a judge or justice. It recognized the risks judges and justices face in dispensing their duties and responsibilities, risks similar to those experienced by members of law enforcement or the military. The law provides for contingencies for judges and justices who unexpectedly left their loved ones who depended on them for support and sustenance.

Judge Gruba's death follows the second scenario under Section 2 of Republic Act No. 9946. He died due to natural causes while serving the Judiciary. He rendered 16 years, six (6) months, and 21 days in government service, thereby complying with the 15-year service requirement under the law. His heirs became entitled to a lump sum of 10 years gratuity computed on the basis of the highest monthly salary, plus the highest monthly aggregate of transportation, representation, and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance.

The fact that the heirs of Judge Gruba received death benefits under Republic Act No. 910 prior to amendments in Republic Act No. 9946 does not preclude the heirs from receiving the 10-year lump sum in full. This is the effect of the retroactivity mentioned in Section 3-B of Republic Act No. 9946. This is also in keeping with a policy declaration under Article XVI, Section 8 of the Constitution stating that "[the] State shall, from time to time, review to upgrade the pensions and other benefits due to retirees of both the government and the private sectors."

However, Mrs. Gruba is not qualified for survivorship pension benefits under Section 3 of Republic Act No. 9946

When Mrs. Gruba applied for benefits under Republic Act No. 9946, she was not claiming additional gratuity benefits.

She was invoking the second paragraph of Section 3 of Republic Act No. 910 as amended by Republic Act No. 9946, thus:

> Upon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally *at the time of death*, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.

According to Section 3 of Republic Act No. 9946, survivorship pension benefits are given to surviving spouses of retired judges or justices or surviving spouses of judges or justices who are eligible to retire optionally. This means that for the spouse to qualify for survivorship pension, the deceased judge or justice must (1) be at least 60 years old, (2) have rendered at least fifteen years in the Judiciary or in any other branch of government, and in the case of eligibility for optional retirement, (3) have served the last three years continuously in the Judiciary.

When the judge or justice is neither retired nor eligible to retire, his or her surviving spouse is not entitled to those benefits. This was the reason behind our Resolution dated November 27, 2012, wherein we revoked the approval of Mrs. Gruba's application for survivorship pension benefits. The Resolution discontinued the payment of Mrs. Gruba's survivorship pension benefits. We no longer required Mrs. Gruba to reimburse survivorship pension benefits received by virtue of the earlier Resolution dated January 17, 2012 considering that she received those payments in good faith.

Mrs. Gruba could have been entitled to survivorship pension benefits if her late husband were eligible to optionally retire at the time of his death. However, we are faced with a situation where the justice complied only with two of three requirements for optional retirement. He served government for a total of 16 years, six (6) months, and 21 days. In those years, he rendered service for three (3) years, nine (9) months, and eight (8) days in the Judiciary.

Judge Gruba neither retired compulsorily prior to his death nor was he eligible for optional retirement at the time of his death. He would have qualified for the government service requirements. However, his age at the time of his death did not make him qualified for optional retirement. He was only 55 years old, and the law required the age of 60 for eligibility for optional retirement.

It was unfortunate that Judge Gruba died five years short of the optional retirement age. However, survivorship benefits are an offshoot of retirement benefits. Administrative Circular 81-2010 qualified that "[t]he legitimate surviving spouse of a Justice or Judge who (1) has retired or was eligible to retire optionally at the time of death; and (2) was receiving or would have been entitled to receive a monthly pension" is the individual qualified to receive survivorship benefits. This suggests that survivorship pension benefits are extensions of retirement benefits given to judges and justices, and retirement benefits in government service are governed by law.[35] Noncompliance with the clear text of the law means that the benefit cannot be granted.

We note, however, that if Judge Gruba were eligible to optionally retire under Republic Act No. 9946 at the time of his death and despite the fact that he passed away prior to the amendatory law's passage, his widow would have been entitled to the survivorship pension. The law was passed on January 13, 2010, and any surviving spouse of a judge or justice who died prior to this date but was retired or eligible to retire optionally should be covered by Republic Act No. 9946 by virtue of its retroactivity clause.

Republic Act No. 9946 has recognized the risks and contingencies of being involved in public service in the Judiciary. Death gratuity benefits have been improved to take into account the various circumstances that might surround a judge's or justice's death. However, the application of the law is not without limits. The law accommodates the heirs of Judge Gruba by

[35] *See Beronilla v. Government Service Insurance System,* 146 Phil. 646, 660 (1970).

entitling them to receive the improved gratuity benefits under Republic Act No. 9946, but it is clear that Mrs. Gruba is not entitled to the survivorship pension benefits.

Despite the fact that Mrs. Gruba is not entitled to receive survivorship pension, she no longer needs to return the survivorship pension benefits she received from January 2011 to April 2012 amounting to ₱1,026,748.00. This Court, in the past, have decided *pro hac vice* that a surviving spouse who received survivorship pension benefits in good faith no longer needs to refund such pensions. In *Re: Application for Survivorship Pension Benefits of Hon. Juanito C. Ranjo, Former Deputy Court Administrator (DCA)*,[36] we initially resolved to award survivorship pension benefits to DCA Ranjo's surviving spouse, Mrs. Ranjo. In a latter Resolution, we ruled that DCA Ranjo was not entitled to receive benefits under Republic Act No. 9946; hence, it was erroneous to award survivorship pension benefits to his widow. However, this Court ruled that the application of the resolution revoking survivorship pension benefits "appl[ies] prospectively, not retroactively and adversely to [Mrs. Ranjo]."[37] This Court found that Mrs. Ranjo accepted this amount in good faith, and the same could be said about Mrs. Gruba.

This Court has made similar pronouncements on other benefits erroneously received by government employees. This Court agreed that employees who have erroneously received rice allowances,[38] productivity incentive bonuses,[39] representation and transportation

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[36] *Re: Application for Survivorship Pension Benefits of Hon. Juanito C. Ranjo, Former Deputy Court Administrator (DCA),* A.M. No. 14082-Ret., Resolution dated October 9, 2012 *as cited in* the FMBO Report dated October 25, 2012, pp. 7-8.

[37] *Id*.

[38] *Agra v. Commission on Audit*, G.R. No. 167807, December 6, 2011, 661 SCRA 563; *De Jesus v. Commission on Audit*, 451 Phil. 812, 824 (2003).

[39] *De Jesus v. Commission on Audit, supra*; *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765-766 (1998).

allowances (RATA),[40] anniversary bonuses,[41] year-end bonuses,[42] and cash gifts[43] no longer need to refund the same. The reasoning was that:

> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of x x x benefits x x x, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.[44]

Analogously, when Mrs. Gruba received the survivorship pension benefits, she accepted them in good faith, knowing that this Court positively pronounced that she was entitled to them in the Resolution dated January 17, 2012. When we revoked this Resolution, such revocation should only apply prospectively in the interest of equity and fairness.[45]

IN VIEW OF THE FOREGOING, WE RESOLVE TO GRANT a lump sum of 10 years gratuity benefits under Section 2 of Republic Act No. 9946 to the heirs of Judge Gruba, subject to the availability of funds, and **DENY** the prayer of Mrs. Gruba to receive survivorship pension benefits.

SO ORDERED.

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

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[40] *De Jesus v. Commission on Audit, supra.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Blaquera v. Hon. Alcala, supra.*

[45] Considerations of equity and fairness were also cited in the ruling in *Agra v. Commission on Audit, supra.*

EN BANC

[G.R. Nos. 164068-69. November 19, 2013]

ROLANDO P. DE LA CUESTA, *petitioner, vs.* **THE SANDIGANBAYAN, FIRST DIVISION and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. Nos. 166305-06. November 19, 2013]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO M. COJUANGCO, JR., HERMENEGILDO[*] C. ZAYCO, SALVADOR ESCUDERO III, VICENTE B. VALDEPEÑAS, JR., ROLANDO P. DE LA CUESTA and THE HON. SANDIGANBAYAN (FIRST DIVISION),** *respondents.*

[G.R. Nos. 166487-88. November 19, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **THE SANDIGANBAYAN and EDUARDO M. COJUANGCO, JR., ROLANDO P. DE LA CUESTA, HERMINIGILDO C. ZAYCO, JOSE R. ELEAZAR, JR., FELIX V. DUEÑAS, JR., SALVADOR ESCUDERO III, and VICENTE B. VALDEPEÑAS, JR.,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); CIRCUMSTANCES NEGATING PROBABLE CAUSE FOR VIOLATION OF SECTION 3 (e), R.A. 3019; THE PCA'S GRANT OF FINANCIAL ASSISTANCE TO COCOFED WAS NOT MADE FOR DISHONEST PURPOSE AND, IN FACT, SERVED A PUBLIC PURPOSE PURSUANT TO R.A. 6260, P.D. 1972, AND E.O.

[*] Also referred to as Herminigildo and Hermenigildo in some parts of the records.

1064.— There is probable cause when the evidence at hand will persuade a reasonably discreet and prudent man to believe that the accused committed the offense of which he is charged. Only common sense, not the technical rules for weighing evidence, is required. But, although less than the evidence that would justify conviction is needed, probable cause demands more than bare suspicion. The corrupt practice committed by a public officer under Section 3(e) of R.A. 3019 consists in his "causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." x x x [T]he PCA Administrator's separate memoranda to the Board of Governors in 1984 and 1985 that recommended the financial grants to COCOFED, do not on their faces show some semblance of corruption. The January 17, 1984 Memorandum which recommended the ₱2 million grant to COCOFED informed the Board that the grant was meant to help COCOFED stave off an anticipated scaling down of its 992 chapters nationwide which were essential channels for the dissemination of information on the advances in coconut technology and other programs of the coconut industry. COCOFED, a non-profit organization, had a vast national membership of coconut farmers and it had consistently helped the PCA implement its programs for their industry. COCOFED was PCA's indispensable link to farmers. Similarly, the December 16, 1985 Memorandum recommending the ₱6 million grant to COCOFED adequately explained that it was made to augment the resources of COCOFED due to the lifting of government funding to ensure the effective implementation of the national coconut replanting program which was carried out with its active assistance and participation. x x x [I]t cannot be said that, in granting financial assistance to COCOFED, the accused PCA Governing Board members gave it "unwarranted benefits x x x through manifest partiality, evident bad faith or gross inexcusable negligence." The grant was not for any dishonest purpose. COCOFED's role in the coconut industry began with the enactment of R.A. 6260 in 1971. The law created a Coconut Investment Fund, initially capitalized by the government, but eventually supported by a levy on the farmers' sale of their *copra*. Further, it directed the PCA to prescribe rules for the collection of the levy in

consultation with "the recognized national association of coconut producers with the largest number of membership as determined by" the PCA. COCOFED quickly qualified to that position on account of its large membership and no one had disputed its credentials. Notably, recognizing the organization's importance, R.A. 6260 set aside ₱0.02 out of every ₱0.55 levied on farmers "for the maintenance and operation of its principal office which shall be responsible for continuing liaison with the different sectors of the industries, the government and its own mass base." Relating to this, the financial grants that the PCA Board gave appear to serve a public purpose. Furthermore, Presidential Decree (P.D.) 1972, and Executive Order (E.O.) 1064 required the PCA to undertake a coconut replanting program "with the active assistance and participation of the recognized organization of the coconut farmers pursuant to the provisions of R.A. 6260." This meant COCOFED. Without this organization, the PCA would forfeit its important link to the coconut farmers that it primarily served, hampering the attainment of its objectives. Although the Coconut Investment Fund was scrapped in 1982, the PCA continued to work with COCOFED in its programs for coconut farmers; hence, the recommendation to grant the organization financial assistance so it could maintain its useful function. x x x The prosecution points out that the ₱2 million grant was supposed to be taken from Fund 503 or the PCA Special Funds; yet, nothing in the laws that mandated the collection of fees for the PCA Special Funds authorized the PCA to grant assistance out of the same in COCOFED's favor. But this is not altogether accurate. Sections 1 and 2 of P.D. 1854 grant the PCA Governing Board the authority to draw up its own budgetary requirements out of the earmarked collections. x x x The [same provisions] vested in the PCA Governing Board the authority to allocate and disburse PCA funds by board resolution without the need for presidential approval. The above of course provides that the PCA Special Funds are to be used "exclusively" for its operations. But this restriction was evidently intended to prevent the use of the money for other than the implementation of PCA plans and programs for the coconut industry. It bars the hands of other government agencies from dipping into those funds. As pointed out above, the initial ₱2 million grant to COCOFED was actually in furtherance of PCA's operations, its partnership with that organization being an integral part of such operations. The

prosecution also claimed that the National Coconut Productivity Fund budget from which it was sourced did not include the grant of ₱6 million to COCOFED and, therefore, the PCA Board's approval of the same on December 16, 1985 without the President's approval was illegal. But President Marcos indirectly authorized such expenditure. On January 14, 1985 he issued a Memorandum addressed to Prime Minister Cesar E.A. Virata, Budget and Management Minister Manuel S. Alba, and PCA Chairman Rolando P. De La Cuesta ordering the release of ₱118.7 million from the coconut productivity program and authorizing the PCA to implement the government's long-term productivity program and its major components. x x x Clearly, the President had approved the use of money out of the Special Activities Funds to finance and implement the PCA coconut productivity program. Further to this, on November 13, 1985 President Marcos issued E.O. 1064, Section 1 of which directed the PCA to immediately implement the government's accelerated coconut hybrid planting and replanting program specifically "with the active assistance and participation of the recognized organization of coconut farmers pursuant to the provisions of R.A. 6260," which was no other than COCOFED. x x x But, as stated above, COCOFED was in danger of disintegrating with the unwitting removal of the financial subsidy it was getting from the former Coconut Investment Fund. Consequently, in order to successfully carry out the President's order under E.O. 1064 dated November 13, 1985 to pursue the government's planting and replanting program, it was essential that PCA grant financial assistance to COCOFED.

2. ID.; ID.; WHERE THE TWO INFORMATIONS CHARGING THE ACCUSED FOR VIOLATION OF SECTION 3 (e) OF R.A. 3019 CANNOT BE USED TO PROSECUTE AND TRY THE SAME ACCUSED FOR TWO COUNTS OF TECHNICAL MALVERSATION UNDER ARTICLE 220 OF THE REVISED PENAL CODE.— Apparently conscious that its charge of violation of Section 3(e) of R.A. 3019 against the accused had not been strong, the prosecution claims that the latter may alternatively be prosecuted and tried under the same informations for two counts of technical malversation under Article 220 of the Revised Penal Code. The rule of course is that the real nature of the criminal charge is determined not by the caption of the information or the citation of the law

allegedly violated but by the actual recital of facts in that information. Consequently, the issue is whether the facts alleged in the informations in the subject criminal cases make out a case for the crime of technical malversation. x x x The element in the crime of technical malversation that public fund be appropriated for a public use requires an earmarking of the fund or property for a specific project. For instance there is no earmarking if money was part of the municipality's "general fund," intended by internal arrangement for use in paving a particular road but applied instead to the payrolls of different *barangay* workers in the municipality. That portion of the general fund was not considered appropriated since it had not been earmarked by law or ordinance for a specific expenditure. Here, there is no allegation in the informations that the ₱2 million and ₱6 million grants to COCOFED had been earmarked for some specific expenditures. What is more, the informations in question do not allege that the subject ₱2 million and ₱6 million were applied to a public use other than that for which such sums had been appropriated. Quite the contrary, those informations allege that those sums were unlawfully donated to "a private entity," not applied to some public use. Clearly, the constitutional right of the accused to be informed of the crimes with which they are charged would be violated if they are tried for technical malversation under criminal informations for violation of Section 3(e) of R.A. 3019 filed against them.

BRION, ***J., separate concurring opinion*:**

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); PROBABLE CAUSE FOR VIOLATION OF SECTION 3(e) THEREOF EXISTS IN CASE AT BAR; SPECIFIC PROVISIONS OF P.D. 1854, R.A. 1145, AND P.D. 1468 ARE ALL UNEQUIVOCAL IN STATING THAT THE SERVICE FEE OF THE PHILIPPINE COCONUT AUTHORITY (PCA) SHALL BE EXCLUSIVELY UTILIZED FOR ITS OPERATIONS; THE *PONENCIA*'S POSITION THAT THE DONATIONS WERE WARRANTED BECAUSE THEY SERVED A PUBLIC PURPOSE WAS BASELESS AND THE POWER TO DONATE IS NOT ONE OF THOSE ENUMERATED POWERS OF THE PCA IN THE MEMORANDUM.—

Section 2 of PD 1854, Section 14 of RA 1145 and Section 3(k), Article 2 of PD 1468 are all unequivocal in stating that the PCA's service fees shall be exclusively utilized for its operations. In fact, Section 14 of RA 1145 clearly states that all income and receipts from the special funds shall be available solely for the use of the Philippine Coconut Administration (and subsequently, the PCA). x x x It is a settled rule that where the law does not distinguish, we should not distinguish. Notably, the above provisions do not distinguish between government agencies and private entities. *On the contrary, they categorically prohibit the utilization of the PCA's funds for other than its operations.* x x x A plain reading of [Section 8 of RA 6260] shows that the legislature merely directs the PCA to prescribe rules for the collection of levy in consultation with the recognized national association of coconut producers. x x x The provision does not even hint that the donation of the PCA's special funds to a private entity is allowed. A close study of the relevant laws also reveals that Section 8 of RA 6260 has no relevance in determining whether the PCA has the power to donate its own special funds to COCOFED. In fact, the PCA's special funds are different from the Coconut Investment Fund. The PCA's special funds are sourced from the service fees originally collected by the defunct Philippine Coconut Administration for its exclusive use. RA 1145 constituted this fund from the levy of ₱0.10 for every 100 kilograms of desiccated coconut, coconut oil and copra on desiccating factories, oil mills, and exporters, dealers or producers of copra, respectively. PD 232, Creating a Philippine Coconut Authority, subsequently created the PCA and abolished the Philippine Coconut Administration. This decree transferred the Philippine Coconut Administration's powers and functions, including the collection of service fees, to the PCA. RA 6260 established the Coconut Investment Fund on June 19, 1971. The coconut farmers capitalized this fund through the **Coconut Investment Company** for purposes of maximizing the coconut production, accelerating the growth of the coconut industry, expanding the coconut marketing system, and ensuring stable incomes for coconut farmers. Section 8 of RA 6260 provides that the Coconut Investment Company shall administer the Coconut Investment Fund that came from the ₱0.55 levy on the coconut farmer's first domestic sale of every 100 kilograms

of copra, or its equivalent. The collected levies were converted into shares of stock in the Coconut Investment Company. Thus, the PCA's special funds funded its operational budget, while the coconut farmers raised the capital for the Coconut Investment Fund through the Coconut Investment Company. Under Section 9 of RA 6260, the Philippine Coconut Administration (and subsequently, the PCA) was merely designated as the **collection agent** of the Coconut Investment Fund; *the Coconut Investment Fund is not part of the operational budget of the PCA.* These relationships belie the *ponencia's* position, citing Section 8 of RA 6260, that the donations were warranted because they served a public purpose.

2. ID.; ID.; ID.; PROSECUTION'S DOCUMENTARY EVIDENCE IS SUFFICIENT TO ENGENDER A WELL-FOUNDED BELIEF THAT VIOLATION OF SECTION 3(e) of R.A. 3019 HAS BEEN COMMITTED AND THE ACCUSED ARE PROBABLY GUILTY THEREOF.— The records show that the accused authorized, without legal authority, the disbursement of public funds in favor of COCOFED in Board Resolutions 009-84 and 128-85. They also allowed the release, without legal authority, of the PCA's funds as evidenced by the disbursement vouchers, the PNB checks and the official receipts. These pieces of evidence, read in light of the law, already show probable cause that an offense under Section 3(e) of RA 3019 has been consummated. For this Court to require further evidence is to render public corporate directors and officers virtually immune from criminal liability under Section 3(e) of RA 3019. Specifically, the *ponencia's* ruling would allow *corporate directors and officers to evade possible criminal prosecution by simply stating in their board resolutions, memoranda, and the like the alleged novel and public purpose of the conversion or transfer of public funds.* x x x While the *ponencia* is dissatisfied with the OSG's documentary evidence, I take the contrary view that the accused's evident bad faith or manifest partiality can be discerned from their acts of authorizing and allowing, without legal authority, the disbursement of the PCA's funds in favor of COCOFED. Let it be remembered that ignorance of the law excuses no one from complying therewith. Also, the transfer of funds without legal authority already constitutes undue injury on the part of the government and unwarranted benefit on the

part of the recipient private entity. To rule that the accused can evade criminal prosecution on the flimsy ground that the donation served a public purpose would create a very dangerous precedent and open loopholes in our criminal justice system.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO A SPEEDY DISPOSITION OF THE CASE, EXPLAINED; USE OF BALANCING TEST AND THE PECULIAR CIRCUMSTANCES OF THE CASE ARE CONSIDERED IN THE DETERMINATION OF WHETHER THE RIGHT OF A PARTY IS VIOLATED.— The right to a speedy disposition of the case is guaranteed by Section 16, Article III of the Constitution which provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This constitutional guarantee is intended to stem the tide of disenchantment among the people in the administration of justice by judicial and quasi-judicial tribunals. The constitutional right to a speedy disposition of the case is not limited to the accused in criminal proceedings, but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Thus, any party to a case may demand the expeditious action by all officials who are tasked with the administration of justice. This right is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays, but the concept of "speedy disposition" is relative and flexible. A mere mathematical reckoning of the time involved is not sufficient. Thus, a balancing test is used to determine whether a party has been denied his right and the conduct of both parties is weighed and the peculiar facts and circumstances of the case are taken into account. These circumstances include: **(1)** the length of delay; **(2)** the reasons for the delay; **(3)** the assertion or failure to assert such right by the accused; and **(4)** the prejudice caused by the delay.

4. ID.; ID.; ID.; ID.; INORDINATE DELAYS FOR EIGHTEEN (18) YEARS BEFORE THE ISSUE OF PROBABLE CAUSE WAS RESOLVED WITH FINALITY CLEARLY CONSTITUTE VIOLATION OF THE RIGHT TO SPEEDY DISPOSITION OF THE CASE; DISMISSAL OF THE CRIMINAL CASES AGAINST THE ACCUSED IS

WARRANTED.— The factual circumstances of this case lead me to conclude that the dismissal of the criminal cases against the accused is warranted for gross violation of their right to a speedy disposition of the case. **I point out that the accused have not yet been arraigned despite the lapse of eighteen (18) years from the filing of the informations against them.** The delays in the proceedings of the case can largely be attributed to the prosecution and the Sandiganbayan: (1) the Ombudsman's vacillating positions on whether there is probable cause to hold the accused for trial; (2) the OSG's initial failure to adequately explain the documentary evidence submitted during the preliminary investigation; (3) the Sandiganbayan's four-year delay in promulgating a ruling on the existence of probable cause; and (4) the Sandiganbayan's three-year delay in resolving the accused's motions for reconsideration. These inordinate delays grossly violated the accused's rights as the People of the Philippines had been given more than ample opportunity to prosecute the accused, yet it took a painful eighteen (18) years for the issue of probable cause to be resolved with finality. Again, I point out that the accused have not yet been arraigned after more than a decade of protracted proceedings before the Ombudsman and the Sandiganbayan. After eighteen (18) long years, the case is still at the initial phase of the proceedings — the filing of the information. Meanwhile, the accused are made to suffer the anxiety of unduly delayed proceedings and the expense of court litigation.

5. ID.; ID.; ID.; ID.; RIGHT OF THE ACCUSED TO A SPEEDY TRIAL UNDER SECTION 14(2), ARTICLE III OF THE CONSTITUTION *VIS-A-VIS* THE SPEEDY TRIAL ACT OF 1998 (R.A. 8493), EXPLAINED; VIOLATION OF THE ACCUSED'S RIGHT TO SPEEDY TRIAL ALSO WARRANTS THE DISMISSAL OF THE CRIMINAL CASES AGAINST THEM.— Gross violation of the accused's right to a speedy trial also serves as a reason for the dismissal of the criminal cases. The accused's right to a speedy, impartial and public trial is a right enshrined under Section 14(2), Article III of the Constitution. RA 8493, the Speedy Trial Act of 1998, further elaborates on the right to a speedy trial by providing time frames: **(1) between the filing of the information and the arraignment of the accused; (2) between arraignment and trial; and (3) the trial period.** Before the indictment,

there is no trial to speak of in the legal sense. Similar to the right to a speedy disposition of the case, the defendant may ask for the dismissal of the criminal case on the ground that his right to a speedy trial has been violated. A violation of the right to a speedy trial transpires when the proceedings are attended by vexatious, capricious and oppressive delays. As in the right to a speedy disposition of the case, the concept of speedy trial cannot be based on mere mathematical reckoning of time. However, the right to a speedy trial only applies to criminal proceedings, unlike the right to a speedy disposition of the case which applies to all proceedings. The right to a speedy trial may also only be invoked during the trial stage, from the filing of information until the termination of trial. On the other hand, the right to a speedy disposition of the case may be invoked during the trial stage, as well as when the case has already been submitted for decision. Section 7 of RA 8493 states that the arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. The accused shall have at least fifteen (15) days to prepare for trial after pleading not guilty at the arraignment. Trial shall commence within thirty (30) days from arraignment as fixed by the court. Under Section 10 of RA 8493, certain delays are excluded from the computation of time within which trial must commence. The case is required to be set for continuous trial on a weekly or other short-term trial calendar at the earliest possible time. The entire trial period shall not exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court. Under Section 13 of RA 8493, the information shall be dismissed on motion of the accused if he is not brought to trial within the time limits required by Section 7, as extended by Section 9 of RA 8493. The accused should ask for the continuation of the case if he desires to exercise his right to a speedy trial during trial. Thereafter, the court shall proceed with the trial if the prosecution unjustly asks for the postponement of the hearing. The court shall dismiss the case, upon motion of the accused, if the prosecution fails to prove the case against the accused or is ill-prepared during trial. The dismissal of the criminal case for violation of the

accused's right to a speedy trial is equivalent to an acquittal. Double jeopardy will apply even if the dismissal is made with the express consent of the accused, or upon his own motion.

APPEARANCES OF COUNSEL

De la Cuesta De las Alas & Tantuico for Rolando P. De La Cuesta.

Estelito P. Mendoza Lorenzo G. Timbol and *Eirene Jhone E. Aguila* for Eduardo M. Cojuangco, Jr.

Roger Reyes for Herminigildo C. Zayco.

Dante Vargas for Felix V. Dueñas, Jr.

Gavino L. Barlin for Salvador Escudero III.

Chua and Associates Law Office for Vicente B. Valdepeñas, Jr.

D E C I S I O N

ABAD, *J.*:

These cases refer to a government agency's grant of financial assistance to a private non-profit organization representing the community whose interests such agency serves.

The Facts and the Case

On February 9, 1995 the Office of the Ombudsman (OMB) filed two separate informations against former members of the Governing Board of the Philippine Coconut Administration (PCA), including its chairman, accused Rolando P. De La Cuesta, and a member, Eduardo M. Cojuangco, Jr., before the Sandiganbayan in Criminal Cases 22017 and 22018. They were charged with granting financial assistance of ₱2 million in 1984[1] and ₱6 million in 1985[2] to the Philippine Coconut Producers

[1] Under Board Resolution 009-84, *rollo* (G.R. Nos. 166305-06), pp. 245-247.

[2] Under Board Resolution 128-85, *id*. at 254 and 1291; *Cojuangco, Jr. v. Sandiganbayan*, 360 Phil. 559, 568 (1998).

Federation (COCOFED), a nationwide association of coconut farmers, in violation of Section 3(e) of Republic Act 3019 (the Anti-Graft and Corrupt Practices Act).

The criminal Informations read:

In Criminal Case 22017

That on or about December 19, 1985, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, accused MARIA CLARA L. LOBREGAT, ROLANDO P. DE LA CUESTA, HERMENEGILDO C. ZAYCO, JOSE R. ELEAZAR, JR., SALVADOR ESCUDERO III and VICENTE B. VALDEPEÑAS, JR., being then Members of the Board of Directors and FELIX J. DUEÑAS, JR., being then the Administrator, all of the Philippine Coconut Authority, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, with evident bad faith and manifest partiality, and all conspiring and confederating with each other, did then and there wilfully, unlawfully and criminally donate and/or extend financial assistance to the Philippine Coconut Producers Federation (COCOFED), a private entity, the total amount of Six Million Pesos (₱6,000,000.00) which sum was taken from the Special Funds of the Philippine Coconut Authority, said accused knowing fully well that COCOFED is a private entity and that the same amount was not included in the budget Fund 503, thereby giving unwarranted benefit in favor of the Philippine Coconut Producers Federation (COCOFED) and, consequently, causing undue injury to the Government in the aforestated amount.

In Criminal Case 22018

That on or about January 18, 1984, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above named accused, all public officers, accused EDUARDO M. COJUANGCO, JR., MARIA CLARA L. LOBREGAT, ROLANDO P. DE LA CUESTA, HERMENEGILDO C. ZAYCO, and JOSE R. ELEAZAR, JR., being then the members of the Board of Directors and FELIX J. DUEÑAS, JR., being then the Administrator, all of the Philippine Coconut Authority, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, with evident bad

faith and manifest partiality, and all conspiring and confederating with each other, did then and there wilfully, unlawfully and criminally donate and/or extend financial assistance to the Philippine Coconut Producers Federation (COCOFED), a private entity, the total amount of Two Million Pesos (₱2,000,000.00) which sum was taken from the Special Funds of the Philippine Coconut Authority, said accused knowing fully well that COCOFED is a private entity and that the same amount was not included in the budget of Fund 503, thereby giving unwarranted benefit in favor of the Philippine Coconut Producers Federation (COCOFED) and, consequently, causing undue injury to the Government in the aforestated amount.

Claiming that the informations were prematurely filed as they were not notified of the June 2, 1992 Resolution, a requirement provided for by law,[3] the Sandiganbayan granted the accused leave to seek reconsideration of such Resolution from the Office of the Special Prosecutor (OSP),[4] the prosecution arm of the OMB. The court gave the Presidential Commission on Good Government (PCGG) the chance to comment.[5]

On December 6, 1996 the OMB submitted to the Sandiganbayan[6] the October 22, 1996 Memorandum of Special Prosecution Officer III Victorio U. Tabanguil, bearing the November 15, 1996 approval of Ombudsman Aniano A. Desierto[7] recommending the dismissal of the cases. This prompted the accused to file their respective motions to dismiss.[8]

Meantime, the Office of the Solicitor General (OSG) filed with the OMB a motion for reconsideration of the adverse position that it had taken in the cases.[9] On learning of the OSG's action,

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[3] Administrative Order 7 and Sec. 27 of Republic Act 6770 or The Ombudsman Act of 1989.

[4] *Rollo* (G.R. Nos. 164068-69), pp. 100-107, 466, 691, 775; *Cojuangco, Jr. v. Sandiganbayan*, *supra* note 2, at 570.

[5] *Id*. at 112-113.

[6] *Id*. at 149-151.

[7] *Id*. at 152-161.

[8] *Rollo* (G.R. Nos. 166305-06), pp. 150-158; 787-790.

[9] *Rollo* (G.R. Nos. 166487-88), pp. 21, 209-214.

the Sandiganbayan directly ordered it to comment on the prosecution's motion to withdraw the Informations and the accused to reply in turn.[10] Both complied.[11] On February 4, 1997 the Sandiganbayan ordered the OSG and the PCGG to appear before it on February 17. Further, it required the PCGG to respond to the OSG's claim that the exhibits needed to prove the existence of probable cause remained with the PCGG.[12]

At the February 17 hearing of the withdrawal issue, the OSG told the court that, as it turned out, the documents needed to show probable cause had already been submitted to the OMB at the preliminary investigation but were simply not adequately explained and, therefore, not fully appreciated. With this development, the Sandiganbayan gave the OSG time to submit to the OSP a catalogue of the documents mentioned with the accompanying explanation of their significance, after which the latter was to inform the court whether it was maintaining its position or changing it.[13]

These documents are as follows:

(a) The PCA Administrator's separate 1984 and 1985 memoranda to the PCA Governing Board recommending the financial grants of ₱2 million and ₱6 million, respectively, for COCOFED's use and providing justifications for the same;[14]

(b) Minutes of the PCA Board Meetings of January 18, 1984 and December 19, 1985[15] during which the PCA Governing Board approved the grants under Resolutions 009-84 and 128-85, respectively;

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[10] *Rollo* (G.R. Nos. 166305-06), pp. 792-793.

[11] *Id*. at 168-171; 373-417.

[12] *Id*. at 794-796.

[13] *Rollo* (G.R. Nos. 164068-69), pp. 175-176.

[14] *Rollo* (G.R. Nos. 166305-06), pp. 214-217. The first is dated January 17, 1984 and the second dated December 16, 1985.

[15] *Id*. at 221, 246-247, 249, 254.

(c) The PCA Governing Board Resolutions 009-84 and 128-85;[16]

(d) The Disbursement Vouchers showing PCA's release of ₱2 million and ₱6 million (the latter in two equal payments) grants to COCOFED pursuant to the above Resolutions.[17]

(e) The PNB check and the corresponding COCOFED official receipt covering the ₱2 million PCA "financial assistance" to COCOFED under Board Resolution 009-84.[18]

(f) The PNB check and the corresponding COCOFED official receipt covering the first ₱3 million of the ₱6 million PCA "financial assistance" to COCOFED under Board Resolution 128-85.[19]

(g) The PNB check and the corresponding COCOFED official receipt covering the second ₱3 million of the ₱6 million PCA "financial assistance" to COCOFED under Board Resolution 128-85.[20]

(h) The letter dated 31 July 1986[21] of PCA Corporate Auditor Archimedes S. Sitjar to the PCA Administrator, disallowing the ₱2 million "financial assistance" to COCOFED paid out of the PCA Special Funds on the ground that this was not included in Fund 503 of that agency for the year 1984;

(i) The letter bearing receipt dated October 6,1986[22] of PCA Auditor Sitjar to the PCA Administrator, disallowing the ₱6

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[16] *Id*. at 218-220.

[17] *Id*. at 263-265. Disbursement Vouchers (DV) No. 503-8403-546 (dated 20 March 1984) and DV Nos. 8601-003 (dated 9 January 1986); and 8601-0016 (dated 21 January 1986).

[18] *Id*. at 266. PNB Check 574587 dated March 20, 1984 and Official Receipts 10499 dated March 29, 1984.

[19] *Id*. at 267. PNB Check 671405 dated January 9, 1986 and COCOFED Official Receipt 11587 dated January 9, 1986.

[20] *Id*. at 269. PNB Check 671729 dated January 21, 1986 and PCA Official Receipt 11603 dated January 22, 1986.

[21] *Id*. at 271.

[22] *Id*. at 273.

million "financial assistance" to COCOFED paid out of the National Coconut Productivity Program (NCPP) fund on the ground that this was not included in the NCPP budget of that agency;

(j) The letter dated December 29, 1986 of the PCA Office of the Auditor to the PCA Administrator,[23] disallowing the ₱6 million "financial assistance" to COCOFED on the further ground of failure to secure the approval of the Chief Executive/President as provided for in Section 2 of P.D. 1997.[24]

On March 17, 1997 the OSP informed the Sandiganbayan that, even with the above documents, it still found no new evidence sufficient to overturn its earlier findings that no probable cause existed against the accused.[25]

Four years later on October 31, 2001 the Sandiganbayan ruled that probable cause existed to warrant the prosecution of the accused. It said:

> Admittedly, the recipient of these donations was the COCOFED, a private corporation. When government funds are "donated" to private entities—which is against laws and regulations unless otherwise authorized by law—there is, at least at first blush, an apparent undue injury to the government and a corresponding unwarranted benefit to the private party favored with the donation. These make out *prima facie* the third and fourth elements above, or conversion for misuse of public funds, or some other offense which would be adequately covered by the present Informations.[26]

Petitioners De La Cuesta and Cojuangco moved for reconsideration on December 7[27] and December 10, 2001,[28] respectively. Meantime, Special Prosecutor Raymundo Julio

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[23] *Id*. at 274.

[24] *Rollo* (G.R. Nos. 166487-88), pp. 223-225.

[25] *Rollo* (G.R. Nos. 166305-06), pp. 797-811.

[26] *Rollo* (G.R. Nos. 166487-88), p. 112.

[27] *Rollo* (G.R. Nos. 164068-69), pp. 214-226.

[28] *Rollo* (G.R. Nos. 166305-06), pp. 838-883.

A. Olaguer replaced Special Prosecutor Tabanguil who retired and on October 17, 2002 Ombudsman Simeon V. Marcelo took over the OMB,[29] signalling a change in its position. On January 9, 2003 Special Prosecutor Olaguer recommended to Ombudsman Marcelo the adoption of the OSG's position, which he approved.[30] Subsequently, the Special Prosecutor conveyed this change of position to the Sandiganbayan.[31]

On July 23, 2004, following accused De La Cuesta's filing of a petition before this Court in G.R. Nos.164068-69, complaining of alleged denial of his right to speedy trial,[32] the Sandiganbayan issued a Resolution[33] granting the accused's motions for reconsideration of its October 31, 2001 Resolution. The Sandiganbayan thus dismissed the cases against them for lack of probable cause, specifically since it found no *prima facie* evidence that evident bad faith, manifest partiality, or gross inexcusable negligence attended the PCA financial assistance to COCOFED.

The Sandiganbayan said that, based on the OSG-submitted documents, the grant of assistance to COCOFED followed a correct course: the PCA Administrator's proposal outlined the justification for the grants and the law that allowed these; the Board of Directors adopted the proposal upon an assumption that funds were indeed available and that the grants were allowed by law and the PCA charter; the required checks were supported by approved disbursement vouchers that were passed in audit; and COCOFED received the checks in due time. While the payments were disallowed in post audit, this was not because

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[29] *Id.* at 1218.

[30] *Id.* at 487.

[31] *Id.* at 485-486.

[32] *Rollo* (G.R. Nos. 164068-69), pp. 3-36.

[33] *Rollo* (G.R. Nos. 166305-06), pp. 78-103. Penned by Associate Justice Diosdado M. Peralta (now a member of this Court) and concurred in by Associate Justices Teresita J. Leonardo-De Castro (now a member of this Court) and Roland B. Jurado.

the grants were irregular but because of the absence of certifications of availability of funds and a prior approval by the President.

The Sandiganbayan observed, however, that these omissions only gave rise to possible administrative or civil liability, given that the grants did not appear to be patently illegal. At best, said that court, such omissions were mere errors in management discretion or bad judgment. That court concluded that, in the absence of *prima facie* evidence of evident bad faith, manifest partiality or gross inexcusable negligence, no case for violation of Section 3(e) of Republic Act (R.A.) 3019 exists.

Further, the Sandiganbayan did not agree with the prosecution that the accused may be indicted for technical malversation, using the same informations without violating their right to know what they were accused of. The charges were for the violation of a special law, the Anti-Graft and Corrupt Practices Act, a *malum prohibitum*, which did not embrace or cover any other offense. Section 3(e) of R.A. 3019 did not cover technical malversation or misuse of public funds under Article 220 of the Revised Penal Code, a *malum in se* offense the elements of which were distinct from Section 3(e) of R.A. 3019.

The OSP and OSG filed their respective motions for reconsideration[34] that the accused opposed.[35] On December 15, 2004 the Sandiganbayan denied the motion, prompting the OSP and the OSG to file separate petitions with this Court in G.R. Nos. 166305-06 and Nos. 166487-88, respectively. Subsequently, this Court ordered the two petitions consolidated with the earlier petition in G.R. 164068-69.[36]

The Issues Presented

These cases present the following issues:

1. Whether or not the Sandiganbayan erred in not holding that it was bound by the findings and recommendations of the

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[34] *Id*. at 489-531; 532-576.

[35] *Id*. at 577-599; 604-637.

[36] *Rollo* (G.R. Nos. 164068-69), pp. 391 and 446.

Ombudsman concerning the existence of probable cause in the two cases;

2. Whether or not the Sandiganbayan erred in dismissing for lack of probable cause the twin criminal informations against accused Rolando P. De La Cuesta, Eduardo M. Cojuangco, Jr., and the others with them for violation of Section 3(e) of R.A. 3019 covering the financial assistance that the PCA gave COCOFED in 1984 (₱2 million) and 1985 (₱6 million);

3. Whether or not the Sandiganbayan erred in failing to hold that the accused may be held for trial, using the same criminal informations, for the crime of technical malversation under Article 220 of the Revised Penal Code; and

4. Whether or not the Sandiganbayan erred in declining to dismiss the criminal actions against the accused on the ground of denial of their right to speedy trial.

The Court's Rulings

To simplify discussion, the Court will refer to the OSP and the OSG collectively as the prosecution.

1. The prosecution points out that the Sandiganbayan erred in dismissing the subject cases for lack of probable cause, given that the Ombudsman, who has the primary authority on the matter, found probable cause that warrants the filing of the informations against the accused.

But while it is true that the prosecution has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case is filed, any disposition the prosecutor may afterwards deem proper should be addressed to the court for its consideration and approval.[37] It is the court's bounden duty to assess independently the merits of the same.[38]

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[37] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 598-599, citing *Galvez v. Court of Appeals*, G.R. No. 114046, October 24, 1994, 237 SCRA 685, 698-699.

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

The only qualification is that the action of the court must not impair the substantial right of the accused or the right of the People to due process of law.[39] This has not happened in the cases below.

2. There is probable cause when the evidence at hand will persuade a reasonably discreet and prudent man to believe that the accused committed the offense of which he is charged. Only common sense, not the technical rules for weighing evidence, is required. But, although less than the evidence that would justify conviction is needed, probable cause demands more than bare suspicion.[40]

The corrupt practice committed by a public officer under Section 3(e) of R.A. 3019 consists in his "causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence."

It will be recalled that, following a reinvestigation of the subject cases, the OSP reversed its previous position and informed the Sandiganbayan that no probable cause existed against the accused. But the OSG, as general counsel for the government, disagreed. It claimed that the documents before the OMB showed otherwise. To settle the issue, the Sandiganbayan let the OSG catalogue the documents mentioned and show how these could prove probable cause that the accused violated Section 3(e) of R.A. 3019.

Two of those documents, the PCA Administrator's separate memoranda to the Board of Governors in 1984 and 1985 that recommended the financial grants to COCOFED, do not on their faces show some semblance of corruption. The January 17, 1984 Memorandum which recommended the ₱2 million grant to COCOFED informed the Board that the grant was meant to

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[39] *Leviste v. Alameda, supra* note 37, at 599.

[40] *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 720 (2005).

help COCOFED stave off an anticipated scaling down of its 992 chapters nationwide which were essential channels for the dissemination of information on the advances in coconut technology and other programs of the coconut industry. COCOFED, a non-profit organization, had a vast national membership of coconut farmers and it had consistently helped the PCA implement its programs for their industry. COCOFED was PCA's indispensable link to farmers.[41]

Similarly, the December 16, 1985 Memorandum recommending the ₱6 million grant to COCOFED adequately explained that it was made to augment the resources of COCOFED due to the lifting of government funding to ensure the effective implementation of the national coconut replanting program which was carried out with its active assistance and participation.[42]

Notably, the prosecution does not dare diminish or malign COCOFED's above role. Nor does it deny that the PCA has been working in partnership with COCOFED towards the attainment of the policy established by law for the industry. Consequently, it cannot be said that, in granting financial assistance to COCOFED, the accused PCA Governing Board members gave it "unwarranted benefits x x x through manifest partiality, evident bad faith or gross inexcusable negligence." The grant was not for any dishonest purpose.

COCOFED's role in the coconut industry began with the enactment of R.A. 6260[43] in 1971. The law created a Coconut Investment Fund, initially capitalized by the government, but eventually supported by a levy on the farmers' sale of their *copra*. Further, it directed the PCA to prescribe rules for the collection of the levy in consultation with "the recognized national association of coconut producers with the largest number of membership as determined by"[44] the PCA.

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[41] *Rollo* (G.R. Nos. 166305-06), pp. 214-215.

[42] *Id.* at 216-217.

[43] Entitled An Act Instituting a Coconut Investment Fund and Creating A Coconut Investment Company for the Administration Thereof.

[44] Republic Act 6260, Sec. 8.

COCOFED quickly qualified to that position on account of its large membership and no one had disputed its credentials. Notably, recognizing the organization's importance, R.A. 6260 set aside ₱0.02 out of every ₱0.55 levied on farmers "for the maintenance and operation of its principal office which shall be responsible for continuing liaison with the different sectors of the industries, the government and its own mass base."[45] Relating to this, the financial grants that the PCA Board gave appear to serve a public purpose.

Furthermore, Presidential Decree (P.D.) 1972,[46] and Executive Order (E.O.) 1064[47] required the PCA to undertake a coconut replanting program "with the active assistance and participation of the recognized organization of the coconut farmers pursuant to the provisions of R.A. 6260."[48] This meant COCOFED.[49] Without this organization, the PCA would forfeit its important link to the coconut farmers that it primarily served, hampering the attainment of its objectives.[50] Although the Coconut Investment Fund was scrapped in 1982, the PCA continued to work with COCOFED in its programs for coconut farmers; hence, the recommendation to grant the organization financial assistance so it could maintain its useful function.

Actually, the Sandiganbayan noted that, in charging the accused with violation of Section 3(e) of R.A. 3018, the prosecution completely relied on the COA disallowance of the disbursements upon post audit. But the post audits disallowed the twin financial assistance to COCOFED, not because government funds were used for something unrelated to the objectives of the PCA but

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[45] *Id.*, Sec. 9.

[46] April 8, 1985, An Act to Finance the Coconut Replanting Program.

[47] November 13, 1985, Implementing the Coconut Productivity Program.

[48] P.D. 1972, Sec. 1; E.O. 1064, Sec. 1.

[49] *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government*, 258-A Phil. 1 (1989).

[50] *Rollo* (G.R. Nos. 166305-06), pp. 214-215.

because: a) the ₱2 million was not included in its budget for Fund 503[51] and b) the ₱6 million was not included in the NCPP budget and had not been approved by the President.[52]

The prosecution points out that the ₱2 million grant was supposed to be taken from Fund 503 or the PCA Special Funds; yet, nothing in the laws that mandated the collection of fees for the PCA Special Funds authorized the PCA to grant assistance out of the same in COCOFED's favor.[53] But this is not altogether accurate. Sections 1 and 2 of P.D. 1854 grant the PCA Governing Board the authority to draw up its own budgetary requirements out of the earmarked collections. Thus:

> Section 1. The PCA fee imposed and collected pursuant to the provisions of R.A. No. 1145 and Sec. 3(k), Article II of P.D. 1468, is hereby increased to three centavos per kilo of copra or husked nuts or their equivalent in other coconut products delivered to and/or purchased by copra exporters, oil millers, desiccators and other end-users of coconut products. The fee shall be collected under such rules that PCA may promulgate, and shall be paid by said copra exporters, oil millers, desiccators, and other end-users of coconut products, receipt of which shall be remitted to the National Treasury on a quarterly basis.
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> Section 2. The receipt and process of all collections pursuant to Section 1 hereof, shall be utilized exclusively for the operations of the Philippine Coconut Authority and shall be released automatically by the National Treasury upon approval by the PCA Governing Board of its budgetary requirements, as an exception to P.D. 1234 and the budgetary processes provided in P.D. 1177, as amended.

The above vested in the PCA Governing Board the authority to allocate and disburse PCA funds by board resolution without the need for presidential approval. The above of course provides that the PCA Special Funds are to be used "exclusively" for its operations. But this restriction was evidently intended to prevent the use of the money for other than the implementation of PCA

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[51] *Id*. at 272.

[52] *Id*. at 273-274.

[53] *Id*. at 1237-1239.

plans and programs for the coconut industry. It bars the hands of other government agencies from dipping into those funds. As pointed out above, the initial ₱2 million grant to COCOFED was actually in furtherance of PCA's operations, its partnership with that organization being an integral part of such operations.

The prosecution also claimed that the National Coconut Productivity Fund budget from which it was sourced did not include the grant of ₱6 million to COCOFED and, therefore, the PCA Board's approval of the same on December 16, 1985 without the President's approval was illegal.

But President Marcos indirectly authorized such expenditure. On January 14, 1985 he issued a Memorandum addressed to Prime Minister Cesar E.A. Virata, Budget and Management Minister Manuel S. Alba, and PCA Chairman Rolando P. De La Cuesta ordering the release of ₱118.7 million from the coconut productivity program and authorizing the PCA to implement the government's long-term productivity program and its major components. Thus, the President said:

> Further to my Memorandum dated September 19, 1984 directing the adoption and implementation of a long-term Coconut Productivity Program and providing for the utilization of a portion of the export tax on coconut products to finance the same, please be guided as follows:
>
> 1. The special budget of the Coconut Productivity Program of the Philippine Coconut Authority (PCA) for 1985 in the total amount of ₱118.7 million is hereby approved as a priority developmental project under the Special Activities Fund.
>
> 2. To cover the herein-approved special budget, the Office of the Budget and Management is hereby directed to set aside the amount as may be necessary from out of the Special Productivity Fund to augment the funds earlier made available from out of the export tax on coconut products to finance the program.
>
> 3. In order to hasten the implementation of the program, the amount of ₱60 million shall be immediately released to PCA not later than January 31, 1985, and the balance of ₱58.7 million not later than June 30, 1985 any provision of Letter of Instructions No. 1408 to the contrary notwithstanding.

4. The PCA is hereby directed to start the full-scale implementation of the program effective on January 1, 1985 with priority given to coconut-producing areas recently affected by the recent typhoons and calamities. For this purpose and in order to ensure the success of the program, ***the PCA is authorized to purchase equipment/motor vehicles, to create positions and to hire new, and effect necessary movement of, personnel, and to undertake such other activities that may be required in the implementation of the program and its major components***, as an exception to Letter of Implementation No. 146.[54]

Clearly, the President had approved the use of money out of the Special Activities Funds to finance and implement the PCA coconut productivity program. Further to this, on November 13, 1985 President Marcos issued E.O. 1064, Section 1 of which directed the PCA to immediately implement the government's accelerated coconut hybrid planting and replanting program specifically "with the active assistance and participation of the recognized organization of coconut farmers pursuant to the provisions of R.A. 6260," which was no other than COCOFED. Section 1 provides:

Section 1. The Philippine Coconut Authority (PCA) is hereby directed to immediately formulate and implement an accelerated coconut hybrid planting and replanting program (the Program) aimed at increasing farm productivity. The annual program (January-December) shall be prepared by the PCA Board in consultation with the private sector and reviewed by the Cabinet and shall be effective upon approval of the President and 30 days after publication of the same in newspapers of general circulation. The Program shall include the rehabilitation of existing coconut trees as well as intercropping of areas planted to coconut with suitable crops and the replanting shall, together with the project(s) as hereinafter defined involve approximately 30,000 hectares per annum. **PCA shall implement the Program with the active assistance and participation of the recognized organization of coconut farmers pursuant to the provisions of RA 6260** and shall service the requirements of small coconut farmers owning not more than twenty-four (24) hectares who volunteer to participate in the Program. Initially, the devastated areas in Visayas and Mindanao shall be given priority. (Emphasis supplied)

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[54] *Id.* at 1231-1232.

But, as stated above, COCOFED was in danger of disintegrating with the unwitting removal of the financial subsidy it was getting from the former Coconut Investment Fund. Consequently, in order to successfully carry out the President's order under E.O. 1064 dated November 13, 1985 to pursue the government's planting and replanting program,[55] it was essential that PCA grant financial assistance to COCOFED.

3. Apparently conscious that its charge of violation of Section 3(e) of R.A. 3019 against the accused had not been strong, the prosecution claims that the latter may alternatively be prosecuted and tried under the same informations for two counts of technical malversation under Article 220 of the Revised Penal Code.

The rule of course is that the real nature of the criminal charge is determined not by the caption of the information or the citation of the law allegedly violated but by the actual recital of facts in that information.[56] Consequently, the issue is whether the facts alleged in the informations in the subject criminal cases make out a case for the crime of technical malversation.

Compare the facts alleged in the information and the elements of the crime of technical malversation:

Factual Allegations In the Information	The Crime of Technical Malversation
The accused as members of the PCA Board of Directors, acting in conspiracy with each other and with evident bad faith and manifest partiality, gave financial assistance to COCOFED, a private entity, without an appropriate budget, giving unwarranted benefit to the same and causing undue injury to the Government.	The crime is committed by a public officer who administers public fund or property that has been appropriated by law but he applies the same to a public use other than that for which such fund or property has been appropriated.[57]

[55] E.O. 1064, Sec. 1.

[56] *Socrates v. Sandiganbayan*, 324 Phil. 151, 173 (1996).

[57] *Abdulla v. People*, 495 Phil. 70, 83 (2005).

The element in the crime of technical malversation that public fund be appropriated for a public use requires an earmarking of the fund or property for a specific project.[58] For instance there is no earmarking if money was part of the municipality's "general fund," intended by internal arrangement for use in paving a particular road but applied instead to the payrolls of different *barangay* workers in the municipality. That portion of the general fund was not considered appropriated since it had not been earmarked by law or ordinance for a specific expenditure. Here, there is no allegation in the informations that the ₱2 million and ₱6 million grants to COCOFED had been earmarked for some specific expenditures.

What is more, the informations in question do not allege that the subject ₱2 million and ₱6 million were applied to a public use other than that for which such sums had been appropriated. Quite the contrary, those informations allege that those sums were unlawfully donated to "a private entity," not applied to some public use. Clearly, the constitutional right of the accused to be informed of the crimes with which they are charged would be violated if they are tried for technical malversation under criminal informations for violation of Section 3(e) of R.A. 3019 filed against them.

4. With the Court's affirmation of the Sandiganbayan's Resolution dismissing the criminal informations against the accused De La Cuesta and Cojuangco, there is no point in resolving the question of whether or not they are entitled to dismissal on ground of denial of their right to speedy trial.

WHEREFORE, the Court **DENIES** the petitions in G.R. Nos. 166305-06, *People v. Eduardo Cojuangco, Jr., et al.*, and G.R. Nos. 166487-88, *Republic v. Eduardo Cojuangco, Jr., et al.*, for lack of merit and **AFFIRMS** the Resolutions of the Sandiganbayan dated July 23, 2004 and December 15, 2004 in Criminal Cases 22017 and 22018.

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[58] *Parungao v. Sandiganbayan*, 274 Phil. 451, 462 (1991); *Gil v. People*, 258 Phil. 23, 41 (1989).

The Court further **DENIES** the petition in G.R. Nos. 164068-69, *Rolando P. De La Cuesta v. Sandiganbayan*, on ground of mootness.

SO ORDERED.

Velasco, Jr., Bersamin, del Castillo, Villarama, Jr., Perez, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Sereno, C.J. and *Mendoza, J.*, join the separate opinion of *J. Brion* in G.R. Nos. 166305-06 and 166487-88.

Brion, J., see separate concurring opinion.

Carpio, J., no part prior inhibition in related case.

Leonardo-de Castro, J., no part due to prior participation in the Sandiganbayan.

Peralta, J., no part, penned the Decision in the Sandiganbayan.

SEPARATE CONCURRING OPINION

BRION, *J.*:

The Case

I concur with the *ponencia's* conclusion and submit this opinion to put into proper perspective: (1) the Court's appreciation of the existence of probable cause against accused Rolando P. De La Cuesta and Eduardo Cojuangco, Jr. (collectively, *the accused*) for alleged violations of Section 3(e) of Republic Act No. (*RA*) 3019, the *Anti-Graft and Corrupt Practices* Act; and (2) the alleged violation of the accused's rights to a speedy disposition of the case and to a speedy trial.

A. The Factual Highlights

On February 9, 1995, the Office of the Ombudsman filed two separate informations against the accused, former members of the Governing Board of the Philippine Coconut Authority *(PCA)*, for violating Section 3(e) of RA 3019.[1] The informations

[1] Section 3(e) of RA 3019 provides:

alleged that the accused authorized the PCA to unlawfully donate the amounts of ₱2,000,000.00 in 1984 and ₱6,000,000.00 in 1985, from its Special Funds, to the Philippine Coconut Producers Federation *(COCOFED).*

The Office of the Solicitor General *(OSG)* took the position that the donation to COCOFED, a private entity, is contrary to law. It pointed out that the ₱2,000,000.00 donation was not included in the PCA's Budget Fund 503 for the year 1984. The ₱6,000,000.00 donation was not part of the PCA's National Coconut Productivity Program fund, and was not approved by the President as required by Section 2 of Presidential Decree No. (*PD*) 1997.

Upon motion, the Sandiganbayan allowed the accused to seek reconsideration of the informations filed. The Ombudsman thereafter recommended the dismissal of the cases for lack of probable cause. The prosecution accordingly filed a motion to withdraw the informations.

At the hearing of the motion to withdraw, the OSG told the Sandiganbayan that the documents needed to show probable cause had already been submitted to the Ombudsman during the preliminary investigation, but the OSG failed to adequately explain these documents. Thus, the Sandiganbayan gave the OSG time to submit its documentary evidence to the Office of the Special Prosecutor (*OSP*).

On March 17, 1997, the OSP informed the Sandiganbayan that it found no probable cause against the accused. On October 31, 2001, the Sandiganbayan, however, ruled that probable cause existed to warrant the prosecution of the accused. In response, the accused moved for reconsideration, raising in their motion, among others, the violation of their right to speedy trial.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The Office of the Ombudsman reversed its finding and found probable cause against the accused. The Sandiganbayan, however, in its own consideration of the matter, granted the accused's motions for reconsideration in an order dated July 23, 2004. The OSP and the OSG *(*collectively, *the prosecution*) filed their respective motions for reconsideration which the Sandiganbayan denied.

B. The Current Court's Rulings

In the present petition before this Court, **the *ponencia* found that there was no probable cause to warrant the prosecution of the accused.** The *ponencia* held that the accused authorized the donations in good faith and the PCA administrator's memoranda recommending financial assistance to COCOFED did not, on their faces, indicate corruption. In fact, the donations were meant to help COCOFED stave off an anticipated scaling down of its chapters nationwide.

The *ponencia* also declared that the donations served a public purpose and were made in accordance with the following laws: Section 8 of RA 6260;[2] Section 1 of PD 1972;[3] Section 1 of Executive Order No. 1064;[4] and Sections 1 and 2 of PD 1854.[5] On the ₱6,000,000.00 donation, the *ponencia* asserted that President Marcos indirectly authorized this expenditure in EO 1064 and in a memorandum dated January 14, 1985.

The *ponencia* also ruled that there was no point in resolving the claimed violation of the accused's right to a speedy trial since the Court already affirmed the Sandiganbayan's resolution dismissing the criminal case against the accused.

Discussion of the Case

With all due respect, I disagree with the *ponencia's* finding that there is no probable cause that the accused committed

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[2] The Coconut Investment Act.

[3] An Act to Finance the Coconut Replanting Program.

[4] Implementing the Coconut Productivity Program.

[5] Authorizing an Adjustment of the Funding Support of the PCA and Instituting a Procedure for the Management of Such Fund.

violations of Section 3(e) of RA 3019. I posit that all the elements of Section 3(e) of RA 3019 appear in the informations and have been sufficiently established by the OSG's documentary evidence.

I also posit that the determination of whether the accused's rights to the speedy disposition of the case and to a speedy trial had been violated is a core issue that should have been disposed by this Court in finally determining the outcome of this case. The gross violations of the accused's rights to a speedy disposition of the case and to a speedy trial lead me to concur with the *ponencia's* results and to ultimately deny the present petitions.

A. Existence of Probable Cause

None of the ponencia's cited laws, executive order and memorandum expressly or impliedly authorize the PCA to make a donation to COCOFED

I essentially disagree with the *ponencia's* no probable cause finding as none of its cited laws, executive order, and memorandum expressly or impliedly authorize the PCA to make a donation to COCOFED. I discuss these laws, executive order, and memorandum separately below:

First, the *ponencia* interpreted Section 2 of PD 1854, in relation with Section 1 of the same law, as a prohibition ***only*** **against the use by other government agencies** of the PCA's special funds. The relevant provisions state:

> Section 1. **The PCA fee imposed and collected pursuant to the provisions of R.A. No. 1145 and Sec. 3(k), Article II of P.D. 1468, is hereby increased to three centavos per kilo of copra or husked nuts or their equivalent in other coconut products delivered to and/or purchased by copra exporters, oil millers, desiccators and other end-users of coconut products.** The fee shall be collected under such rules that PCA may promulgate, and shall be paid by said copra exporters, oil millers, desiccators, and other end-users of coconut products, receipt of which shall be remitted to the National Treasury on a quarterly basis.

Section 2. **The receipt and process of all collections pursuant to Section 1 hereof, shall be utilized exclusively for the operations of the Philippine Coconut Authority** and shall be released automatically by the National Treasury upon approval by the PCA Governing Board of its budgetary requirements, as an exception to P.D. 1234 and the budgetary processes provided in P.D. 1177, as amended. [emphasis and underscores ours]

The *ponencia's* position that Section 2 of PD 1854 does not prohibit private entities from using the special funds of the PCA finds no support in RA 1145,[6] and Section 3(k), Article 2 of PD 1468.[7] The relevant provisions of RA 1145 state:

CHAPTER VI
Capitalization and Special Funds of the PHILCOA

Section 13. Capitalization. – To raise the necessary funds to carry out the provisions of this Act and the purposes of the PHILCOA, **there shall be levied a fee of ten centavos for every one hundred kilos of dessicated coconut, to be paid by the desiccating factory, coconut oil to be paid by the oil mills, and copra to be paid by the exporters, dealers or producers as the case may be.** This service fee shall be collected by the PHILCOA under such rules and regulations that it shall promulgate: Provided, however, That pending the collection of **service fee**, the PHILCOA is hereby authorized to borrow from any banking institution the sum of fifty thousand pesos to be used in the organization and maintenance of this office.

Section 14. Special Fund. – The proceeds of the foregoing levy shall be set aside to constitute a special fund to be known as the "Coconut Development Fund," which shall be available **exclusively for the use of the PHILCOA. All the income and receipts derived from the special fund herein created shall accrue to, and form part of, the said fund to be available solely for the use of the PHILCOA.** [emphases and underscores ours]

On the other hand, Section 3(k), Article 2 of PD 1468 provides:

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[6] An Act Creating the Philippine Coconut Administration, Prescribing its Powers, Functions and Duties, and Providing for the Raising of the Necessary Funds for its Operation.

[7] The Revised Coconut Industry Code.

(k) To impose and collect, under such rules that it may promulgate, a fee of ten centavos for every one hundred kilos of desiccated coconut, to be paid by the desiccating factory, coconut oil to be paid by the oil mills and copra to be paid by the exporters, **which shall be used exclusively to defray its operating expenses[**.] [emphases and underscores ours]

A basic principle of interpretation is that words must be given their literal meaning and applied without attempted interpretation where the words of a statute are clear, plain and free from ambiguity.[8]

As quoted above, Section 2 of PD 1854, Section 14 of RA 1145 and Section 3(k), Article 2 of PD 1468 are all unequivocal in stating that the PCA's service fees shall be exclusively utilized for its operations. In fact, Section 14 of RA 1145 clearly states that all income and receipts from the special funds shall be available solely for the use of the Philippine Coconut Administration (and subsequently, the PCA). The word "exclusive" in Section 2 of PD 1854 has a definite and unambiguous meaning. Black's Law Dictionary defines the term as "[a]ppertaining to the subject alone, not including, admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or participation; vested in one person alone."[9]

It is a settled rule that where the law does not distinguish, we should not distinguish.[10] Notably, the above provisions do not distinguish between government agencies and private entities. *On the contrary, they categorically prohibit the utilization of the PCA's funds for other than its operations.*

Second, Section 8 of RA 6260 provides:

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[8] *Globe-Mackay Cable and Radio Corporation v. NLRC,* G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711.

[9] *Black's Law Dictionary,* 5th Ed., p. 506.

[10] *United BF Homeowners' Associations, Inc. v. The Barangay Chairman,* 532 Phil. 660, 669 (2006), citing *Philippine Free Press v. Court of Appeals,* G.R. No. 132864, October 24, 2005, 473 SCRA 639.

Section 8. *The Coconut Investment Fund.* There shall be levied on the coconut farmer a sum equivalent to fifty-five centavos (₱0.55) on the first domestic sale of every one hundred kilograms of copra, or its equivalent in terms of other coconut products, for which he shall be issued a receipt which shall be converted into shares of stock of the Company upon its incorporation as a private entity in accordance with Section seven hereof. For every fifty-five centavos (₱0.55) so collected, fifty centavos (₱0.50) shall be set aside to constitute a special fund, to be known as the Coconut Investment Fund, which shall be used exclusively to pay the subscription by the Philippine Government for and in behalf of the coconut farmers to the capital stock of said Company: *Provided*, That this levy shall be imposed until the one hundred million pesos authorized capital stock is fully paid, but collection of said levy shall not continue longer than ten years from the start thereof: ***Provided, further,*** **That the Philippine Coconut Administration (PHILCOA) shall, in consultation with the recognized national association of coconut producers with the largest number of membership as determined by the Philippine Coconut Administration, prescribe and promulgate the necessary rules, regulations and procedures for the collection of such levy and issuance of the corresponding receipts:** *Provided*, still further, That the receipts and/or certificates shall be non-transferable except to coconut farmers only and to the company: *Provided*, *furthermore*, That operational expenses of the Company shall be limited to and charged against the earnings and/or profits of the Fund: ***Provided, finally,*** **That one-tenth of such earnings of the fund for each year shall be used to finance technical and economic research studies, promotional programs, scholarships grants and industrial manpower development programs for the coconut industry.** [italics supplied, emphases ours]

A plain reading of this provision shows that the legislature merely directs the PCA to prescribe rules for the collection of levy in consultation with the recognized national association of coconut producers. It also merely enumerates how one-tenth of the fund's earnings shall be utilized, namely: to finance technical and economic research studies, promotional programs, scholarship grants and industrial manpower development programs for the coconut industry. The provision does not even hint that the donation of the PCA's special funds to a private entity is allowed.

A close study of the relevant laws also reveals that Section 8 of RA 6260 has no relevance in determining whether the PCA has the power to donate its own special funds to COCOFED. In fact, the PCA's special funds are different from the Coconut Investment Fund.

The PCA's special funds are sourced from the service fees originally collected by the defunct Philippine Coconut Administration for its exclusive use. RA 1145 constituted this fund from the levy of ₱0.10 for every 100 kilograms of desiccated coconut, coconut oil and copra on desiccating factories, oil mills, and exporters, dealers or producers of copra, respectively.[11] PD 232, Creating a Philippine Coconut Authority, subsequently created the PCA and abolished the Philippine Coconut Administration. This decree transferred the Philippine Coconut Administration's powers and functions, including the collection of service fees, to the PCA.[12]

RA 6260 established the Coconut Investment Fund on June 19, 1971. The coconut farmers capitalized this fund through the **Coconut Investment Company** for purposes of maximizing the coconut production, accelerating the growth of the coconut industry, expanding the coconut marketing system, and ensuring stable incomes for coconut farmers.[13] Section 8 of RA 6260 provides that the Coconut Investment Company shall administer the Coconut Investment Fund that came from the ₱0.55 levy on the coconut farmer's first domestic sale of every 100 kilograms of copra, or its equivalent. The collected levies were converted into shares of stock in the Coconut Investment Company.

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[11] RA 1145, Section 13.

[12] Section 6 of PD 232 provides:

The Coconut Coordinating Council (CCC), the Philippine Coconut Administration (PHILCOA) and the Philippine Coconut Research Institute (PHILCORIN) are hereby abolished and their powers and functions transferred to the Philippine Coconut Authority, together with all their respective appropriations, funding from all sources, equipment and other assets, and such personnel as are necessary[.]

[13] RA 6260, Section 4.

Thus, the PCA's special funds funded its operational budget, while the coconut farmers raised the capital for the Coconut Investment Fund through the Coconut Investment Company. Under Section 9 of RA 6260, the Philippine Coconut Administration (and subsequently, the PCA) was merely designated as the **collection agent** of the Coconut Investment Fund; *the Coconut Investment Fund is not part of the operational budget of the PCA.* These relationships belie the *ponencia's* position, citing Section 8 of RA 6260, that the donations were warranted because they served a public purpose.

Third, Section 1 of PD 1972 states:

> Section 1. The **basic export duty** imposed by Section 514 of Presidential Decree No. 1464, and the **additional export duty** imposed by Executive Order No. 920-A, on coconut products, as identified and at the rates prescribed by Executive Order No. 920-A, which is hereby incorporated made part hereof any reference, are hereby made **permanently constituted as the initial source of financing for the Philippine Coconut Authority ("PCA"), with the active assistance and participation of the recognized organization of the coconut farmers pursuant to the provisions of Act No. 6260.** [emphases ours]

This provision only relates to the PCA's source of financing. It has no relevance whatsoever to the authority of the PCA to make donations to COCOFED. The statement that the PCA operates with the active assistance and participation of COCOFED does not give the PCA the blanket authority to make a donation to COCOFED.

Fourth, Section 1 of EO 1064 declares:

> Section 1. The Philippine Coconut Authority (PCA) is hereby directed **to immediately formulate and implement an accelerated coconut hybrid planting and replanting program (the Program) aimed at increasing farm productivity.** The annual program (January-December) shall be prepared by the PCA Board in consultation with the private sector and reviewed by the Cabinet and shall be effective upon approval of the President and 30 days after publication of the same in newspapers of general circulation. The Program shall include

the rehabilitation of existing coconut trees as well as intercropping of areas planted to coconut with suitable crops and the replanting shall, together with the project(s) as hereinafter defined involve approximately 30,000 hectares per annum. **PCA shall implement the Program with the active assistance and participation of the recognized organization of coconut farmers pursuant to the provisions of RA 6260 and shall service the requirements of small coconut farmers owning not more than twenty-four (24) hectares who volunteer to participate in the Program.** Initially, devastated areas in Visayas and Mindanao shall be given priority. [emphases ours]

This provision only directs the PCA to formulate and implement the accelerated coconut planting and replanting programs. Again, nowhere in this provision is it stated or implied that the PCA may donate to COCOFED pursuant to the government's coconut planting and replanting program.

Lastly, a memorandum dated January 14, 1985 states:

> Further to my Memorandum dated September 19, 1984 directing the adoption and implementation of a long-term Coconut Productivity Program and providing for the utilization of a portion of the export tax on coconut products to finance the same, please be guided as follows:
>
> 1. The special budget of the Coconut Productivity Program of the Philippine Coconut Authority (PCA) for 1985 in the total amount of ₱118.7 million is hereby approved as a priority development project under the Special Activities Fund.
>
> 2. To cover the herein-approved special budget, the Office of the Budget and Management is hereby directed to set aside the amount as may be necessary from out of the Special Productivity Fund to augment the funds earlier made available from out of the export tax on coconut products to finance the program.
>
> 3. In order to hasten the implementation of the program, the amount of ₱60 million shall be immediately released to PCA not later than January 31, 1985, and the balance of ₱58.7 million not later than June 30, 1985 any provision of Letter of Instructions No. 1408 to the contrary notwithstanding.

> 4. The PCA is hereby directed to start the full-scale implementation of the program effective on January 1, 1985 with priority given to coconut-producing areas recently affected by the recent typhoons and calamities. For this purpose and in order to ensure the success of the program, **the PCA is authorized to purchase equipment/motor vehicles, to create positions and to hire new, and effect necessary movement of, personnel, and to undertake such other activities that may be required in the implementation of the program and its major components, as an exception to Letter of Implementation No. 146.**[14] [emphases ours]

This memorandum authorizes the PCA to purchase equipment, to create positions, to hire new, and effect necessary movement of, personnel, and *to undertake such activities that may be required in the implementation of the program and its major components.* These terms do not give rise to the implication, as the *ponencia* recognized, that the President approved the PCA's donation.

Under the principle of *ejusdem generis*, where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include things akin to, resembling, or of the same kind or class as, those specifically mentioned.[15] Evidently, the power to donate is neither akin, nor related, to the enumerated powers of the PCA in the memorandum.

The OSG's documentary evidence is sufficient to engender a well-founded belief that an offense under Section 3(e) of RA 3019 has been committed and that the accused are probably guilty thereof

The records show that the accused authorized, without legal authority, the disbursement of public funds in favor of COCOFED

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[14] *Ponencia*, pp. 10-11.

[15] *Liwag v. Happy Glen Loop Homeowners Association, Inc.*, G.R. No. 189755, July 4, 2012, 675 SCRA 744, 754, citing *Miranda v. Abaya*, 370 Phil. 642 (1999).

in Board Resolutions 009-84 and 128-85. They also allowed the release, without legal authority, of the PCA's funds as evidenced by the disbursement vouchers, the PNB checks and the official receipts. These pieces of evidence, read in light of the law, already show probable cause that an offense under Section 3(e) of RA 3019 has been consummated. For this Court to require further evidence is to render public corporate directors and officers virtually immune from criminal liability under Section 3(e) of RA 3019. Specifically, the *ponencia's* ruling would allow *corporate directors and officers to evade possible criminal prosecution by simply stating in their board resolutions, memoranda, and the like the alleged novel and public purpose of the conversion or transfer of public funds.*

I emphasize at this point that the issue at hand is *only* probable cause and not the guilt of the accused. Probable cause is defined as the existence of such facts and circumstances sufficient to excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was to be prosecuted. It is merely a reasonable ground of belief that a matter is, or may be, well founded, or a state of facts in the mind of the prosecutor that would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.[16]

A finding of probable cause need not be based on clear and convincing evidence of guilt, nor on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. Probable cause does not import absolute certainty but is merely based on opinion and reasonable belief. It does not require an inquiry into whether there is sufficient evidence to secure a conviction. It is enough to reasonably believe, based on the appreciated facts, that the act or omission complained of constitutes the offense charged.[17]

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[16] *Pilapil v. Sandiganbayan,* G.R. No. 101978, April 7, 1993, 221 SCRA 349, 360.

[17] *Ibid*.

While the *ponencia* is dissatisfied with the OSG's documentary evidence, I take the contrary view that the accused's evident bad faith or manifest partiality can be discerned from their acts of authorizing and allowing, without legal authority, the disbursement of the PCA's funds in favor of COCOFED. Let it be remembered that ignorance of the law excuses no one from complying therewith.[18] Also, the transfer of funds without legal authority already constitutes undue injury on the part of the government and unwarranted benefit on the part of the recipient private entity. To rule that the accused can evade criminal prosecution on the flimsy ground that the donation served a public purpose would create a very dangerous precedent and open loopholes in our criminal justice system.

B. The Right to a Speedy Disposition of the Case

The violation of the accused's right to a speedy disposition of the case warrants the dismissal of the criminal cases against them

The right to a speedy disposition of the case is guaranteed by Section 16, Article III of the Constitution which provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This constitutional guarantee is intended to stem the tide of disenchantment among the people in the administration of justice by judicial and quasi-judicial tribunals.[19]

The constitutional right to a speedy disposition of the case is not limited to the accused in criminal proceedings, but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Thus, any party to a case may demand the expeditious action by all officials who are tasked with the administration of justice.[20]

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[18] CIVIL CODE, Article 3.

[19] *Roquero v. Chancellor of UP-Manila,* G.R. No. 181851, March 9, 2010, 614 SCRA 723, 733-734.

[20] *Id*. at 732.

This right is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays, but the concept of "speedy disposition" is relative and flexible. A mere mathematical reckoning of the time involved is not sufficient. Thus, a balancing test is used to determine whether a party has been denied his right and the conduct of both parties is weighed and the peculiar facts and circumstances of the case are taken into account. These circumstances include: **(1)** the length of delay; **(2)** the reasons for the delay; **(3)** the assertion or failure to assert such right by the accused; and **(4)** the prejudice caused by the delay.[21]

The factual circumstances of this case lead me to conclude that the dismissal of the criminal cases against the accused is warranted for gross violation of their right to a speedy disposition of the case. **I point out that the accused have not yet been arraigned despite the lapse of eighteen (18) years from the filing of the informations against them.** The delays in the proceedings of the case can largely be attributed to the prosecution and the Sandiganbayan: (1) the Ombudsman's vacillating positions on whether there is probable cause to hold the accused for trial; (2) the OSG's initial failure to adequately explain the documentary evidence submitted during the preliminary investigation; (3) the Sandiganbayan's four-year delay in promulgating a ruling on the existence of probable cause; and (4) the Sandiganbayan's three-year delay in resolving the accused's motions for reconsideration.

These inordinate delays grossly violated the accused's rights as the People of the Philippines had been given more than ample opportunity to prosecute the accused, yet it took a painful eighteen (18) years for the issue of probable cause to be resolved with finality. Again, I point out that the accused have not yet been arraigned after more than a decade of protracted proceedings before the Ombudsman and the Sandiganbayan. After eighteen (18) long years, the case is still at the initial phase of the

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[21] *Id*. at 732-733; and *dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

proceedings — the filing of the information. Meanwhile, the accused are made to suffer the anxiety of unduly delayed proceedings and the expense of court litigation.

C. The Right to a Speedy Trial

The violation of the accused's right to a speedy trial also warrants the dismissal of the criminal cases against them

Gross violation of the accused's right to a speedy trial also serves as a reason for the dismissal of the criminal cases. The accused's right to a speedy, impartial and public trial is a right enshrined under Section 14(2), Article III of the Constitution. RA 8493, the Speedy Trial Act of 1998, further elaborates on the right to a speedy trial by providing time frames: **(1) between the filing of the information and the arraignment of the accused; (2) between arraignment and trial; and (3) the trial period.** Before the indictment, there is no trial to speak of in the legal sense.[22]

Similar to the right to a speedy disposition of the case, the defendant may ask for the dismissal of the criminal case on the ground that his right to a speedy trial has been violated. A violation of the right to a speedy trial transpires when the proceedings are attended by vexatious, capricious and oppressive delays. As in the right to a speedy disposition of the case, the concept of speedy trial cannot be based on mere mathematical reckoning of time.

However, the right to a speedy trial only applies to criminal proceedings, unlike the right to a speedy disposition of the case which applies to all proceedings. The right to a speedy trial may also only be invoked during the trial stage, from the filing of information until the termination of trial. On the other hand, the right to a speedy disposition of the case may be invoked during the trial stage, as well as when the case has already been submitted for decision.[23]

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[22] *Bermisa v. Court of Appeals,* 180 Phil. 571, 576 (1979).

[23] *Licaros v. Sandiganbayan,* 421 Phil. 1075, 1089-1090 (2001).

Section 7 of RA 8493 states that the arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. The accused shall have at least fifteen (15) days to prepare for trial after pleading not guilty at the arraignment. Trial shall commence within thirty (30) days from arraignment as fixed by the court.[24] Under Section 10 of RA 8493, certain delays are excluded from the computation of time within which trial must commence.[25]

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[24] RA 8493, Section 7.

[25] Section 10 of Republic Act No. 8493 provides:

Exclusions. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) delay resulting from an examination of the accused, and hearing on his/her mental competency, or physical incapacity;

(2) delay resulting from trials with respect to charges against the accused;

(3) delay resulting from interlocutory appeals;

(4) delay resulting from hearings on pre-trial motions: Provided, That the delay does not exceed thirty (30) days[;]

(5) delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;

(6) delay resulting from a finding of the existence of a valid prejudicial question; and

(7) delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of the accused or an essential witness.

For purposes of this subparagraph, an accused or an essential witness shall be considered absent when his/her whereabouts are unknown and, in addition, he/she is attempting to avoid apprehension or prosecution or his/her whereabouts cannot be determined by due diligence. An accused or an essential witness shall be considered unavailable whenever his/her whereabouts are known but his/her presence for trial cannot be

The case is required to be set for continuous trial on a weekly or other short-term trial calendar at the earliest possible time. The entire trial period shall not exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court.[26]

Under Section 13 of RA 8493, the information shall be dismissed on motion of the accused if he is not brought to trial within the time limits required by Section 7,[27] as extended by

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obtained by due diligence or he/she resists appearing at or being returned for trial.

(c) Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or as to whom the time for trial has not run and no motion for severance has been granted.

(f) Any period of delay resulting from a continuance granted by any justice or judge *motu* [*proprio*] or on motion of the accused or his/her counsel or at the request of the public prosecutor, if the justice or judge granted such continuance on the basis of his/her findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this subparagraph shall be excludable under this section unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the accused in a speedy trial. [italics ours]

[26] RA 8493, Section 6; and RULES OF COURT, Rule 119, Section 2.

[27] Section 7 of RA 8493 provides:

Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial. — The arraignment of an accused shall be held within thirty (30) days from the filing of the information,

Section 9 of RA 8493.[28] The accused should ask for the continuation of the case if he desires to exercise his right to a speedy trial during trial. Thereafter, the court shall proceed with the trial if the prosecution unjustly asks for the postponement of the hearing. The court shall dismiss the case, upon motion of the accused, if the prosecution fails to prove the case against the accused or is ill-prepared during trial.[29]

The dismissal of the criminal case for violation of the accused's right to a speedy trial is equivalent to an acquittal. Double jeopardy will apply even if the dismissal is made with the express consent of the accused, or upon his own motion.[30]

As earlier discussed, the extraordinary delays of the proceedings in this case are unjustified. These undue delays, too, are not covered by the exclusions under Section 10 of RA 8493. To reiterate, under Section 7 of RA 8493, the arraignment of the accused shall be held within thirty (30) days from the filing of

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or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. Trial shall commence within thirty (30) days from arraignment as fixed by the court.

If the accused pleads not guilty to the crime charged, he/she shall state whether he/she interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt, while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence.

[28] Section 9 of RA 8493 provides:

Extended Time Limit. — Notwithstanding the provisions of Section 7 of this Act, for the first twelve-calendar-month period following its effectivity, the time limit with respect to the period from arraignment to trial imposed by Section 7 of this Act shall be one hundred eighty (180) days. For the second twelve-month period the time limit shall be one hundred twenty (120) days, and for the third twelve-month period the time limit with respect to the period from arraignment to trial shall be eighty (80) days.

[29] *Salcedo v. Judge Mendoza,* 177 Phil. 749, 754, citing *Gandicela v. Lutero,* 88 Phil. 299, 307 (1951).

[30] *Almario v. Court of Appeals,* 407 Phil. 279, 286 (2001).

the information, or from the date the accused appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. In the present case, it took eighteen (18) years for the issue of probable cause to be resolved with finality in seesaw developments that transpired after the filing of the informations. While certainty of the probable cause is the requisite for the validity of the informations filed, the extreme circumstances of the case demand that no less than the right to a speedy trial be recognized; to do any less is to allow this right to be negated by the People and by the very same adjudication arms of government against whom the guarantee of the right is addressed.

For all these reasons, I vote to deny the petitions.

EN BANC

[G.R. No. 184083. November 19, 2013]

WILLIAM C. DAGAN, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, represented by HON. ROGELIO A. RINGPIS, Graft Investigation and Prosecution Officer II, JAIME DILAG *Y* AGONCILLO, EDUARDO JOSE *Y* BAUTISTA, VERGEL CRUZ *Y* AQUINO, EDUARDO DOMINGO *Y* COSCULLUELA, ROGELIO TANDIAMA *Y* ARESPACOCHAGA, REYNALDO FERNANDO *Y* GALANG, and ROMEO BUENCAMINO *Y* FRANCISCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OMBUDSMAN ACT OF 1989 (R.A. 6770); DECISION OF THE OFFICE OF THE OMBUDSMAN ARISING FROM AN ADMINISTRATIVE CASE

ABSOLVING THE RESPONDENT FROM THE CHARGE WAS FINAL AND UNAPPEALABLE; APPLICATION.— [Section 27 Republic Act No. 6770 or otherwise known as "The Ombudsman Act of 1989"] logically implies that where the respondent is absolved of the charge, the decision shall be final and unappealable. Although the provision does not mention absolution, it can be inferred that since decisions imposing light penalties are final and unappealable, with greater reason should decisions absolving the respondent of the charge be final and unappealable. This inference is validated by Section 7, Rule III of Administrative Order No. 07, series of 1990 (otherwise known as the Rules of Procedure of the Office of the Ombudsman)[.] x x x It was thus clarified that there are two instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary. In the instant case, the respondents were absolved of the charges against them by the Office of the Ombudsman. Such decision is final and unappealable.

2. ID.; ID.; ID.; DECISION OF THE OMBUDSMAN MAY BE REVIEWED, MODIFIED OR REVERSED *VIA* RULE 65 PETITION.— [P]etitioner is not left without any remedy. In *Republic v. Francisco,* we ruled that decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. Thus, the decision of the Ombudsman may be reviewed, modified or reversed *via* petition for *certiorari* under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.

3. ID.; ID.; ID.; ID.; THE PETITION FOR *CERTIORARI* SHOULD BE INITIALLY FILED WITH THE COURT OF APPEALS PURSUANT TO THE DOCTRINE OF HIERARCHY OF COURTS; RULING IN *BRITO* CASE WHERE THE COURT ALLOWED THE DIRECT RESORT

TO THE SUPREME COURT WAS ALREADY ABANDONED.— [T]here still is the question which court has jurisdiction over a *certiorari* petition under Rule 65. Citing *Barata*, petitioner argues that he correctly filed a petition for *certiorari* under Rule 65 before the Court of Appeals. The OSG countered that the petition for *certiorari* under Rule 65 must be filed before this Court pursuant to *Brito*. In *Barata*, petitioner filed a petition for review under Rule 43 of the Rules of Court with the appellate court from the decision exonerating the respondent mayor of the administrative charge. The appellate court dismissed the petition on the ground that said decision was not appealable. We affirmed the appellate court's ruling and further ruled that while the decision absolving respondent from the charge was final and unappealable, the complainant was not deprived of a legal recourse by *certiorari* under Rule 65 of the Rules of Court and the correct recourse was to the Court of Appeals. The Court, in *Brito*, deviated from the foregoing doctrine. Complainant elevated the administrative aspect of the Ombudsman's order imposing upon respondent government employees the penalty of reprimand to the Court of Appeals *via* petition for *certiorari* under Rule 65. The Court held that complainant should have filed the *certiorari* petition directly with the Supreme Court. The Court sourced its holding from *Francisco*. *Francisco* cemented the rule that the Court of Appeals has no appellate jurisdiction to review, rectify or reverse certain decisions of the Ombudsman that are final and unappealable and that decisions of quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. However, there was no categorical pronouncement in *Francisco* vesting exclusive jurisdiction on the Supreme Court over a *certiorari* petition under Rule 65 challenging a decision absolving a respondent from an administrative charge. Considering that a special civil action for *certiorari* is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, such petition should be initially filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. We reiterated in *Heirs of Teofilo Gaudiano v. Benemerito*, that concurrence of jurisdiction should not to be taken to mean as granting parties seeking any of the writs an absolute and unrestrained freedom of choice of the court to

which an application will be directed. It is an established policy that a direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special, important and compelling reasons, clearly and specifically spelled out in the petition. In view of the foregoing disquisition, we abandon the procedural rule enunciated in *Brito*. The legal outcome of said case is not necessarily affected because petitioner therein nonetheless failed to adduce evidence that the Deputy Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in his joint order.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IT IS NOT THE FUNCTION OF THIS COURT TO ANALYZE AND WEIGH THE EVIDENCE; FACTUAL FINDINGS OF THE OFFICE OF THE OMBUDSMAN, ACCORDED RESPECT.— Basic is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when, as in this case, they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.

5. ID.; ID.; ID.; THERE IS NO SHOWING THAT THE DECISION OF THE OFFICE OF THE OMBUDSMAN IS TAINTED WITH GRAVE ABUSE OF DISCRETION.— There is no showing that the assailed Decision is tainted with grave abuse of discretion. The Office of the Ombudsman's Decision exonerating respondents from the administrative charges discussed at length and resolved all issues raised by petitioner. Furthermore, the Office of the Ombudsman, in its Order denying petitioner's Motion for Reconsideration, repeatedly addressed *seriatim* the arguments raised in the motion. On the charge of overpaying the Philippine Racing Club, Inc. and the Manila Jockey Club, Inc., the Office of the Ombudsman maintained that there is nothing in the law or in

the memorandum cited by petitioner which requires retention of the horseowner's prize of the day. The Office of the Ombudsman declared that petitioner failed to establish the culpability of respondents for the alleged arbitrary exclusion of his horses. On the matter of alleged malversation of funds, the Office of the Ombudsman reiterated that it is premature to file an administrative case in view of the ongoing post-audit being conducted by the Resident COA auditor. With regard to conflict of interest, the Office of the Ombudsman clearly stated that Jose holds his position as Philracom commissioner in an honorary capacity, thereby exempting him from the required divestment of financial or business interest. The Office of the Ombudsman dismissed the charge of alleged neglect to enforce drug testing as unsubstantiated. On the unlawful purchase of employees' uniform, the Office of the Ombudsman restated that it was a private transaction between the employees and the supplier. Essentially, then, the Office of the Ombudsman, in a proper exercise of discretion, found the evidence adduced by petitioner as wanting to support the administrative charges brought against respondents.

APPEARANCES OF COUNSEL

Napoleon M. Malimas for petitioner.
The Solicitor General for public respondent.
Dolores L. Espanol for private respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition are the twin Resolutions of the Court of Appeals dated 28 April 2008[1] and 6 August 2008,[2] respectively in CA-G.R. SP No. 103150, dismissing petitioner William C.

[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Jose Catral Mendoza (now an Associate Justice of this Court) and Arturo G. Tayag, concurring. *Rollo*, pp. 39-42.

[2] *Id*. at 44.

Dagan's appeal from the Decision and Order of the Office of the Ombudsman (OMB) in OMB-C-A-05-0263-F, exonerating respondents Jaime A. Dilag (Dilag), Eduardo B. Jose (Jose), Vergel A. Cruz, Eduardo C. Domingo, Rogelio A. Tandiama, Reynaldo G. Fernando and Romeo F. Buencamino from administrative charges.

The antecedent facts follow.

Petitioner is the owner of several racehorses that participated in horse races at the Philippine Racing Club, Inc. and Manila Jockey Club, Inc., while respondents were the former Chairman and Commissioners of the Philippine Racing Commission (Philracom).

Petitioner filed a complaint-affidavit before the Office of the Ombudsman against respondents for violation of Anti-Graft and Corrupt Practices Act; malversation; violation of Republic Act No. 6713 or the Code of Conduct and Ethical Standards of Public Officials and Employees; falsification of public document; dishonesty and grave misconduct. Petitioner made the following averments in his complaint-affidavit:

1. Under Philracom-sponsored races, Philracom undertakes the payment of all prizes for the race to the winning horses or owners thereof, less the allotted horse owner's prize of the day with the understanding that either Philippine Racing Club, Inc. or Manila Jockey Club, Inc. shall advance the same. Petitioner accuses Philracom, through respondents, of overpaying the Philippine Racing Club, Inc. and Manila Jockey Club, Inc. by ₱28,624,235.00 when it failed to deduct the allotted horse owner's prize of the day.

2. On the day of the race, petitioner's horses were denied participation and were scratched out from the race, as per order of Philracom.

3. Respondent Dilag purchased various medicines for his personal use and benefit, amounting to ₱13,346.00.

4. Respondent Dilag caused the disbursement of funds of Philracom allegedly as reimbursement for promotional expenses

without specifying the nature of such promotion and without the necessary public bidding and prior approval of Philracom.

5. Respondent Jose had owned and appears to still own at least 11 racehorses in gross violation of the Philracom rules and policies.

6. Respondent Dilag entered into a contract for the purchase of the uniforms of Philracom employees in the amount of ₱400,000.00 which amount was taken from the uniform allowance of the employees, without their consent.

7. Respondent Dilag purchased equipment and medicines purportedly to be used in the implementation of the commission's policy to conduct a Coggins Test on all race horses, which purchases reportedly amounted to more than ₱200,000.00 per release.

8. Respondent Dilag and the rest of the commissioners have repeatedly failed and refused without any lawful justification to implement the compulsory drug testing for possible use of prohibitive substances on all race horses.[3]

Thus, the assailed Decision of the Office of the Ombudsman dealt with the following administrative charges:

1. overpayment
2. improper hiring of media consultant
3. oppressive scratching [out] of racehorses
4. malversation/illegal use of funds
5. unlawful purchases of employees' uniform and Coggins tests equipment and medicines
6. conflict of interest and non-divestment of business interest, and
7. refusal to implement the law on drug-testing.[4]

On 30 September 2005, the Office of the Ombudsman's Preliminary Investigation and Administrative Adjudication Bureau rendered a Decision absolving respondents of charges of grave

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[3] See Complaint-Affidavit. *Id*. at 45-55.

[4] *Id*. at 287-291.

misconduct, oppression, dishonesty, serious irregularities and violation of laws.[5] With respect to the charge of overpayment, the Office of the Ombudsman held that under the Memorandum of Agreement (MOA), Philracom obligated itself to reimburse the prize money and there was nothing in the MOA which supported petitioner's contention that the horse owner's prize of the day should be deducted or withheld by Philracom. On the charge of improper hiring of media consultant, the Office of the Ombudsman dismissed the same for failure of petitioner to submit a copy of the contract. The Office of the Ombudsman justified the removal from a race of petitioner's two racehorses as a penalty for not submitting the horses for a Coggins Test. The Office of the Ombudsman found it premature to make an administrative case because the questioned reimbursements were still being subjected to a post-audit by the Resident Commission on Audit (COA) Auditor of Philracom. The issue of unauthorized promotional expenses was disproved by the fact that the Department of Budget and Management had been providing funds for promotional expenses and the Philracom Chairman was the rightful officer to disburse said funds. Regarding the unlawful purchases of employees' uniform and equipment and medicines to implement the Coggins Test, the Office of the Ombudsman accepted the explanation of respondents that the purchase of uniforms was a private transaction between the employees and the awarded supplier. The denial by respondents of any purchase made for equipment and medicines for the Coggins Test was likewise accepted. Anent the charge of conflict of interest, the Office of the Ombudsman ruled that respondent Jose is not covered by the prohibition under Republic Act No. 6713 which is "to own, control manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law" because respondent does not appear to be connected, in any capacity, with racing clubs. Neither is he covered by the requirement of divestment of business interest as provided in Section 9 of Republic Act No. 6713 because he merely served in an honorary capacity. Finally, the OMB

[5] *Id*. at 325.

disregarded the charge of neglect in implementing the law on drug testing because petitioner failed to show that it was respondents' principal duty to implement such drug testing.[6]

Petitioner filed a motion for reconsideration/reinvestigation but on 25 November 2005, the Office of the Ombudsman denied the motion for lack of merit.[7]

Petitioner elevated the case to the Court of Appeals via a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. On 28 April 2008, the appellate court issued a Resolution dismissing the petition for failure of petitioner to avail of the correct mode of appeal. Citing *Fabian v. Hon. Desierto*,[8] the appellate court ruled that since the assailed issuances of the Ombudsman are administrative in nature, the proper remedy is through a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. Petitioner sought the reconsideration of the Resolution but it was denied on 6 August 2008.[9]

Thus, the present recourse. Petitioner argues that the Court of Appeals erred in dismissing his petition for *certiorari*. He contends that the *Fabian* case applies only to a situation where the decision of the Office of the Ombudsman is that of conviction. In case of exoneration, petitioner asserts that under Section 27 of Republic Act No. 6770 or the Ombudsman Act, the decision is final, executory and unappealable. Petitioner maintains that his only recourse to reverse and nullify the same is by way of a special civil action for *certiorari* under Rule 65. Petitioner cites *Barata v. Abalos, Jr.*[10] to support his contention.

Petitioner also raises as a ground for review the factual findings of the Office of the Ombudsman. First, petitioner insists that the reimbursement to be made by Philracom should only be to

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[6] *Id*. at 308-324.

[7] *Id*. at 353.

[8] 356 Phil. 787 (1998).

[9] *Rollo*, p. 44.

[10] 411 Phil. 204, 211-212 (2001).

the extent of the actual amount paid to race horse owners. Second, petitioner assails Philracom's policy of subjecting all race horses to the Coggins Test for being an undue and unreasonable restriction on his right to participate in the races. Third, petitioner claims that Chairman Dilag obtained reimbursement for the purchase of medicines but made it appear that the payment was for reimbursement of promotional expenses. Fourth, petitioner proffers that the "conflict of interest" provision applies to all businesses which may be opposed to or affected by the faithful performance of the duty of such official. Likewise, the rule applies to all public officials whether or not they are receiving compensation. Fifth, petitioner submits that Philracom is legally mandated to implement drug testing on all horses.

On behalf of the Office of the Ombudsman, the Office of the Solicitor General (OSG) filed a Comment defending the Court of Appeals' dismissal of the petition for *certiorari*. The OSG avers that our ruling in *Brito v. Office of the Deputy Ombudsman for Luzon*,[11] where we held that the decision of the Ombudsman may be reviewed by filing a petition for *certiorari* under Rule 65 before us, applies in this case. Also the OSG posits that the issues raised by petitioner involve questions of facts which are beyond the province of a petition for review.

Respondents also filed their Comment and decry their continuous harassment by petitioner. Respondents maintain that *certiorari* could not be availed of before the appellate court because the Decision and Resolution of the Ombudsman have become final and executory. Moreover, respondents cite that Dilag was already dismissed from the service on 27 April 2006 as a consequence of a complaint filed by petitioner before the Presidential Anti-Graft Commission, which fact, according to respondents, demonstrates petitioner's propensity to mislead the Court under the guise of being deprived of due process.

We rule in favor of respondents.

Section 27 of Republic Act No. 6770 or otherwise known as "The Ombudsman Act of 1989," provides:

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[11] 554 Phil. 112 (2007).

SEC. 27. Effectivity and Finality of Decisions. – (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: provided, that only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman, when supported by substantial evidence, are conclusive. **Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.**

xxx xxx xxx

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied).

The above-quoted provision logically implies that where the respondent is absolved of the charge, the decision shall be final and unappealable. Although the provision does not mention absolution, it can be inferred that since decisions imposing light penalties are final and unappealable, with greater reason should decisions absolving the respondent of the charge be final and unappealable.

This inference is validated by Section 7,[12] Rule III of Administrative Order No. 07, series of 1990 (otherwise known as the Rules of Procedure of the Office of the Ombudsman), to wit:

[12] The latest amendment to this section reads:

SEC. 7. Finality of decision. – Where the respondent is **absolved of the charge**, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, **the decision shall be final and unappealable**. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770. (Emphasis theirs).

It was thus clarified that there are two instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary.[13]

In the instant case, the respondents were absolved of the charges against them by the Office of the Ombudsman. Such decision is final and unappealable.

However, petitioner is not left without any remedy. In *Republic v. Francisco,*[14] we ruled that decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel

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Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

[13] *Office of the Ombudsman v. Alano*, 544 Phil. 709, 714 (2007).

[14] 539 Phil. 433, 449 (2006).

a contrary conclusion, the Court will not hesitate to reverse the factual findings. Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for *certiorari* under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.[15]

That said, there still is the question which court has jurisdiction over a *certiorari* petition under Rule 65.

Citing *Barata*, petitioner argues that he correctly filed a petition for *certiorari* under Rule 65 before the Court of Appeals. The OSG countered that the petition for *certiorari* under Rule 65 must be filed before this Court pursuant to *Brito*.

In *Barata*, petitioner filed a petition for review under Rule 43 of the Rules of Court with the appellate court from the decision exonerating the respondent mayor of the administrative charge. The appellate court dismissed the petition on the ground that said decision was not appealable. We affirmed the appellate court's ruling and further ruled that while the decision absolving respondent from the charge was final and unappealable, the complainant was not deprived of a legal recourse by *certiorari* under Rule 65 of the Rules of Court and the correct recourse was to the Court of Appeals.[16]

The Court, in *Brito*, deviated from the foregoing doctrine. Complainant elevated the administrative aspect of the Ombudsman's order imposing upon respondent government employees the penalty of reprimand to the Court of Appeals *via* petition for *certiorari* under Rule 65. The Court held that complainant should have filed the *certiorari* petition directly with the Supreme Court. The Court sourced its holding from *Francisco*. *Francisco* cemented the rule that the Court of Appeals has no appellate jurisdiction to review, rectify or reverse certain decisions of the Ombudsman that are final and unappealable

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[15] *Id*. at 450 citing *De Guzman v. Commission on Elections*, G.R. No. 159713, 31 March 2004, 426 SCRA 698, 707-708.

[16] *Barata v. Abalos, Jr., supra* note 10 at 212-213.

and that decisions of quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law.[17] However, there was no categorical pronouncement in *Francisco* vesting exclusive jurisdiction on the Supreme Court over a *certiorari* petition under Rule 65 challenging a decision absolving a respondent from an administrative charge.

Considering that a special civil action for *certiorari* is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, such petition should be initially filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. We reiterated in *Heirs of Teofilo Gaudiano v. Benemerito,*[18] that concurrence of jurisdiction should not to be taken to mean as granting parties seeking any of the writs an absolute and unrestrained freedom of choice of the court to which an application will be directed. It is an established policy that a direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special, important and compelling reasons, clearly and specifically spelled out in the petition.[19]

In view of the foregoing disquisition, we abandon the procedural rule enunciated in *Brito*. The legal outcome of said case is not necessarily affected because petitioner therein nonetheless failed to adduce evidence that the Deputy Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in his joint order.

In the same vein, while petitioner employed the correct mode of review in this case, *i.e.*, a special civil action for *certiorari* before the Court of Appeals, petitioner failed to show grave abuse of discretion committed by the Office of the Ombudsman. Hence, the petition must fail.

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[17] *Republic v. Francisco, supra* note 14 at 450.

[18] 545 Phil. 311 (2007).

[19] *Id.* at 319-320.

Petitioner's rehashed arguments seek to refute the factual findings of the Office of the Ombudsman.

Basic is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when, as in this case, they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.[20]

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner – which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law – in order to exceptionally warrant judicial intervention.[21]

There is no showing that the assailed Decision is tainted with grave abuse of discretion. The Office of the Ombudsman's Decision exonerating respondents from the administrative charges discussed at length and resolved all issues raised by petitioner. Furthermore, the Office of the Ombudsman, in its Order denying petitioner's Motion for Reconsideration, repeatedly addressed *seriatim* the arguments raised in the motion. On the charge of overpaying the Philippine Racing Club, Inc. and the Manila

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[20] *Tolentino v. Loyola*, G.R. No. 153809, 27 July 2011, 654 SCRA 420, 434.

[21] *Casing v. Ombudsman*, G.R. No. 192334, 13 June 2012, 672 SCRA 500, 508.

Jockey Club, Inc., the Office of the Ombudsman maintained that there is nothing in the law or in the memorandum cited by petitioner which requires retention of the horseowner's prize of the day. The Office of the Ombudsman declared that petitioner failed to establish the culpability of respondents for the alleged arbitrary exclusion of his horses. On the matter of alleged malversation of funds, the Office of the Ombudsman reiterated that it is premature to file an administrative case in view of the ongoing post-audit being conducted by the Resident COA auditor. With regard to conflict of interest, the Office of the Ombudsman clearly stated that Jose holds his position as Philracom commissioner in an honorary capacity, thereby exempting him from the required divestment of financial or business interest. The Office of the Ombudsman dismissed the charge of alleged neglect to enforce drug testing as unsubstantiated. On the unlawful purchase of employees' uniform, the Office of the Ombudsman restated that it was a private transaction between the employees and the supplier. Essentially, then, the Office of the Ombudsman, in a proper exercise of discretion, found the evidence adduced by petitioner as wanting to support the administrative charges brought against respondents.

WHEREFORE, based on the foregoing, the instant petition is **DENIED** for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Mendoza, J., no part.

EN BANC

[G.R. No. 208566. November 19, 2013]

GRECO ANTONIOUS BEDA B. BELGICA, JOSE M. VILLEGAS, JR., JOSE L. GONZALEZ, REUBEN M. ABANTE, and QUINTIN PAREDES SAN DIEGO, *petitioners, vs.* **HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., SECRETARY OF BUDGET AND MANAGEMENT FLORENCIO B. ABAD, NATIONAL TREASURER ROSALIA V. DE LEON, SENATE OF THE PHILIPPINES, represented by FRANKLIN M. DRILON in his capacity as SENATE PRESIDENT, and HOUSE OF REPRESENTATIVES, represented by FELICIANO S. BELMONTE, JR. in his capacity as SPEAKER OF THE HOUSE,** *respondents.*

[G.R. No. 208493. November 19, 2013]

SOCIAL JUSTICE SOCIETY (SJS) PRESIDENT SAMSON S. ALCANTARA, *petitioner, vs.* **HONORABLE FRANKLIN M. DRILON, in his capacity as SENATE PRESIDENT, and HONORABLE FELICIANO S. BELMONTE, JR., in his capacity as SPEAKER OF THE HOUSE OF REPRESENTATIVES,** *respondents.*

[G.R. No. 209251. November 19, 2013]

PEDRITO M. NEPOMUCENO, Former Mayor-Boac, Marinduque Former Provincial Board Member - Province of Marinduque, *petitioner, vs.* **PRESIDENT BENIGNO SIMEON C. AQUINO III[*] and SECRETARY FLORENCIO "BUTCH" ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondents.*

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[*] Dropped as a party per Memorandum dated October 17, 2013 filed by counsel for petitioners Atty. Alfredo B. Mollo III, *et al. Rollo* (G.R. No. 208566), p. 388.

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; REQUISITES FOR JUDICIAL INQUIRY.— The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) there must be an **actual case or controversy** calling for the exercise of judicial power; (b) the person challenging the act must have the **standing** to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the **earliest opportunity**; and (d) the issue of constitutionality must be the very *lis mota* of the case. Of these requisites, case law states that the first two are the most important and, therefore, shall be discussed forthwith.

2. ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; REQUIREMENT OF CONTRARIETY OF LEGAL RIGHTS; SATISFIED BY THE ANTAGONISTIC POSITIONS OF THE PARTIES ON THE CONSTITUTIONALITY OF THE "PORK BARREL SYSTEM".— By constitutional fiat, judicial power operates only when there is an actual case or controversy. This is embodied in Section 1, Article VIII of the 1987 Constitution which pertinently states that "[j]udicial power includes the duty of the courts of justice **to settle actual controversies involving rights which are legally demandable and enforceable** x x x." Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." In other words, "[t]here must be **a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence**." Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then

been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the **existence of an immediate or threatened injury to itself as a result of the challenged action**." "Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions." Based on these principles, the Court finds that there exists an actual and justiciable controversy in these cases. The requirement of contrariety of legal rights is clearly satisfied by the antagonistic positions of the parties on the constitutionality of the "Pork Barrel System." Also, the questions in these consolidated cases are ripe for adjudication since the challenged funds and the provisions allowing for their utilization – such as the 2013 GAA for the PDAF, PD 910 for the Malampaya Funds and PD 1869, as amended by PD 1993, for the Presidential Social Fund – are currently existing and operational; hence, there exists an immediate or threatened injury to petitioners as a result of the unconstitutional use of these public funds.

3. ID.; ID.; ID.; ID.; ID.; MOOT AND ACADEMIC CASE; THE PRESIDENT'S DECLARATION THAT HE HAD ALREADY "ABOLISHED THE PDAF" DOES NOT RENDER THE ISSUES ON THE PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) MOOT PRECISELY BECAUSE THE EXECUTIVE BRANCH OF THE GOVERNMENT HAS NO CONSTITUTIONAL AUTHORITY TO NULLIFY OR ANNUL ITS LEGAL EXISTENCE.— As for the PDAF, the Court must dispel the notion that the issues related thereto had been rendered moot and academic by the reforms undertaken by respondents. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Differing from this description, the Court observes that respondents' proposed line-item budgeting scheme would not terminate the controversy nor diminish the useful purpose for its resolution since said reform is geared towards the 2014 budget, and not the 2013 PDAF Article which, being **a distinct subject matter**, remains legally effective and existing. Neither will the President's declaration that he had already "abolished the PDAF" render the issues on PDAF moot precisely because the Executive branch of government has no

constitutional authority to nullify or annul its legal existence. By constitutional design, the annulment or nullification of a law may be done either by Congress, through the passage of a repealing law, or by the Court, through a declaration of unconstitutionality.

4. ID.; ID.; ID.; ID.; ID.; INSTANCES WHEN THE COURT WILL DECIDE CASES, OTHERWISE MOOT; APPLICABLE IN CASE AT BAR.— Even on the assumption of mootness, jurisprudence, nevertheless, dictates that "the 'moot and academic' principle is not a magical formula that can automatically dissuade the Court in resolving a case." The Court will decide cases, otherwise moot, if: **first**, there is a grave violation of the Constitution; **second**, the exceptional character of the situation and the paramount public interest is involved; **third**, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and **fourth**, the case is capable of repetition yet evading review. The applicability of the **first exception** is clear from the fundamental posture of petitioners – they essentially allege grave violations of the Constitution with respect to, *inter alia*, the principles of separation of powers, non-delegability of legislative power, checks and balances, accountability and local autonomy. The applicability of the **second exception** is also apparent from the nature of the interests involved – the constitutionality of the very system within which significant amounts of public funds have been and continue to be utilized and expended undoubtedly presents a situation of exceptional character as well as a matter of paramount public interest. The present petitions, in fact, have been lodged at a time when the system's flaws have never before been magnified. To the Court's mind, the coalescence of the CoA Report, the accounts of numerous whistle-blowers, and the government's own recognition that reforms are needed "to address the reported abuses of the PDAF" **demonstrates a prima facie pattern of abuse** which only underscores the importance of the matter. It is also by this finding that the Court finds petitioners' claims as not merely theorized, speculative or hypothetical. Of note is the weight accorded by the Court to the findings made by the CoA which is the constitutionally-mandated audit arm of the government.

x x x Thus, **if only for the purpose of validating the existence of an actual and justiciable controversy in these cases**, the Court deems the findings under the CoA Report to be sufficient. The Court also finds the **third exception** to be applicable largely due to the practical need for a definitive ruling on the system's constitutionality. x x x Finally, the application of the **fourth exception** is called for by the recognition that the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurrence. The relevance of the issues before the Court does not cease with the passage of a "PDAF- free budget for 2014." The evolution of the "Pork Barrel System," by its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar." In *Sanlakas v. Executive Secretary*, the government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "[t]o prevent similar questions from re-emerging." The situation similarly holds true to these cases. Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.

5. ID.; ID.; ID.; ID.; ID.; POLITICAL QUESTION DOCTRINE; THE INTRINSIC CONSTITUTIONALITY OF THE "PORK BARREL SYSTEM" IS NOT A POLITICAL QUESTION BUT RATHER A LEGAL ONE WHICH THE CONSTITUTION ITSELF HAS COMMANDED THE COURT TO ACT UPON.— Suffice it to state that the issues raised before the Court do not present political but legal questions which are within its province to resolve. A political question refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure." **The intrinsic constitutionality of the "Pork Barrel System" is not an issue dependent upon the wisdom of the political branches of government but rather a legal one which the Constitution**

itself has commanded the Court to act upon. Scrutinizing the contours of the system along constitutional lines is a task that the political branches of government are incapable of rendering precisely because it is an exercise of judicial power. More importantly, the present Constitution has not only vested the Judiciary the right to exercise judicial power but essentially makes it a duty to proceed therewith. Section 1, Article VIII of the 1987 Constitution cannot be any clearer: "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. [It] includes **the duty** of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." In *Estrada v. Desierto*, the expanded concept of judicial power under the 1987 Constitution and its effect on the political question doctrine was explained. x x x It must also be borne in mind that "when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; does not in reality nullify or invalidate an act of the legislature [or the executive], but only asserts the solemn and sacred obligation assigned to it by the Constitution."

6. ID.; ID.; ID.; ID.; ID.; *LOCUS STANDI*; PETITIONERS, AS CITIZENS AND TAXPAYERS, POSSESS THE REQUISITE STANDING TO QUESTION THE VALIDITY OF THE EXISTING "PORK BARREL SYSTEM" UNDER WHICH THE TAXES THEY PAY HAVE BEEN AND CONTINUE TO BE UTILIZED.— Petitioners have come before the Court in their respective capacities as citizen-taxpayers and accordingly, assert that they "dutifully contribute to the coffers of the National Treasury." Clearly, as taxpayers, they possess the requisite standing to question the validity of the existing "Pork Barrel System under which the taxes they pay have been and continue to be utilized. It is undeniable that petitioners, as taxpayers, are bound to suffer from the unconstitutional usage of public funds, if the Court so rules. Invariably, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public

funds are wasted through the enforcement of an invalid or unconstitutional law, as in these cases. Moreover, as citizens, petitioners have equally fulfilled the standing requirement given that the issues they have raised may be classified as matters "of transcendental importance, of overreaching significance to society, or of paramount public interest." The CoA Chairperson's statement during the Oral Arguments that the present controversy involves "not [merely] a systems failure" but a "complete breakdown of controls" amplifies, in addition to the matters above-discussed, the seriousness of the issues involved herein. Indeed, of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute. All told, petitioners have sufficient *locus standi* to file the instant cases.

7. ID.; ID.; ID.; ID.; ID.; *RES JUDICATA* AND *STARE DECISIS*; CONCEPT; EXPOUNDED.— *Res judicata* (which means a "matter adjudged") and *stare decisis non quieta et movere* ([or simply, *stare decisis*] which means "follow past precedents and do not disturb what has been settled") are general procedural law principles which both deal with the effects of previous but factually similar dispositions to subsequent cases. For the cases at bar, the Court examines the applicability of these principles in relation to its prior rulings in *Philconsa* and *LAMP*. **The focal point of res judicata is the judgment**. The principle states that a **judgment on the merits** in a previous case rendered by a court of competent jurisdiction would bind a subsequent case if, between the first and second actions, **there exists an identity of parties, of subject matter, and of causes of action**. This required identity is not, however, attendant hereto since *Philconsa* and *LAMP*, respectively involved constitutional challenges against the **1994 CDF Article** and **2004 PDAF Article**, whereas the cases at bar call for a broader constitutional scrutiny of the **entire "Pork Barrel System."** Also, the ruling in *LAMP* is essentially a dismissal based on a procedural technicality – and, thus, hardly a judgment on the merits – in that petitioners therein failed to present any "convincing proof x x x showing that, indeed, there were **direct releases of funds** to the Members of Congress, who actually spend them according to their sole discretion" or "pertinent evidentiary

support [to demonstrate the] **illegal misuse of PDAF** in the form of kickbacks [and] has become a common exercise of unscrupulous Members of Congress." As such, the Court upheld, in view of the presumption of constitutionality accorded to every law, the 2004 PDAF Article, and saw "no need to review or reverse the standing pronouncements in the said case." Hence, for the foregoing reasons, the *res judicata* principle, insofar as the *Philconsa* and *LAMP* cases are concerned, cannot apply. On the other hand, **the focal point of** *stare decisis* **is the doctrine created**. The principle, entrenched under Article 8 of the Civil Code, evokes the general rule that, for the sake of certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations**, **like cases ought to be decided alike**. Thus, where the **same questions** relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to re-litigate the same issue.

8. ID.; ID.; ID.; ID.; ID.; THE COURT MUST PARTIALLY ABANDON ITS PREVIOUS RULING IN *PHILIPPINE CONSTITUTIONAL ASSOCIATION V. ENRIQUEZ* INSOFAR AS IT VALIDATED THE POST-ENACTMENT IDENTIFICATION AUTHORITY OF THE MEMBERS OF CONGRESS ON THE GUISE THAT SAME WAS MERELY RECOMMENDATORY.— The Court observes that the *Philconsa* ruling was actually riddled with inherent constitutional inconsistencies which similarly countervail against a full resort to *stare decisis*. As may be deduced from the main conclusions of the case, *Philconsa's* fundamental premise in allowing Members of Congress to propose and identify of projects would be that the said identification authority is but an aspect of the power of appropriation which has been constitutionally lodged in Congress. From this premise, the contradictions may be easily seen. If the authority to identify projects is **an aspect of appropriation** and the power of appropriation is **a form of legislative power** thereby lodged in **Congress**, then it follows that: **(a)** it is Congress which should exercise such authority, and not its individual Members;

(b) such authority must be exercised within the prescribed procedure of law passage and, hence, should not be exercised after the GAA has already been passed; and **(c)** such authority, as embodied in the GAA , has the force of law and, hence, cannot be merely recommendatory. Justice Vitug's Concurring Opinion in the same case sums up the *Philconsa* quandary in this wise: "Neither would it be objectionable for Congress, by law, to appropriate funds for such specific projects as it may be minded; to give that authority, however, to the individual members of Congress in whatever guise, I am afraid, would be constitutionally impermissible." As the Court now largely benefits from hindsight and current findings on the matter, among others, the CoA Report, the Court must partially abandon its previous ruling in *Philconsa* **insofar as it validated the post-enactment identification authority of Members of Congress on the guise that the same was merely recommendatory**. This postulate raises serious constitutional inconsistencies which cannot be simply excused on the ground that such mechanism is "imaginative as it is innovative." Moreover, it must be pointed out that the recent case of *Abakada Guro Party List v. Purisima (Abakada)* has effectively overturned *Philconsa's* allowance of post-enactment legislator participation in view of the separation of powers principle.

9. ID.; ID.; PRINCIPLE OF SEPARATION OF POWERS; THE TERMS "PORK BARREL SYSTEM", "CONGRESSIONAL PORK BARREL" AND THE PRESIDENTIAL PORK BARREL; DEFINED.— Considering petitioners' submission and in reference to its local concept and legal history, the Court defines **the Pork Barrel System as the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government, including its members**. The Pork Barrel System involves two (2) kinds of lump-sum discretionary funds: First, there is **the Congressional Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund wherein legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund's utilization through various post-enactment measures and/or practices**. In particular, petitioners consider the PDAF, as

it appears under the 2013 GAA , as Congressional Pork Barrel since it is, *inter alia*, a post-enactment measure that allows individual legislators to wield a collective power; and Second, there is **the Presidential Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund which allows the President to determine the manner of its utilization**. For reasons earlier stated, the Court shall delimit the use of such term to refer only to the Malampaya Funds and the Presidential Social Fund.

10. ID.; ID.; ID.; THE PRINCIPLE OF SEPARATION OF POWERS REFERS TO THE CONSTITUTIONAL DEMARCATION OF THE THREE FUNDAMENTAL POWERS OF THE GOVERNMENT.— The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government. In the celebrated words of Justice Laurel in *Angara v. Electoral Commission*, it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government." To the legislative branch of government, through Congress, belongs the power to make laws; to the executive branch of government, through the President, belongs the power to enforce laws; and to the judicial branch of government, through the Court, belongs the power to interpret laws. Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere." Thus, "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law." The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry. To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. Lack of independence would result in the inability of one branch of

government to check the arbitrary or self - interest assertions of another or others.

11. ID.; ID.; ID.; THE ENFORCEMENT OF THE NATIONAL BUDGET, AS PRIMARILY CONTAINED IN THE GENERAL APPROPRIATIONS ACT (GAA), IS INDISPUTABLY A FUNCTION BOTH CONSTITUTIONALLY ASSIGNED AND PROPERLY ENTRUSTED TO THE EXECUTIVE BRANCH OF THE GOVERNMENT.— The enforcement of the national budget, as primarily contained in the GAA, is indisputably a function both constitutionally assigned and properly entrusted to the Executive branch of government. In *Guingona, Jr. v. Hon. Carague* (*Guingona, Jr.*), the Court explained that the phase of budget execution "covers the **various *operational* aspects of budgeting**" and accordingly includes "**the evaluation of work and financial plans for individual activities,**" the "**regulation and release of funds**" as well as all "**other related activities**" that comprise the budget execution cycle. This is rooted in the principle that the allocation of power in the three principal branches of government is a grant of all powers inherent in them. Thus, unless the Constitution provides otherwise, the Executive department should exclusively exercise all roles and prerogatives which go into the implementation of the national budget as provided under the GAA as well as any other appropriation law. In view of the foregoing, the Legislative branch of government, much more any of its members, should not cross over the field of implementing the national budget since, as earlier stated, the same is properly the domain of the Executive.

12. ID.; ID.; ID.; SINCE THE RESTRICTION ONLY PERTAINS TO "ANY ROLE IN THE IMPLEMENTATION OR ENFORCEMENT OF THE LAW," CONGRESS MAY STILL EXERCISE ITS OVERSIGHT FUNCTION WHICH IS A MECHANISM OF CHECKS AND BALANCES THAT THE CONSTITUTION ITSELF ALLOWS; ANY POST-ENACTMENT-MEASURE ALLOWING LEGISLATOR PARTICIPATION BEYOND OVERSIGHT IS BEREFT OF ANY CONSTITUTIONAL BASIS AND HENCE, TANTAMOUNT TO IMPERMISSIBLE INTERFERENCE AND/OR ASSUMPTION OF EXECUTIVE FUNCTIONS.— The foregoing cardinal postulates were definitively enunciated

in *Abakada* where the Court held that "**[f]rom the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play <u>any role in the implementation or enforcement of the law</u> violates the principle of separation of powers and is thus unconstitutional**." x x x Congress may still exercise its oversight function which is a mechanism of checks and balances that the Constitution itself allows. But it must be made clear that Congress' role must be confined to mere oversight. x x x As the Court ruled in *Abakada*: **[A]ny post-enactment congressional measure x x x should be limited to scrutiny and investigation**. In particular, congressional oversight must be confined to the following: (1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; and (2) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation. **Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution**.

13. ID.; ID.; ID.; THE POST-ENACTMENT MEASURES WHICH GOVERN THE AREAS OF PROJECT IDENTIFICATION, FUND RELEASE AND FUND RE-ALIGNMENT ARE NOT RELATED TO FUNCTIONS OF CONGRESSIONAL OVERSIGHT AND, HENCE, ALLOW LEGISLATORS TO INTERVENE AND/OR ASSUME DUTIES THAT PROPERLY BELONG TO THE SPHERE OF BUDGET EXECUTION.— Clearly, these post-enactment measures which govern the areas of project identification, fund release and fund realignment are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Indeed, by virtue of the foregoing, legislators have been, in one form or another, authorized to participate in – as *Guingona, Jr.* puts it – "the **various *operational* aspects of budgeting**," including "**the evaluation of work and financial plans for individual activities**" and the "**regulation and release of funds**" in violation of the separation of powers principle. The fundamental rule, as categorically articulated in *Abakada*,

cannot be overstated – **from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional**. That the said authority is treated as merely recommendatory in nature does not alter its unconstitutional tenor since the prohibition, to repeat, covers **any role in the implementation or enforcement of the law**. Towards this end, the Court must therefore abandon its ruling in *Philconsa* which sanctioned the conduct of legislator identification on the guise that the same is merely recommendatory and, as such, respondents' reliance on the same falters altogether.

14. ID.; ID.; NON-DELEGABILITY OF LEGISLATIVE POWER; ONLY CONGRESS, ACTING AS A BICAMERAL BODY, AND THE PEOPLE, THROUGH THE PROCESS OF INTIATIVE AND REFERENDUM, MAY CONSTITUTIONALLY WIELD LEGISLATIVE POWER AND NO OTHER; EXCEPTIONS.— As an adjunct to the separation of powers principle, legislative power shall be exclusively exercised by the body to which the Constitution has conferred the same. In particular, Section 1, Article VI of the 1987 Constitution states that such power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum. Based on this provision, it is clear that only Congress, acting as a bicameral body, and the people, through the process of initiative and referendum, may constitutionally wield legislative power and no other. This premise embodies the principle of non-delegability of legislative power, and the only recognized exceptions thereto would be: (a) delegated legislative power to local governments which, by immemorial practice, are allowed to legislate on purely local matters; and (b) constitutionally-grafted exceptions such as the authority of the President to, by law, exercise powers necessary and proper to carry out a declared national policy in times of war or other national emergency, or fix within specified limits, and subject to such limitations and restrictions as Congress may impose, tariff rates, import and export quotas, tonnage and wharfage

dues, and other duties or imposts within the framework of the national development program of the Government.

15. ID.; ID.; ID.; THE 2013 PDAF ARTICLE, INSOFAR AS IT CONFERS POST-ENACTMENT IDENTIFICATION AUTHORITY TO INDIVIDUAL LEGISLATORS, VIOLATES THE PRINCIPLE OF NON-DELEGABILITY SINCE SAID LEGISLATORS ARE EFFECTIVELY ALLOWED TO INDIVIDUALLY EXERCISE THE POWER OF APPROPRIATION, WHICH IS LODGED IN CONGRESS.— In the cases at bar, the Court observes that the 2013 PDAF Article, insofar as it confers post-enactment identification authority to individual legislators, violates the principle of non-delegability since said legislators are effectively allowed to **individually** exercise the **power of appropriation**, which – as settled in *Philconsa* – is **lodged in Congress**. That the power to appropriate must be exercised only through legislation is clear from Section 29(1), Article VI of the 1987 Constitution which states that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made **by law**." To understand what constitutes an act of appropriation, the Court, in *Bengzon v. Secretary of Justice* and *Insular Auditor* (*Bengzon*), held that the power of appropriation involves **(a)** the **setting apart by law of a certain sum** from the public revenue for **(b)** a **specified purpose**. Essentially, under the 2013 PDAF Article, individual legislators are given a personal lump-sum fund from which they are able to dictate (**a**) **how much** from such fund would go to (**b**) a **specific project or beneficiary** that they themselves also determine. As these two (2) acts comprise the exercise of the power of appropriation as described in *Bengzon*, and given that the 2013 PDAF Article authorizes individual legislators to perform the same, undoubtedly, said legislators have been conferred the power to legislate which the Constitution does not, however, allow. Thus, keeping with the principle of non-delegability of legislative power, the Court hereby declares the 2013 PDAF Article, as well as all other forms of Congressional Pork Barrel which contain the similar legislative identification feature as herein discussed, as unconstitutional.

16. ID.; ID.; CHECKS AND BALANCES; ITEM-VETO POWER; THE PRESIDENT'S POWER TO VETO AN ITEM WRITTEN INTO AN APPROPRIATION, REVENUE OR

TARIFF BILL SUBMITTED TO HIM BY CONGRESS FOR APPROVAL THROUGH A PROCESS KNOWN AS "BILL PRESENTMENT".— A prime example of a constitutional check and balance would be the **President's power to veto an item written into an appropriation, revenue or tariff bill** submitted to him by Congress for approval through a process known as "bill presentment." The President's item-veto power is found in Section 27(2), Article VI of the 1987 Constitution which reads as follows: Sec. 27. x x x. x x x (2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object. The presentment of appropriation, revenue or tariff bills to the President, wherein he may exercise his power of item-veto, forms part of the "**single, finely wrought and exhaustively considered, procedures**" for law-passage as specified under the Constitution. As stated in *Abakada*, the final step in the law-making process is the "submission [of the bill] to the President for approval. Once approved, it takes effect as law after the required publication." Elaborating on the President's item-veto power and its relevance as a check on the legislature, the Court, in *Bengzon*, explained that: The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law-making power. **His disapproval of a bill, commonly known as a veto, is essentially a legislative act**. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that his will be a broader point of view. **The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department**. The Legislature has the affirmative power to enact laws; the **Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the Legislature**. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts will indulge every intendment in favor of the constitutionality of a veto [in the same manner] as they will presume the constitutionality of an act as originally passed by the Legislature.

17. ID.; ID.; ID.; FOR THE PRESIDENT TO EXERCISE HIS ITEM-VETO POWER, IT NECESSARILY FOLLOWS THAT THERE EXIST A PROPER "ITEM" WHICH MAY BE THE OBJECT OF THE VETO; AN APPROPRIATION BILL MUST CONTAIN "SPECIFIC APPROPRIATIONS OF MONEY" AND NOT ONLY "GENERAL PROVISIONS" WHICH PROVIDE PARAMETERS OF APPROPRIATION.— For the President to exercise his item-veto power, it necessarily follows that there exists a proper "item" which may be the object of the veto. An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of *Bengzon v. Secretary of Justice of the Philippine Islands*, the US Supreme Court characterized an item of appropriation as follows: An item of an appropriation bill obviously means an item which, in itself, is a **specific appropriation of money**, **not some general provision of law** which happens to be put into an appropriation bill. On this premise, it may be concluded that an appropriation bill, **to ensure that the President may be able to exercise his power of item veto**, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.

18. ID.; ID.; ID.; AN ITEM OF APPROPRIATION MUST BE AN ITEM CHARACTERIZED BY SINGULAR CORRESPONDENCE, MEANING AN ALLOCATION OF A SPECIFIED SINGULAR AMOUNT FOR A SPECIFIED SINGULAR PURPOSE, OTHERWISE KNOWN AS "LINE ITEM".— Further, it is significant to point out that an item of appropriation must be an item characterized by **singular correspondence** – meaning an allocation of **a specified singular amount for a specified singular purpose**, otherwise known as a "**line-item**." This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation **may be**

validly apportioned into component percentages or values; however, it is crucial that **each percentage or value must be allocated for its own corresponding purpose** for such component to be considered as a proper line-item. Moreover, as Justice Carpio correctly pointed out, a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.*, MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power. Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto **for as long as they follow the rule on singular correspondence** as herein discussed. Anent special purpose funds, it must be added that Section 25(4), Article VI of the 1987 Constitution requires that the "special appropriations bill **shall specify the purpose for which it is intended**, and **shall be supported by funds actually available as certified by the National Treasurer**, or t**o be raised by a corresponding revenue proposal therein**." Meanwhile, with respect to discretionary funds, Section 25(6), Article VI of the 1987 Constitution requires that said funds "shall be disbursed only for public purposes to be **supported by appropriate vouchers** and **subject to such guidelines as may be prescribed by law**."

19. ID.; ID.; ID.; WHAT BECKONS CONSTITUTIONAL INFIRMITY ARE APPROPRIATIONS WHICH MERELY PROVIDE FOR A "SINGULAR LUMP-SUM AMOUNT" TO BE TAPPED AS A SOURCE OF FUNDING FOR MULTIPLE PURPOSES, WITHOUT A PROPER LINE ITEM WHICH THE PRESIDENT MAY VETO.— In contrast, what beckons constitutional infirmity are appropriations which merely provide for a **singular lump-sum amount** to be tapped as a source of funding for **multiple purposes**. Since such appropriation type necessitates the further determination of **both** the **actual amount** to be expended **and** the **actual purpose** of the appropriation which must still be chosen from the multiple purposes stated in the law, it cannot be said that the appropriation law already indicates a "specific appropriation of money" and hence, without a proper line-item which the President may veto. As a practical result, the President would then be faced with the predicament of either

vetoing the entire appropriation if he finds some of its purposes wasteful or undesirable, or approving the entire appropriation so as not to hinder some of its legitimate purposes.

20. ID.; ID.; ID.; UNDER THE 2013 PDAF ARTICLE, THE ENTIRE AMOUNT OF ₱24.7 BILLION PDAF ALLOCATION IS A KIND OF LUMPSUM/POST-ENACTMENT LEGISLATIVE IDENTIFICATION BUDGETING SYSTEM WHICH FOSTERS THE CREATION OF A "BUDGET WITHIN A BUDGET" WHICH SUBVERTS THE PRESCRIBED PROCEDURE OF PRESENTMENT AND CONSEQUENTLY IMPAIRS THE PRESIDENT'S POWER OF ITEM VETO.— Under the 2013 PDAF Article, the amount of ₱24.79 Billion only appears as a collective allocation limit since the said amount would be further divided among individual legislators who would then receive personal lump-sum allocations and could, after the GAA is passed, effectively appropriate PDAF funds based on their own discretion. As these intermediate appropriations are made by legislators only after the GAA is passed and hence, outside of the law, it necessarily means that the actual items of PDA F appropriation would not have been written into the General Appropriations Bill and thus effectuated without veto consideration. This kind of **lump-sum/post-enactment legislative identification budgeting system** fosters the creation of a "budget within a budget" which subverts the prescribed procedure of presentment and consequently impairs the President's power of item veto. As petitioners aptly point out, the above- described system forces the President to decide between (a) accepting the entire ₱24.79 Billion PDAF allocation without knowing the specific projects of the legislators, which may or may not be consistent with his national agenda and (b) rejecting the whole PDAF to the detriment of all other legislators with legitimate projects. Moreover, even without its post-enactment legislative identification feature, the 2013 PDAF Article would remain constitutionally flawed since it would then operate as a prohibited form of lump-sum appropriation as above-characterized. In particular, the lump-sum amount of ₱24.79 Billion would be treated as a mere funding source allotted for multiple purposes of spending, *i.e.*, scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood

control, *etc*. This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, does not readily indicate a discernible item which may be subject to the President's power of item veto.

21. ID.; ID.; PUBLIC ACCOUNTABILITY; ALLOWING LEGISLATORS TO INTERVENE IN THE VARIOUS PHASES OF PROJECT IMPLEMENTATION, A MATTER BEFORE ANOTHER OFFICE OR GOVERNMENT, RENDERS THEM SUSCEPTIBLE TO TAKING UNDUE ADVANTAGE OF THEIR OWN OFFICE.— The Court agrees with petitioners that certain features embedded in some forms of Congressional Pork Barrel, among others the 2013 PDAF Article, has an effect on congressional oversight. The fact that individual legislators are given post-enactment roles in the implementation of the budget makes it difficult for them to become disinterested "observers" when scrutinizing, investigating or monitoring the implementation of the appropriation law. To a certain extent, the conduct of oversight would be tainted as said legislators, who are vested with post-enactment authority, would, in effect, be checking on activities in which they themselves participate. Also, it must be pointed out that this very same concept of post- enactment authorization runs afoul of Section 14, Article VI of the 1987 Constitution. x x x Clearly, allowing legislators to intervene in the various phases of project implementation – a matter before another office of government – renders them susceptible to taking undue advantage of their own office.

22. ID.; ID.; ID.; INSOFAR AS ITS POST-ENACTMENT FEATURES DILUTE CONGRESSIONAL OVERSIGHT AND VIOLATE SECTION 14, ARTICLE VI OF THE 1987 CONSTITUTION, THUS IMPAIRING PUBLIC ACCOUNTABILITY, THE 2013 PDAF ARTICLE AND OTHER FORMS OF CONGRESSIONAL PORK BARREL OF SIMILAR NATURE ARE DEEMED UNCONSTITUTIONAL.— In sum, insofar as its post-enactment features dilute congressional oversight and violate Section 14, Article VI of the 1987 Constitution, thus impairing public accountability, the 2013 PDAF Article and other forms of Congressional Pork Barrel of similar nature are deemed as unconstitutional.

23. ID.; ID.; LOCAL AUTONOMY; THE GAUGE OF PDAF AND CDF ALLOCATION/DIVISION IS BASED SOLELY ON THE FACT OF OFFICE, WITHOUT TAKING INTO ACCOUNT THE SPECIFIC INTERESTS AND PECULIARITIES OF THE DISTRICT THE LEGISLATOR REPRESENTS.— *Philconsa* described the 1994 CDF as an attempt "to make equal the unequal" and that "[i]t is also a recognition that individual members of Congress, far more than the President and their congressional colleagues, are likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project." Drawing strength from this pronouncement, previous legislators justified its existence by stating that "the relatively small projects implemented under [the Congressional Pork Barrel] complement and link the national development goals to the countryside and grassroots as well as to depressed areas which are overlooked by central agencies which are preoccupied with mega-projects. x x x Notwithstanding these declarations, the Court, however, finds an inherent defect in the system which actually belies the avowed intention of "making equal the unequal." In particular, the Court observes that **the gauge of PDAF and CDF allocation/division is based solely on the fact of office, without taking into account the specific interests and peculiarities of the district the legislator represents**. In this regard, the allocation/division limits are clearly not based on genuine parameters of equality, wherein economic or geographic indicators have been taken into consideration. As a result, a district representative of a highly-urbanized metropolis gets the same amount of funding as a district representative of a far-flung rural province which would be relatively "underdeveloped" compared to the former. To add, what rouses graver scrutiny is that even Senators and Party-List Representatives – and in some years, even the Vice- President – who do not represent any locality, receive funding from the Congressional Pork Barrel as well. These certainly are anathema to the Congressional Pork Barrel's original intent which is "to make equal the unequal." Ultimately, the PDAF and CDF had become personal funds under the effective control of each legislator and given unto them on the sole account of their office.

24. ID.; ID.; ID.; INSOFAR AS INDIVIDUAL LEGISLATORS ARE AUTHORIZED TO INTERVENE IN PURELY LOCAL MATTERS AND THEREBY SUBVERT GENUINE LOCAL AUTONOMY, THE 2013 PDAF ARTICLE AS WELL AS ALL OTHER SIMILAR FORMS OF CONGRESSIONAL PORK BARREL IS DEEMED UNCONSTITUTIONAL.— The Court also observes that this concept of legislator control underlying the CDF and PDAF conflicts with the functions of the various Local Development Councils (LDCs) which are already legally mandated to "assist the corresponding *sanggunian* in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction." Considering that LDCs are instrumentalities whose functions are essentially geared towards managing local affairs, their programs, policies and resolutions should not be overridden nor duplicated by individual legislators, who are national officers that have no law-making authority except only when acting as a body.

25. ID.; ID.; PRESIDENTIAL PORK BARREL; VALIDITY OF APPROPRIATION; A LEGAL PROVISION WHICH DESIGNATES A DETERMINATE OR DETERMINABLE AMOUNT OF MONEY AND ALLOCATES THE SAME FOR A PARTICULAR PUBLIC PURPOSE, SUFFICIENTLY SATISFIES THE REQUIREMENT OF AN APPROPRIATION MADE BY LAW UNDER THE CONTEMPLATION OF THE CONSTITUTION.— "An appropriation made by law" under the contemplation of Section 29(1), Article VI of the 1987 Constitution exists when a provision of law (***a***) sets apart **a determinate or determinable amount** of money and (***b***) allocates the same for a **particular public purpose.** These two minimum designations of **amount** and **purpose** stem from the very definition of the word "appropriation," which means "to allot, assign, set apart or apply to a particular use or purpose," and hence, if written into the law, **demonstrate that the legislative intent to appropriate exists**. As the Constitution "does not provide or prescribe any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be 'made by law,'" an appropriation law may – according to *Philconsa* – be "detailed and as broad as

Congress wants it to be" for as long as the intent to appropriate may be gleaned from the same.

26. ID.; ID.; ID.; ID.; UNDUE DELEGATION; AN APPROPRIATION LAW MUST CONTAIN ADEQUATE LEGISLATIVE GUIDELINES IF THE SAME LAW DELEGATES RULE MAKING AUTHORITY TO THE EXECUTIVE; TESTS TO ENSURE THAT LEGISLATIVE GUIDELINES FOR DELEGATED RULE-MAKING ARE INDEED ADEQUATE; "COMPLETENESS TEST" AND "SUFFICIENT STANDARD TEST".— While the designation of a determinate or determinable amount for a particular public purpose is sufficient for a legal appropriation to exist, the appropriation law must contain **adequate legislative guidelines** if the same law delegates rule-making authority to **the Executive** either for the purpose of (*a*) **filling up the details** of the law for its enforcement, known as supplementary rule-making, or (*b*) **ascertaining facts** to bring the law into actual operation, referred to as contingent rule-making. There are two (2) fundamental tests to ensure that the legislative guidelines for delegated rule-making are indeed adequate. The first test is called the "**completeness test**." Case law states that a law is complete when it sets forth therein the policy to be executed, carried out, or implemented by the delegate. On the other hand, the second test is called the "**sufficient standard test**." Jurisprudence holds that a law lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy, and identify the conditions under which it is to be implemented.

27. ID.; ID.; ID.; ID.; ID.; WHILE SECTION 8 OF PRESIDENTIAL DECREE NO. 910 MAY HAVE PASSED THE COMPLETENESS TEST, THE PHRASE "AND FOR SUCH OTHER PURPOSES AS MAY HEREAFTER DIRECTED BY THE PRESIDENT" UNDER THE SAID SECTION CONSTITUTES AN UNDUE DELEGATION OF LEGISLATIVE POWER INSOFAR AS IT DOES NOT LAY DOWN A SUFFICIENT STANDARD TO ADEQUATELY DETERMINE THE LIMITS OF THE

PRESIDENT'S AUTHORITY WITH RESPECT TO THE PURPOSE FOR WHICH THE MALAMPAYA FUNDS MAY BE USED.— The Court agrees with petitioners that the phrase "and for such other purposes as may be hereafter directed by the President under **Section 8 of PD 910** constitutes an undue delegation of legislative power insofar as it does not lay down a sufficient standard to adequately determine the limits of the President's authority with respect to the **purpose** for which the Malampaya Funds may be used. **As it reads, the said phrase gives the President wide latitude to use the Malampaya Funds for any other purpose he may direct and, in effect, allows him to unilaterally appropriate public funds beyond the purview of the law**. That the subject phrase may be confined only to "energy resource development and exploitation programs and projects of the government" under the principle of *ejusdem generis,* meaning that the general word or phrase is to be construed to include – or be restricted to – things akin to, resembling, or of the same kind or class as those specifically mentioned, is belied by three (3) reasons: **first**, the phrase "energy resource development and exploitation programs and projects of the government" states a **singular and general class** and hence, cannot be treated as a statutory reference of specific things from which the general phrase "for such other purposes" may be limited; **second**, the said phrase also exhausts the class it represents, namely energy development programs of the government; and, **third**, the Executive department has, in fact, used the Malampaya Funds for non-energy related purposes under the subject phrase, thereby contradicting respondents' own position that it is limited only to **"**energy resource development and exploitation programs and projects of the government." Thus, while Section 8 of PD 910 may have passed the completeness test since the policy of energy development is clearly deducible from its text, the phrase "and for such other purposes as may be hereafter directed by the President" under the same provision of law should nonetheless be stricken down as unconstitutional as it lies independently unfettered by any sufficient standard of the delegating law.

28. ID.; ID.; ID.; ID.; PRESIDENTIAL SOCIAL FUND AS PROVIDED IN SECTION 12 OF PD 1869, AS AMENDED BY PD 1993; THE PHRASE "TO FINANCE THE

PRIORITY INFRASTRUCTURE DEVELOPMENT PROJECTS' MUST BE STRICKEN AS UNCONSTITUTIONAL SINCE THE DELEGATING LAW DOES NOT SUPPLY A DEFINITION OF "PRIORITY INFRASTRUCTURE DEVELOPMENT PROJECTS" AND HENCE, LEAVES THE PRESIDENT WITHOUT ANY GUIDELINE TO CONSTRUE THE SAME.— Primarily, Section 12 of PD 1869, as amended by PD 1993, indicates that the Presidential Social Fund may be used "to [**first,**] finance the priority infrastructure development projects and [**second**,] to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines." The Court finds that while the second indicated purpose adequately curtails the authority of the President to spend the Presidential Social Fund only for restoration purposes which arise from calamities, the first indicated purpose, however, gives him *carte blanche* authority to use the same fund for any infrastructure project he may so determine as a "priority". Verily, the law does not supply a definition of "priority infrastructure development projects" and hence, leaves the President without any guideline to construe the same.

29. ID.; ID.; ID.; ID.; ID.; PROPER REMEDY TO INVOKE PETITIONERS' RIGHT TO INFORMATION IS TO FILE A PETITION FOR *MANDAMUS*; A "WELL-DEFINED, CLEAR AND CERTAIN LEGAL RIGHT" TO BE FURNISHED BY THE EXECUTIVE SECRETARY AND/ OR THE DBM OF THEIR REQUESTED PDAF USE SCHEDULE/LIST AND PRESIDENTIAL PORK USE REPORT, NOT ESTABLISHED; CASE AT BAR.— Case law instructs that the proper remedy to invoke the right to information is to file a petition for *mandamus*. As explained in the case of *Legaspi v. Civil Service Commission*. x x x Corollarily, in the case of *Valmonte v. Belmonte Jr.* (Valmonte), it has been clarified that the right to information does not include the right to compel the preparation of "lists, abstracts, summaries and the like." In the same case, it was stressed that it is essential that the "applicant has a well- defined, clear and certain legal right to the thing demanded and that it is the imperative duty of defendant to perform the act required." Hence, without the foregoing substantiations, the Court cannot

grant a particular request for information. x x x In these cases, aside from the fact that none of the petitions are in the nature of *mandamus* actions, the Court finds that petitioners have failed to establish a " well-defined, clear and certain legal right" to be furnished by the Executive Secretary and/or the DBM of their requested PDAF Use Schedule/List and Presidential Pork Use Report. Neither did petitioners assert any law or administrative issuance which would form the bases of the latter's duty to furnish them with the documents requested.

30. ID.; ID.; ID.; ID.; ID.; UPON PROMULGATION OF THE DECISION, THE RELEASE OF THE REMAINING PDAF FUNDS FOR 2013, AMONG OTHERS, IS PERMANENTLY ENJOINED AND MUST BE REVERTED TO THE UNAPPROPRIATED SURPLUS OF THE GENERAL FUND.— At the outset, it must be observed that the issue of whether or not the Court's September 10, 2013 TRO should be lifted is a matter rendered moot by the present Decision. The unconstitutionality of the 2013 PDAF Article as declared herein has the consequential effect of converting the temporary injunction into a permanent one. **Hence, from the promulgation of this Decision, the release of the remaining PDAF funds for 2013, among others, is now permanently enjoined**. The propriety of the DBM's interpretation of the concept of "release" must, nevertheless, be resolved as it has a practical impact on the execution of the current Decision. In particular, the Court must resolve the issue of whether or not PDAF funds covered by obligated SAROs, at the time this Decision is promulgated, may still be disbursed following the DBM's interpretation in DBM Circular 2013-8. On this score, the Court agrees with petitioners' posturing for the fundamental reason that funds covered by an obligated SARO are yet to be "released" under legal contemplation. A SARO, as defined by the DBM itself in its website, is "[a]specific authority issued to identified **agencies to incur obligations** not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures **the release of which is subject to compliance** with specific laws or regulations, or is **subject to separate approval or clearance by competent authority**." Based on this definition, it may be gleaned that a SARO only evinces the existence of an obligation and not the directive to pay. x x x On the other hand, the actual release of funds is

brought about by the issuance of the NCA , which is subsequent to the issuance of a SARO. As may be determined from the statements of the DBM representative during the Oral Arguments. x x x Thus, unless an NCA has been issued, public funds should not be treated as funds which have been "released." In this respect, therefore, the disbursement of 2013 PDAF funds which are only covered by obligated SAROs, and without any corresponding NCAs issued, must, **at the time of this Decision's promulgation**, be enjoined and consequently **reverted to the unappropriated surplus of the general fund**. Verily, in view of the declared unconstitutionality of the 2013 PDAF Article, the funds appropriated pursuant thereto cannot be disbursed even though already obligated, else the Court sanctions the dealing of funds coming from an unconstitutional source. This same pronouncement must be equally applied to (*a*) the Malampaya Funds which have been obligated but not released – meaning, those merely covered by a SARO – under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of PD 910; and (*b*) funds sourced from the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of PD 1869, as amended by PD 1993, which were altogether declared by the Court as unconstitutional. However, these funds should not be reverted to the general fund as afore-stated but instead, respectively remain under the Malampaya Funds and the Presidential Social Fund to be utilized for their corresponding special purposes not otherwise declared as unconstitutional.

31. ID.; ID.; ID.; ID.; ID.; CONSEQUENTIAL EFFECTS OF DECISION; THE COURT'S PRONOUNCEMENT ANENT THE UNCONSTITUTIONALITY OF THE 2013 PDAF ARTICLE AND ITS SPECIAL PROVISIONS AND ALL CONGRESSIONAL PORK BARREL PROVISIONS SIMILAR THERETO AND THE ASSAILED PHRASES UNDER SECTION 8 OF PD 910 AND SECTION 12 OF PD 1869, AS AMENDED BY PD 1993 MUST BE TREATED AS PROSPECTIVE IN EFFECT IN VIEW OF THE OPERATIVE FACT DOCTRINE.— As a final point, it must be stressed that the Court's pronouncement anent the **unconstitutionality** of (*a*) the 2013 PDAF Article and its Special Provisions, (*b*) all other Congressional Pork Barrel provisions

similar thereto, and (*c*) the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910, and (2) "to finance the priority infrastructure development projects" under Section 12 of PD 1869, as amended by PD 1993, must only be treated as **prospective in effect** in view of the **operative fact doctrine**. To explain, the operative fact doctrine exhorts the recognition that until the judiciary, in an appropriate case, declares the invalidity of a certain legislative or executive act, such act is presumed constitutional and thus, entitled to obedience and respect and should be properly enforced and complied with.

SERENO, *C.J., concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIARY DEPARTMENT; THE JUDICIARY CANNOT TRAVERSE AREAS WHERE THE CHARTER DOES NOT ALLOW ITS ENTRY.— Since the *ponencia* crafted a ruling on a highly technical matter, it is only fitting that the nuances, implications, and conclusions on our pronouncement be elucidated. My views are guided by the inherent restraint on the judicial office; as unelected judges, we cannot haphazardly set aside the acts of the Filipino people's representatives. This is the import of the requirement for an actual case or controversy to exist before we may exercise judicial review, as aptly noted by the pre-eminent constitutionalist, former Associate Justice Vicente V. Mendoza: Insistence on the existence of a case or controversy before the judiciary undertakes a review of legislation gives it the opportunity, denied to the legislature, of seeing the actual operation of the statute as it is applied to actual facts and thus enables it to reach sounder judgment. In fact, the guiding principle for the Court should not be to "anticipate a question of constitutional law in advance of the necessity of deciding it," but rather to treat the function of judicial review as a most important and delicate matter; after all, we cannot replace the wisdom of the elected using our own, by adding qualifications under the guise of constitutional "interpretation." While it is true that the Constitution must be interpreted both in its written word and underlying intent, the intent must be reflected in taking the Constitution itself as one cohesive, functional whole. x x x In other words, alongside deciding what the law is given

a particular set of facts, **we must decide "what not to decide."** Justice Mendoza likens our Supreme Court to the U.S. Supreme Court, in that "its teachings…x x x have peculiar importance because it interprets principles of fact and of value, not merely in the abstract, but in their bearing upon the concrete, immediate problems which are at any given moment puzzling and dividing us… For this reason the court holds a unique place in the cultivation of our national intelligence." Thus, in matters such as the modality to be employed in crafting the national budget, this Court must be sensitive of the extent and the limits of its pronouncements. As Justice Laurel instructively stated, the structure of government provided by the Constitution sets the general metes and bounds of the powers exercised by the different branches; the judiciary cannot traverse areas where the charter does not allow its entry. We cannot interpret the Constitution's silence in order to conform to a perceived preference on how the budget should be run. After all, it is the Constitution, not the Court, which has "blocked out with deft strokes and in bold lines," the allotment of power among the different branches.

2. ID.; ID.; ID.; WHOLESALE REJECTION OF LUMP-SUM ALLOCATIONS CONTRIVES A RULE OF LAW BROADER THAN WHAT IS REQUIRED BY THE PRECISE FACTS OF THE CASE; TO FURTHER CREATE A CONSTITUTIONAL OBLIGATION OF THE EXECUTIVE AND LEGISLATIVE TO FOLLOW LINE-ITEM BUDGETING PROCEDURE AND—MORE DANGEROUSLY—GIVE IT THE STRENGTH OF A FUNDAMENTAL NORM, GOES BEYOND WHAT PETITIONERS WERE ABLE TO ESTABLISH AND ASCRIBES A CONSTITUTIONAL INTENT WHERE THERE IS NONE.— To conclude that a line-item budgeting scheme is a matter of constitutional requirement is to needlessly strain the Constitution's silence on the matter. Foremost among the duties of this Court is, as previously discussed, to proceed based only on what it needs to resolve. Hence, I see no need to create brand new doctrines on budgeting, especially not ones that needlessly restrict the hands of budget-makers according to an apparently indiscriminate condemnation of lump-sum funding. To further create a constitutional obligation of the Executive and Legislative to follow a line-item budgeting procedure, and - more dangerously - give it the strength of a

fundamental norm, goes beyond what the petitioners were able to establish, and ascribes a constitutional intent where there is none. Again, the Court's power of judicial review must be confined only to dispositions which are constitutionally supportable. Aside from the jurisdictional requirements for the exercise thereof, other guidelines are also mandated, i.e., that the question to be answered must be in a form capable of judicial resolution; that as previously discussed, the Court will not anticipate a question in advance of the necessity of deciding it; and, most relevant to the present case, that **the Court "will not formulate a rule of constitutional law broader than is required by the precise facts on which it is to be applied."** Given a controversy that raises several issues, the tribunal must limit its constitutional construction to the precise facts which have been established. This rule is most applicable "in determining whether one, some or all of the remaining substantial issues should be passed upon." Thus, the Court is not authorized to take cognizance of an issue too far-removed from the other.

3. ID.; ID.; ID.; GIVEN THAT THE *LIS MOTA* OF THE PRESENT PETITIONS HAS BEEN SQUARELY DISPOSED ON THOROUGH, RESPONSIVE, AND DETERMINATIVE CONSTITUTIONAL GROUNDS, IT WAS UNNECESSARY TO STRETCH THE DISCUSSION TO INCLUDE THE PROPRIETY OF LUMP-SUM APPROPRIATIONS IN THE BUDGET.— The *ponencia* struck down the PDAF on the basis of the general principle of non-delegability of rule-making functions lodged in the Congress. It then ruled that the individual participation of the Members of the Congress is an express violation of this principle. Again, this ruling is already determinative of the *lis mota* of the case, as it directly addressed petitioners' principal claim that the PDAF unduly delegates legislative power. Given that the *lis mota* has been squarely disposed of on these thorough, responsive, and determinative constitutional grounds, it was unnecessary to stretch the discussion to include the propriety of lump-sum appropriations in the budget. The questions surrounding lump-sum appropriations, in the context of how they arose during the interpellation, are not legal questions. Unlike the first two reasons advanced by the *ponencia* in finding for the

unconstitutionality of the PDAF, the invalidity of lump-sum appropriations finds no textual support in the Constitution. By its very words, the Constitution does not prohibit lump-sum appropriations. In fact, the history of legislative appropriations suggests otherwise.

4. ID.; ID.; ID.; AS IT STANDS NOW, THE PLAIN TEXT OF THE CONSTITUTION AND THE REVISED ADMINISTRATIVE CODE RENDERS THE MODALITY OF BUDGETING TO BE A POLITICAL QUESTION.— The Constitution contains provisions that regulate appropriation law, namely: it must originate from the House of Representatives, its items can be vetoed by the President, it is initiated by the Executive, and money can only be paid out of the Treasury by virtue of appropriations provided by law. Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget must be prescribed by law, and no provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein, and such provision or enactment shall be limited in its operation to the appropriation to which it relates. Procedures involving appropriations must be uniform. A special appropriations bill must be specific in purpose and supported or supportable by funds. Only the heads of the branches of government, as well as the constitutional commissions and fiscally independent bodies may be authorized to augment items in appropriations. Discretionary funds are regulated. Appropriations of the previous year are automatically revived if Congress fails to pass a new law. Appropriations for fiscally autonomous agencies are released automatically. Furthermore, in relation to all this, the Constitution gives to the President the duty to faithfully execute the law. Beneath this framework runs a sea of options, from which the two political branches must carve a working, functioning fiscal system for the State. So long as these basic tenets are maintained, the political branches can ply the route of the way they deem appropriate to achieve the purpose of the government's budget. What are thus clearly set forth are requirements for appropriations, and not the modalities of budgeting which fall squarely under the technical domain of the Executive branch, namely, the Department of Budget and

Management (DBM). When the Constitution gives the political branches a "textually demonstrable constitutional commitment of the issue[,]" or the lack of "judicially discoverable and manageable standards for resolving it[,]" or even the "impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government[,]"then there is a political question that this Court, in the absence of grave abuse of discretion, cannot conclude.

5. ID.; ID.; ID.; TO REJECT EVEN VERY LIMITED FORMS OF LUMP-SUM BUDGETING WITHOUT ASKING WHETHER IT CAN BE OPERATIONALLY DONE WITHIN THE VERY TIGHT TIMELINE OF THE CONSTITUTION FOR PREPARING, SUBMITTING, AND PASSING INTO LAW A NATIONAL BUDGET IS SIMPLY PLAIN WRONG AND MOST UNFAIR.— Apart from the provisions already discussed, there are no constitutional restrictions on how the government should prepare and enact its budget. In fact, these restrictions are mostly procedural and not formal. If the Constitution does not impose a specific mode of budgeting, be it purely line-item budgeting, purely lump-sum budgeting, a mixture of the two, or something else entirely, *e.g.* zero balance lump-sum, loan repayment schemes, or even performance-informed budgeting, then neither should this Court impose the line-item budgeting formula on the Executive and Legislative branches. This confusion appears to have stemmed from the highly limited exchanges in the oral arguments between one of the petitioners and the Chairperson of the Commission on Audit (COA), on one hand, and a Member of the Court, on the other. The argument progressed on the basis of the Member's own suggestion that the item-veto power of the President is negated by lump-sum budgeting despite the fact that it was not the very issue identified in the petitions. While it is true that the COA Chairperson opined that line-item is preferred, that statement is an operational standard, not a legal standard. It cannot be used to support a judicial edict that requires Congress to adopt an operational standard preferred, even if suggested by the COA Chairperson. The Court never asked Congress what its response would be to a wholesale striking down of lump-sum budgeting. It never asked the DBM whether it could submit an expenditure

proposal that has nothing but line-item budgets. To reject even very limited forms of lump-sum budgeting without asking whether it can even be operationally done within the very tight timeline of the Constitution for preparing, submitting, and passing into law a national budget is simply plain wrong and most unfair. *It is as if this Court is trying to teach both political branches — who constitute the nation's top 300 elected officials — what they can and cannot do, in a manner that will completely take them by surprise, as lump-sum budgeting was never the lis mota in this case.* At the very least, this is not the case for that matter, if eventually this matter were also to be decided.

6. ID.; ID.; LEGISLATIVE DEPARTMENT; APPROPRIATIONS LAW; A LUMP-SUM APPROPRIATION CAN STILL BE AUDITED AND ACCOUNTED FOR PROPERLY.— Once the appropriations law is passed, the day-to-day management of the national budget is left to the DBM and DOF, in accordance with the appropriate rules and regulations. Simultaneously, the COA is tasked to conduct auditing and post-auditing throughout the fiscal year, with a final audit report presented to the President and Congress at the end of such year. In this whole process, an appropriation can be made and has been made at the lump-sum level. While not initially broken down in the budget formulation aspect of the entire expenditure process, the individual expenditures sourced from these lump-sum appropriations are broken down in journal entries after the fact, during the auditing process of the COA, which has the power to issue notices of disallowance should it find a particular expenditure to have been improper under law and accounting rules. Consequently, a lump-sum appropriation can still be audited and accounted for properly. This recognizes the fact that lump-sum appropriating is a formal concern of the COA, and all other agencies and instrumentalities of the government that take part in the appropriations process. In fact, the Administrative Code gives formal discretion to the President, in the following manner: Section 12. Form and Content of the Budget. – xxx The budget shall be presented to the Congress in such form and content as may be approved by the President and may include the following: xxx It thus appears from the perspective of this process, that the Legislature never considered the form of the budget as being constitutionally infirm for containing lump-sums, an attitude engendered from

the birth of the 1987 Constitution, that has lasted up until this case was argued before this Court. It is perplexing to see any eager discussion at this opportunity to make pre-emptive declarations on the invalidity of the lump-sum budgeting form, when no party has raised the issue in the principal petitions.

7. ID.; ID.; ID.; LUMP-SUM APPROPRIATIONS ARE NOT TEXTUALLY PROHIBITED BY THE CONSTITUTION.— The item veto-power of the Governor-General in past appropriation laws originating from the United States was given to the President, Prime Minister, and President respectively in the 1935, 1973, and 1987 Constitutions. The most recent incarnation is stated thusly: The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object. It is noteworthy that the veto refers to "any particular item or items" and not "line-items" or "earmarked appropriations." In *Gonzales v. Macaraig*, we declared that the term "item" in the Constitution referred to a specific appropriation of money, dedicated to a stated purpose, and not a general provision of law: The terms item and provision in budgetary legislation and practice are concededly different. **An item in a bill refers to the particulars, the details, the distinct and severable parts . . . of the bill. It is an indivisible sum of money dedicated to a stated purpose.** The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice* declared "that an 'item' of an appropriation bill obviously **means an item which in itself is a specific appropriation of money, not some general provision of law,** which happens to be put into an appropriation bill." The Constitution's "item" is, therefore, an allocation of money for a stated purpose, as opposed to a general provision in the appropriations law that does not deal with the appropriation of money, or in the words of *Gonzales*, "inappropriate provisions." Thus, a lump-sum appropriation is an item for purposes of the Presidential veto, considering the fact that it is an appropriation of money for a stated purpose. The constitutional provision does nothing to prohibit the appropriation apart from that. As will be discussed, this is the crucial point, because a lump-sum item as defined does not, as it stands, appear to violate the requirement of stated purpose and specificity. This Court has, in fact, already ruled on the status of lump-sum appropriation. The vetoed

item that was the subject of dispute in *Bengzon v. Drilon* was a lump-sum appropriation for the "general fund adjustment," and that it was "**an item** which appropriates ₱500,000,000.00 to enable the Government to meet certain unavoidable obligations which may have been inadequately funded by the specific items for the different branches, departments, bureaus, agencies, and offices of the government." Since the Court itself in *Bengzon* had defined lump-sum provisions to be constitutional "items," then the item-veto power of the President against lump-sum funds remains intact. It has been stated that the President's item-veto power is hampered when the "pork barrel" is lumped together with beneficial programs, which thus destroys the check and balance between the Executive and Legislative. This view seems to confuse the actual definition of lump-sum items (as discussed *infra*, items with more than one object) with line-items (singular object). Lump-sum items are not items without a specific purpose. Their stated purpose simply allows the funds to be used on multiple objects. "Specific" should not be equated with "singular." The former is an aspect of quality, the latter quantity. Singularity and multiplicity qualify the word "object" and not purpose, which are wholly different since a purpose can refer to several objects, *e.g.*, the use of the plural "projects" instead of "project." In fact, the law journal article cited in the Separate Opinion of Justice Carpio, which was cited to define the "pork barrel" as an "appropriation yielding rich patronage benefits," *itself* acknowledges the validity of lump-sum budgeting, citing the United States' own budgeting practice. It goes even further to highlight the disadvantages inherent in adopting a purely line-item budget. ***viz*: xxx Lump-sum budgeting allows the President not only to selectively allocate lump sums, but also to transfer funds between budget accounts when necessary to save programs that might otherwise perish because Congress appropriated too little or was unable to anticipate unforeseen developments. More significantly for purposes of comparison with a line-item veto, lump-sum budgeting also authorizes the President to shift funds within a single appropriation account by reprogramming. Unlike a transfer of funds, which typically requires either statutory support or a national emergency, reprogramming is subject to mostly non-statutory controls "to be discovered in committee reports, committee**

hearings, agency directives, correspondence between subcommittee chairmen and agency officials, and also gentlemen's agreements and understandings that are not part of the public record." x x x *Gonzales* outlined the following legal requirements for valid appropriations on budget items: First, that an item is "an indivisible sum of money dedicated to a **stated purpose**." Second, that an item is in itself a "**specific appropriation** of money, not some general provision of law." There is therefore no condition that the purpose be singular. As will be demonstrated, the difference between a lump-sum and line-item is just the number of objects a lump-fund may have. After all, even if the purpose has multiple objects, it is still a stated purpose.

8. ID.; ID.; ID.; THE USE OF THE COMMISSION ON AUDIT MEMORANDUM TO BUTTRESS THE ARGUMENT THAT THE CONSTITUTION REQUIRES LINE-ITEM BUDGETING IS MISLEADING.— The use of the COA Memorandum to buttress the argument that the Constitution requires line-item budgeting is misleading. Again, even if the COA Chairperson prefers line-item budgeting, such preference is not equivalent to a legal standard sufficient for this Court to strike down all forms of lump-sum budgeting. At this point, there appears to be an attempted transformation of policy recommendations into legal imperatives. No matter how desirable these recommendations on adopting a purely line-item budget may sound – and they may turn out to be the best alternative – we cannot equate seeming consensus on good and desirable policy, with what the law states. The choice of policy is not ours to make, no matter how intelligent or practical we deem ourselves to be.

9. ID.; ID.; ID.; IN ANY CASE, THE PREVAILING JURISPRUDENCE ALLOWS FOR THE CONCLUSION THAT THE ITEM-VETO POWER OF THE PRESIDENT CANNOT BE IMPAIRED.— The Court in *Gonzales* described the three modes of veto available to the President. The first is the veto of an entire bill under Article VI, Section 27(1). The second is the item-veto in an appropriation, revenue, or tariff bill. The third is an iteration of the second, which is the veto of provisions as previously defined by the 1935 Constitution. With respect to the second mode of veto, *Gonzales* extends

the application of the item veto power to "inappropriate provisions," as we stated: Consequently, Section 55 (FY '89) and Section 16 (FY '90) although labelled as "provisions," are actually inappropriate provisions that **should be treated as items for the purpose of the President's veto power**. Thus, even if we were to assume that a lump-sum appropriation is not an "item" as defined by *Gonzales*, as previously expounded, for purposes of the Presidential veto, it is still an item, and the item-veto power appears to remain unimpaired by virtue of jurisprudential precedent. To summarize, whether the appropriation is a line-item, as claimed by petitioners, or a lump-sum appropriation item, as proposed in an Opinion, or even a general provision of law that is unrelated to the appropriation law, the power of the President to exercise item-veto is intact. Whichever interpretation we accept as to the nature of lump-sum appropriations – though as I have shown, they are properly appropriation "items" – is irrelevant.

10. ID.; ID.; ID.; THE USE OF LUMP-SUM APPROPRIATIONS INHERENTLY SPRINGS FROM THE REALITY THAT THE GOVERNMENT CANNOT COMPLETELY PREDICT AT THE BEGINNING OF A FISCAL YEAR WHERE FUNDS WILL BE NEEDED IN CERTAIN INSTANCES.— The use of lump-sum appropriations inherently springs from the reality that the government cannot completely predict at the beginning of a fiscal year where funds will be needed in certain instances. Since Congress is the source of the appropriation law in accordance with the principle of separation of powers, it can craft the law in such a way as to give the Executive enough fiscal tools to meet the exigencies of the year. Lump-sum appropriations are one such tool. After all, the different agencies of government are in the best position to determine where the allocated money might best be spent for their needs: [A]n agency's allocation of funds from a lump-sum appropriation requires "a complicated balancing of a number of factors which are peculiarly within its expertise": whether its "resources are best spent" on one program or another; whether it "is likely to succeed" in fulfilling its statutory mandate; whether a particular program "best fits the agency's overall policies"; and, "indeed, whether the agency has enough resources" to fund a program "at all." Thus, the importance of allowing lump-sum appropriations for budgetary flexibility

and good governance has been validated in other jurisdictions. The evolution of the government's budgeting from a small amount in past decades, into what is now a massive undertaking that contains complexities, and involves an exponentially larger sum than before, suggests that a mixture of lump-sum and line-item budgeting within the same appropriation law could also be a feasible form of budgeting. At the very least, this Court owes it to Congress to ask it the question directly, on whether an exclusively line-item budgeting system is indeed feasible. Simply put, there appears, even in the United States, a necessity for the inclusion of lump-sum appropriations in the budget: Congress has been making appropriations since the beginning of the Republic. In earlier times when the federal government was much smaller and federal programs were (or at least seemed) much simpler, very specific line-item appropriations were more common. In recent decades, however, as the federal budget has grown in both size and complexity, **a lump-sum approach has become a virtual necessity**.

11. ID.; ID.; ID.; THE COURT SHOULD NOT READ FROM THE TEXT OF THE CONSTITUTION AND THE LAW, A MANDATE TO CRAFT THE NATIONAL BUDGET IN A PURELY LINE-ITEM FORMAT; TO DO SO WOULD BE EQUIVALENT TO JUDICIAL LEGISLATION, BECAUSE THE COURT WOULD READ INTO THE LAW AN ADDITIONAL REQUIREMENT THAT IS NOT SUPPORTED BY ITS TEXT OR SPIRIT OF THE LAW, IN ACCORDANCE WITH ITS OWN PERCEIVED NOTION OF HOW A GOVERNMENT BUDGET SHOULD BE FORMULATED.— The Legislative Branch foresaw that these types of appropriations had to be regulated by law, since "a fundamental principle of appropriations law is that where Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions." Without statutory regulation, an untrammelled system of lump-sum appropriations would breed corruption, or at the very least, make the Executive less circumspect in preparing and proposing the budget to the Legislature. Hence, Congress promulgated the Administrative Code of 1987, which regulates, in its provisions on budgeting, lump-sum funds. x x x Additionally, the Administrative Code

provides that certain items may be lump-sum funds, such as the budget for coordinating bodies, the budget for the pool of Foreign Service officers, and merit increases. As a result, this Court should not read from the text of the Constitution and the law, a mandate to craft the national budget in a purely line-item format. To do so would be equivalent to judicial legislation, because the Court would read into the law an additional requirement that is not supported by its text or spirit of the law, in accordance with its own perceived notion of how a government budget should be formulated. If we rule out lump-sum budgeting, what happens then to the various provisions of the law, principally the Administrative Code, that govern lump-sum funds? Is there such a thing as a collateral constitutional attack? Too many questionable effects will result from a sledgehammer denunciation of lump-sum appropriations. This Court does not even know how many lump-sum appropriation laws will be affected by such a ruling. Thus, it is important to emphasize that the *fallo* only afflicts the 2013 GAA, Article XIV.

12. ID.; ID.; THE BASELESS CONCLUSION THAT THE LUMP-SUM CHARACTERISTIC, TAKEN ALONE, RESULTS IN THE UNCONSTITUTIONALITY OF THE LAW THAT CARRIES IT, AS A PRACTICAL CONSEQUENCE CAN CREATE ADDITIONAL DANGERS AFFECTING THE FUNDING OF UNFORESEEN EVENTS SUCH AS TYPHOONS AND OTHER CALAMITIES.— The baseless conclusion that the lump-sum characteristic, taken alone, results in the unconstitutionality of the law that carries it, can create additional dangers as illustrated below. Closer to today's events, the Executive would have immediately been prevented from using the lump-sum funds such as Calamity Funds – which under the Federal Appropriations Law is a 'lump-sum' – to alleviate the State of National Calamity brought about by super typhoon Yolanda. With the intensity of a signal number four storm, the first one in 22 years and considered the biggest super typhoon in world history, Yolanda is one such unforeseen event for which lump-sum funds are intended. In other words, lump-sum appropriations are currently the form of preparation Congress saw fit to address these disasters. This is the point recognized precisely in the law journal article cited by Justice Carpio: there is congressional recognition that lump-sum

appropriation allows the President and administrative agencies the executive flexibility to make necessary adjustments for "unforeseen developments, changing requirements . . . and legislation enacted subsequent to appropriations." If the problem is a lack of a definition, or a confusion pertaining to the same, then let the Court define it when the definition itself becomes the legal issue before us.

13. ID.; ID.; ID.; ID.; THE EXECUTIVE AND ITS LINE AGENCIES WOULD BE DEPRIVED OF THE ABILITY TO MAKE USE OF ADDITIONAL SOURCES OF FUNDS.— In addition, the Executive and its line agencies would be deprived of the ability to make use of *additional* sources of funds. Suppose that a source of revenue was anticipated by government, the exact amount of which could not be determined during the budget preparation stage. Suppose also that Congress agreed upon items which had to be implemented once the funding materializes, and that this funding could support more than one budget item, as is usually the case with major financing arrangements negotiated with the World Bank, the Asian Development Bank and other development partners. Can Congress be prevented from deciding to include in the appropriations law a provision for these items, to be funded by the said additional sources? Should the Court thereby deprive the Legislature of its discretion to bestow leeway upon the Executive branch, so that it may effectively utilize the funds realized only later on? Congress, in this case, cannot be reasonably expected to predetermine all sources of revenue, and neither can it pinpoint the items to be prioritized with a rigid specificity, since it is only within the budget execution stage that the financing materialized.

14. ID.; ID.; ID.; THE DISCUSSION ON "SAVINGS" AND THE POWER TO AUGMENT UNDER THE CONSTITUTION IS NOT AN ISSUE IN THE PRESENT CASE AND THAT SAID DISCUSSION MIGHT IN FACT DEMONSTRATE THE UNWARRANTED POTENTIAL OF OVER-EXTENDING THE COURT'S REACH INTO MATTERS THAT ARE NOT *LIS MOTA*.— It is also respectfully suggested that any discussion on "savings" and the power to augment under the Constitution is not an issue in this case and that said discussion might in fact demonstrate the

unwarranted potential of over-extending this Court's reach into matters that are not *lis mota*. My misgivings on discussing "savings," which is the main issue of a pending matter before us involving the Disbursement Allocation Program (DAP), impels me to caution the Court: a narrow approach to the PDAF better serves the interest of the rule of law. Any reformulation or redefinition of the powers under Article VI, Section 25(5) of the Constitution, *i.e*. transfer and augmentation of appropriations, is improper in this case, and better ventilated before us in the course of resolving DAP petitions.

CARPIO, *J., concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; AS TAXPAYERS AND ORDINARY CITIZENS, PETITIONERS POSSESS *LOCUS STANDI* TO BRING THE SUITS WHICH INDISPUTABLY INVOLVE THE DISBURSEMENT OF PUBLIC FUNDS; ISSUES OF TRANSCENDENTAL IMPORTANCE JUSTIFY IMMEDIATE COURT RESOLUTION.— Petitioners filed the present petitions for *certiorari* and prohibition in their capacity as taxpayers and Filipino citizens, challenging the constitutionality of the PDAF provisions in the 2013 GAA and certain provisions in Presidential Decree Nos. 910 and 1869. As taxpayers and ordinary citizens, petitioners possess *locus standi* to bring these suits which indisputably involve the disbursement of public funds. As we held in *Pascual v. Secretary of Public Works*, taxpayers, such as petitioners in the present petitions, have "sufficient interest in preventing the illegal expenditures of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys." Likewise, in *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, we declared that "taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law." The present petitions also raise constitutional issues of transcendental importance to the nation, justifying their immediate resolution by this Court. Moreover, the special civil actions of *certiorari* and *prohibition*

are proper remedial vehicles to test the constitutionality of statutes.

2. ID.; ID.; PRINCIPLE OF SEPARATION OF POWERS; GENERAL APPROPRIATIONS ACT (GAA); THE IMPLEMENTATION OF THE GAA BELONGS EXCLUSIVELY TO THE PRESIDENT AND CANNOT BE EXERCISED BY CONGRESS.— Once the appropriations bill is signed into law, its implementation becomes the exclusive function of the President. The Constitution states, "The executive power shall be vested in the President." The Constitution has vested the executive power **solely in the President** and to no one else in government. The Constitution also mandates that the President "shall ensure that the laws be faithfully executed." The President cannot refuse to execute the law not only because he is constitutionally mandated to ensure its execution, but also because he has taken a constitutionally prescribed solemn oath to "**faithfully and conscientiously**" execute the law. To exercise the executive power effectively, the President must necessarily control the entire Executive branch. Thus, the Constitution provides, "The President shall have control of all the executive departments, bureaus, and offices." The Constitution does not exempt any executive office from the President's control. The GAA is a law. The implementation of the GAA belongs exclusively to the President, and cannot be exercised by Congress. The President cannot share with the Legislature, its committees or members the power to implement the GAA. The Legislature, its committees or members cannot exercise functions vested in the President by the Constitution; otherwise, there will be a violation of the separation of powers.

3. ID.; ID.; ID.; ID.; ID.; SPECIAL PROVISION NOS. 2, 3, 4 AND 5, ARTICLE XLIV OF THE 2013 GAA VIOLATE THE PRINCIPLE OF SEPARATION OF POWERS WHERE CONGRESSIONAL COMMITTEES AND LEGISLATORS ARE ALLOWED TO EXERCISE IN PART OR TO VETO THE EXECUTIVE'S EXCLUSIVE POWER TO IMPLEMENT THE APPROPRIATION LAW.— Special Provision Nos. 2, 3, 4, and 5, Article XLIV of the 2013 GAA violate the principle of separation of powers enshrined in the Constitution. These provisions allow

congressional committees and legislators not only to exercise in part the Executive's exclusive power to implement the appropriations law, they also grant congressional committees and legislators a veto power over the Executive's exclusive power to implement the appropriations law. While Special Provision No. 2 of the 2013 PDAF provides that projects shall be taken from a priority list provided by the Executive, **legislators actually identify the projects to be financed under the PDAF.** This is clear from Special Provision No. 3 which states that **"the total amount of projects to be identified by the legislators shall be as follows:** x x x." This identification of projects by legislators is **mandatory** on the Executive. This is clear from the second paragraph of Special Provision No. 4 which requires the "**favorable endorsement**" of the House Committee on Appropriations or the Senate Committee on Finance (Congressional Committees) in case of "**any x x x revision and modification**" of the project identified by the legislator. This requirement of "**favorable endorsement**" constitutes a veto power by either of the Congressional Committees on the exclusive power of the Executive to implement the law. This requirement also encroaches on the President's control over executive agencies. It is the individual House member or individual Senator who identifies the project to be funded and implemented under the PDAF. This identification is made after the enactment into law of the GAA.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE CASES OF *PHILCONSA V. ENRIQUEZ AND LAWYERS AGAINST MONOPOLY AND POVERTY V. SECRETARY OF BUDGET AND MANAGEMENT* DO NOT APPLY TO THE PRESENT CASES BECAUSE THE MANDATORY IDENTIFICATION OF PROJECTS BY INDIVIDUAL LEGISLATORS IN THE 2013 GAA IS NOT PRESENT IN THE 1994 AND 2004 GAAs.— *PHILCONSA* and *LAMP* do not apply to the present cases because the mandatory identification of projects by individual legislators in the 2013 GAA is not present in the 1994 and 2004 GAAs. A comparison of Article XLI of the 1994 GAA, Article XLVII of the 2004 GAA, and Article XLIV of the 2013 GAA shows that only the 2013 GAA provides for the mandatory identification of projects by legislators. In *PHILCONSA*, Republic Act No. 7663, or the 1994 GAA, authorized members of Congress to identify projects in the CDF allotted to them. x x x It is clear from the CDF provisions

of the 1994 GAA that the authority vested in legislators was limited to the mere identification of projects. There was nothing in the 1994 GAA that made identification of projects by legislators mandatory on the President. **The President could change the projects identified by legislators without the favorable endorsement of any congressional committee, and even without the concurrence of the legislators who identified the projects.** x x x *LAMP* is likewise not applicable to the cases before us. x x x **The PDAF provision in the 2004 GAA does not even state that legislators may propose or identify projects to be funded by the PDAF. The 2004 PDAF provision is completely silent on the role of legislators or congressional committees in the implementation of the 2004 PDAF.** Indeed, the petitioner in *LAMP* even argued that the Special Provision of the 2004 GAA "does not empower individual members of Congress to propose, select and identify programs and projects to be funded out of PDAF," and thus "the pork barrel has become legally defunct under the present state of GAA 2004." The Court ruled in *LAMP* that there was no convincing proof that there were direct releases of funds to members of Congress. The Court also reiterated in *LAMP* that members of Congress may propose projects, which is merely recommendatory, and thus constitutional under case law.

5. ID.; ID.; ID.; ID.; ID.; ID.; THE REALIGNMENT OF FUNDS UNDER SPECIAL PROVISION NO. 4 OF THE 2013 GAA WHICH IS SUBJECT TO CERTAIN CONDITIONS BEFORE THE PRESIDENT CAN REALIGN SAVINGS IN THE EXECUTIVE BRANCH VIOLATES THE SEPARATION OF POWERS AND IS UNCONSTITUTIONAL.— The first paragraph of Special Provision No. 4 clearly states that the Executive's **realignment of funds** under the PDAF is conditioned, among others, on the "**concurrence of the legislator concerned**." Such concurrence allows the legislator not only to share with the Executive the implementation of the GAA , but also to veto any realignment of funds initiated by the Executive. Thus, the President cannot exercise his constitutional power to realign savings without the "**concurrence**" of legislators.This violates the separation of powers, and is thus unconstitutional. The second paragraph of Special Provision No. 4 states that "any realignment" of funds shall have the "**favorable endorsement**" of either of the Congressional Committees. The word "**endorse**"

means to "declare one's public approval or support." The word "**favorable**" stresses that there must be an affirmative action. Thus, the phrase "favorable endorsement," as used in Special Provision No. 4 of the PDAF, means categorical approval, agreement, consent, or concurrence by the Congressional Committees. This means that the President cannot realign savings in the PDAF, which is an appropriation for the Executive branch, without the concurrence of either of the Congressional Committees, contrary to the constitutional provision that it is the President who can realign savings in the Executive branch. This violates the separation of powers, and is thus unconstitutional.

6. ID.; ID.; ID.; ID.; ID.; ID.; THE TERM "FUNDS" IN SPECIAL PROVISION NO. 4 IS NOT THE SAME AS "SAVINGS"; THE TERM "FUNDS" MEANS APPROPRIATED FUNDS, WHETHER SAVINGS OR NOT; THE TERM, "SAVINGS" IS MUCH NARROWER, AND MUST STRICTLY QUALIFY AS SUCH UNDER SECTION 53 OF THE GENERAL PROVISIONS OF THE 2013 GAA.— The Constitution expressly states that what can be realigned are "**savings**" from an item in the GAA , and such savings can only be used to augment another existing **"item"** in the "**respective appropriations**" of the Executive, Legislature, Judiciary, and the Constitutional Commissions **in the same GAA**. The term "funds" in Special Provision No. 4 is not the same as "savings." **The term "funds" means appropriated funds, whether savings or not. The term "savings" is much narrower, and must strictly qualify as such under Section 53 of the General Provisions of the 2013 GAA**, which is a verbatim reproduction of the definition of "savings" in previous GAA s. Section 53 of the 2013 GAA defines "savings" as follows: Sec. 53. **Meaning of Savings** and Augmentation. Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems

and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

7. ID.; ID.; ID.; ID.; ID.; ID.; INDISPUTABLY, ONLY SAVINGS CAN BE REALIGNED; TRANSFER OF FUNDS OR APPROPRIATIONS IS UNCONSTITUTIONAL.— Indisputably, only "**savings**" can be realigned. Unless there are savings, there can be no realignment. Funds, or "appropriations" as used in the first clause of Section 25(5) of Article V I, cannot be transferred from one branch to another branch or to a Constitutional Commission, or even within the same branch or Constitutional Commission. Thus, funds or appropriations for the Office of the President cannot be transferred to the Commission on Elections. Likewise, funds or appropriations for one department of the Executive branch cannot be transferred to another department of the Executive branch. **The transfer of funds or appropriations is absolutely prohibited, *unless the funds qualify as "savings,"*** in which case the savings can be realigned to an existing item of appropriation but only within the same branch or Constitutional Commission.

8. ID.; ID.; ID.; ID.; ID.; ID.; SPECIAL PROVISION NO. 4 OF THE 2013 GAA ALLOWING REALIGNMENT OF FUNDS, NOT SAVINGS, IS UNCONSTITUTIONAL; CASE AT BAR.— Special Provision No. 4 allows realignment of **funds**, not **savings**. That only **savings,** and **not funds**, can be realigned has already been settled in *Demetria v. Alba*, and again in *Sanchez v. Commission on Audit.* In *Demetria*, we distinguished between *transfer of funds* and *transfer of savings* for the purpose of augmenting an existing item in the GAA, the former being unconstitutional and the latter constitutional. Thus, in *Demetria*, we struck down as constitutional paragraph 1, Section 44 of Presidential Decree No. 1177, for authorizing the President to transfer funds as distinguished from savings.

9. ID.; ID.; ID.; ID.; ID.; ID.; THE PRESIDENT'S CONSTITUTIONAL POWER TO REALIGN SAVINGS CANNOT BE DELEGATED TO THE DEPARTMENT SECRETARIES BUT MUST BE EXERCISED BY THE PRESIDENT HIMSELF.— The President's constitutional power to realign savings cannot be delegated to the Department

Secretaries but must be exercised by the President himself. Under Special Provision No. 4, the President's power to realign is delegated to Department Secretaries, which violates the Constitutional provision that it is the President who can realign savings. In PHILCONSA, we ruled that the power to realign cannot be delegated to the Chief of Staff of the Armed Forces of the Philippines because this power "can be exercised **only** by the President pursuant to a specific law." In Sanchez, we rejected the transfer of funds because it was exercised by the Deputy Executive Secretary. We ruled in Sanchez that "**[e]ven if the DILG Secretary had corroborated the initiative of the Deputy Executive Secretary, it does not even appear that the matter was authorized by the President**." Clearly, the power to realign savings must be exercised by the President himself.

10. ID.; ID.; ID.; ID.; ID.; ID.; THE POWER TO RELEASE FUNDS AUTHORIZED TO BE PAID UNDER THE GAA IS AN EXECUTIVE FUNCTION; ANY POST-ENACTMENT INTERVENTION BY THE LEGISLATURE, ITS COMMITTEES OR MEMBERS OTHER THAN THROUGH LEGISLATION IS AN ENCROACHMENT ON EXECUTIVE POWER AND IN VIOLATION OF THE SEPARATION OF POWERS.— The power to release public funds authorized to be paid under the GAA is an Executive function. However, under Special Provision No. 5, prior approval of either of the Congressional Committees is required for the release of funds. Thus, the Congressional Committees effectively control the release of funds to implement projects identified by legislators. Unless the funds are released, the projects cannot be implemented. Without doubt, the Congressional Committees and legislators are exercising Executive functions in violation of the separation of powers. The Congressional Committees and the legislators are also divesting the President of control over the implementing agencies with respect to the PDAF. A law that invests Executive functions on the Legislature, its committees or members is unconstitutional for violation of the separation of powers. In the 1928 case of Springer v. Government of the Philippine Islands, the U.S. Supreme Court held: **Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty**

of such enforcement. The latter are executive functions. x x x. W hat happens to the law after its enactment becomes the domain of the Executive and the Judiciary. The Legislature or its committees are limited to investigation in aid of legislation or oversight as to the implementation of the law. Certainly, the Legislature, its committees or members cannot implement the law, whether partly or fully. Neither can the Legislature, its committees or members interpret, expand, restrict, amend or repeal the law except through a new legislation. The Legislature or its committees cannot even reserve the power to approve the implementing rules of the law. Any such post-enactment intervention by the Legislature, its committees or members other than through legislation is an encroachment on Executive power in violation of the separation of powers.

11. ID.; ID.; ID.; ID.; ID.; ID.; LUMP-SUM PDAF NEGATES THE PRESIDENT'S EXERCISE OF THE LINE-ITEM VETO POWER IN VIOLATION OF THE CONSTITUTION.— For the President to exercise his constitutional power to veto a particular item of appropriation, the GAA must provide line-item, instead of lump-sum, appropriations. This means Congress has the constitutional duty to present to the President a GAA containing items, instead of lump-sums, stating in detail the specific purpose for each amount of appropriation, precisely to enable the President to exercise his line-item veto power. Otherwise, the President's line-item veto power is negated by Congress in violation of the Constitution. The President's line-item veto in appropriation laws is intended to eliminate "wasteful parochial spending," primarily the pork-barrel. Historically, the pork-barrel meant "appropriation yielding rich patronage benefits." In the Philippines, the pork-barrel has degenerated further as shown in the COA Audit Report on the 2007-2009 PDAF. The pork-barrel is mischievously included in lump-sum appropriations that fund much needed projects. The President is faced with the difficult decision of either vetoing the lump-sum appropriation that includes beneficial programs or approving the same appropriation that includes the wasteful pork-barrel. To banish the evil of the pork-barrel, the Constitution vests the President with the line- item veto power, which for its necessary and proper exercise requires the President to propose, *and Congress to enact, only line-item appropriations.*

12. ID.; ID.; ID.; ID.; ID.; ID.; THERE CAN BE NO LUMP-SUM APPROPRIATIONS IN THE GAA BECAUSE THE ADMINISTRATIVE CODE OF 1987 REQUIRES "CORRESPONDING APPROPRIATIONS FOR EACH PROGRAM AND PROJECT."— Under Section 23 (Chapter 4 Book VI of the Administrative Code of 1987), "**each program and project**" in the GAA must have "**corresponding appropriations**." Indisputably, the Administrative Code mandates line-item appropriations in the GAA. **There can be no lump-sum appropriations in the GAA because the Administrative Code requires "corresponding appropriations for each program and project**." This means a corresponding appropriation for each program, and a corresponding appropriation for each project of the program. **To repeat, lump-sum appropriations are not allowed in the GAA.**

13. ID.; ID.; ID.; ID.; ID.; ID.; THE CONSTITUTION ALLOWS THE CREATION OF DISCRETIONARY AND SPECIAL FUNDS BUT THESE FUNDS MUST HAVE SPECIFIC PURPOSES AND CAN BE USED ONLY FOR SUCH SPECIFIC PURPOSES.— The OSG maintains that "there is nothing in the Constitution that mandates Congress to pass only line-item appropriations." In fact, according to the OSG, the Constitution allows the creation of "discretionary funds" and "special funds," which are allegedly lump-sum appropriations. This is plain error. The Constitution allows the creation of discretionary and special funds but **with certain specified conditions**. ***The Constitution requires that* these funds must have specific purposes and can be used only for such specific purposes**.

14. ID.; ID.; ID.; ID.; ID.; ID.; WHATEVER FUNDS THAT ARE STILL REMAINING FROM THE INVALID APPROPRIATION SHALL REVERT TO THE UNAPPROPRIATED SURPLUS OR BALANCES OF THE GENERAL FUND.— Clearly, the PDAF negates the President's constitutional line-item veto power, and also violates the constitutional duty of Congress to enact a line-item GAA . Thus, Article XLIV, on the Priority Development Assistance Fund, of the 2013 GAA is unconstitutional. Whatever funds that are still remaining from this invalid appropriation shall revert to the unappropriated surplus or balances of the General Fund. The balance of the 2013 PDAF, having reverted to the

unappropriated surplus or balances of the General Fund, can be the subject of an emergency supplemental appropriation to aid the victims of Typhoon Yolanda as well as to fund the repair and reconstruction of facilities damaged by the typhoon.

15. ID.; ID.; ID.; CONGRESS HAS THE EXCLUSIVE POWER TO APPROPRIATE PUBLIC FUNDS, AND VESTING THE PRESIDENT WITH THE POWER TO DETERMINE THE USES OF THE MALAMPAYA FUND VIOLATES THE EXCLUSIVE CONSTITUTIONAL POWER OF CONGRESS TO APPROPRIATE PUBLIC FUNDS.— The phrase "**as may be *hereafter directed* by the President**" refers to other purposes still to be determined by the President in the future. Thus, the other purposes to be undertaken could not as yet be determined at the time PD No. 910 was issued. W hen PD No. 910 was issued, then President Ferdinand E. Marcos exercised both executive and legislative powers. The President then, in the exercise of his law-making powers, could determine in the future the other purposes for which the Malampaya Fund would be used. This is precisely the reason for the phrase "as may be *hereafter directed* by the President." Thus, in light of the executive and legislative powers exercised by the President at that time, the phrase "for such other purposes as may be hereafter directed by the President" has a **broader meaning** than the phrase "energy resource development and exploitation programs and projects of the government." This does not mean, however, that the phrase "energy resource development and exploitation programs and projects" should be unreasonably interpreted narrowly. To finance "energy resource development and exploitation programs and projects" includes all expenditures necessary and proper to carry out such development and exploitation – including expenditures to secure and protect the gas and oil fields in Malampaya from encroachment by other countries or from threats by terrorists. x x x Under the 1987 Constitution, determining the purpose of the expenditure of government funds is an exclusive legislative power. The Executive can only propose, but cannot determine the purpose of an appropriation. An appropriation cannot validly direct the payment of government funds "for such other purposes as may be hereafter directed by the President," absent the proper application of the *ejusdem generis* rule. Section 8 of PD No. 910 authorizes the use of the Malampaya Fund for other projects approved only by the President. To repeat, Congress has the

exclusive power to appropriate public funds, and vesting the President with the power to determine the uses of the Malampaya Fund violates the exclusive constitutional power of Congress to appropriate public funds.

LEONEN, *J., concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; "PORK BARREL SYSTEM"; GREED UNDERMINES THE ABILITY OF ELECTED OFFICIALS TO BE REAL AGENTS OF THEIR CONSTITUENTS.— We are again called to exercise our constitutional duty to ensure that every morsel of power of any incumbent in public office should only be exercised in stewardship. Privileges are not permanent; they are not to be abused. Rank is bestowed to enable public servants to accomplish their duties; it is not to aggrandize. Public office is for the public good; it is not a title that is passed on like a family heirloom. It is solemn respect for the public's trust that ensures that government is effective and efficient. Public service suffers when greed fuels the ambitions of those who wield power. Our coffers are drained needlessly. Those who should pay their taxes will not properly pay their taxes. Some of the incumbents expand their experience in graft and corruption rather than in the knowledge and skills demanded by their office. Poverty, calamities, and other strife inordinately become monsters that a weakened government is unable to slay. Greed, thus, undermines the ability of elected representatives to be real agents of their constituents. It substitutes the people's interest for the narrow parochial interest of the few. It serves the foundation of public betrayal while it tries to do everything to mask its illegitimacy. The abuse of public office to enrich the incumbent at the expense of the many is sheer moral callousness. It is evil that is not easy to discover. However, the evil that men do cannot be hidden forever. In time, courage, skill or serendipity reveals. The time has come for what is loosely referred to as the "pork barrel system." We will allow no more evasion.

2. ID.; ID.; ID.; ID.; ID.; PORK BARREL FUNDS INCULCATES A PERVERSE UNDERSTANDING OF REPRESENTATIVE DEMOCRACY; IT DOES NOT TRULY EMPOWER

THOSE WHO ARE IMPOVERISHED OR FOUND IN THE MARGINS OF OUR SOCIETY.— Pork barrel funds historically encourage dole-outs. It inculcates a perverse understanding of representative democracy. It encourages a culture that misunderstands the important function of public representation in Congress. It does not truly empower those who are impoverished or found in the margins of our society. There are better, more lasting and systematic ways to help our people survive. A better kind of democracy should not be the ideal. It should be the norm. We listen to our people as we read the Constitution. We watch as others do their part and are willing to do more. We note the public's message: Politics should not be as it was. Eradicate greed. Exact accountability. Build a government that has a collective passion for real social justice.

3. ID.; ID.; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY REQUIREMENT; WILL ENSURE THAT THE COURT WILL NOT ISSUE ADVISORY OPINIONS AND WILL PREVENT IT FROM USING THE IMMENSE POWER OF JUDICIAL REVIEW ABSENT A PARTY THAT CAN SUFFICIENTLY ARGUE FROM A STANDPOINT WITH REAL AND SUBSTANTIAL INTERESTS.— Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. x x x A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that

they legitimately represent. x x x The requirement of an 'actual case' will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE CASE OF *DELOS SANTOS V. COMMISSION ON AUDIT* AS BASIS FOR AN EXCEPTION TO AN ACTUAL CASE; TAKEN TOGETHER, *DELOS SANTOS* AND THE *PRIMA FACIE* FINDINGS OF FACT IN THE COMMISSION ON AUDIT (COA) REPORT INDICATE WIDESPREAD AND WASTAGE OF PUBLIC FUNDS BY THE MEMBERS OF CONGRESS WHO ARE TASKED TO CHECK THE PRESIDENT'S SPENDING AND SAID LEAKAGES ARE NOT ONLY IMMINENT BUT ONGOING.— To support the factual backdrop of their case, petitioners rely primarily on the Commission on Audit's Special Audits Office Report No. 2012-03, entitled *Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)* "x x x as definitive documentary proof that Congress has breached the limits of the power given it by the Constitution on budgetary matters, and together with the Executive, has been engaged in acts of grave abuse of discretion." However, the facts that the petitioners present may still be disputable. These may be true, but those named are still entitled to legal process. The Commission on Audit (COA) Report used as the basis by petitioners to impute illegal acts by the members of Congress is a finding that may show, *prima facie*, the factual basis that gives rise to concerns of grave irregularities. It is based upon the Commission on Audit's procedures on audit investigation as may be provided by law and their rules. It may suggest the culpability of some public officers. Those named, however, still await notices of disallowance/charge, which are considered audit decisions, to be issued on the basis of the COA Report. This is provided in the procedures of the Commission on Audit. x x x Notices of Disallowance that will be issued will furthermore still be litigated. However, prior to the filing of these Petitions, this Court promulgated *Delos Santos v. Commission on Audit.* In that case, we dealt with the patent irregularity of the disbursement of the Priority

Development Assistance Fund of then Congressman Antonio V. Cuenco. We have basis, therefore, for making the exception to an actual case. Taking together *Delos Santos* and the *prima facie* findings of fact in the COA Report, which must be initially respected by this Court sans finding of grave abuse of discretion, there appears to be some indication that there may be widespread and pervasive wastage of funds by the members of the Congress who are tasked to check the President's spending. It appears that these leakages are not only imminent but ongoing. We note that our findings on the constitutionality of this item in the General Appropriations Act is without prejudice to finding culpability for violation of other laws. None of the due process rights of those named in the report will, thus, be imperiled.

5. ID.; ID.; ID.; ID.; ID.; POLITICAL QUESTION DOCTRINE AND THE EXPANDED POWER OF JUDICIAL REVIEW; JUDICIAL REVIEW EXTENDS TO REVIEW POLITICAL DISCRETION THAT CLEARLY BREACHES FUNDAMENTAL VALUES AND PRINCIPLES CONGEALED IN THE PROVISIONS OF THE CONSTITUTION.— With this background and from our experience during Martial Law, the members of the Constitutional Commission clarified the power of judicial review through the second paragraph of Section 1 of Article VIII of the Constitution. This provides: Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable ***and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government***. This addendum was borne out of the fear that the political question doctrine would continue to be used by courts to avoid resolving controversies involving acts of the Executive and Legislative branches of government. Hence, judicial power was expanded to include the review of any act of grave abuse of discretion on ***any*** branch or instrumentality of the government. The Constitutional Commissioners were working with their then recent experiences in a regime of Martial Law. The examples that they had during the deliberations on the floor of the Constitutional Commission were naturally based on those experiences. It appears that they did not want a Court that

had veto on any and all actions of the other departments of government. Certainly, the Constitutional Commissioners did not intend that this Court's discretion substitutes for the political wisdom exercised within constitutional parameters. However, they wanted the power of judicial review to find its equilibrium further than unthinking deference to political acts. Judicial review extends to review political discretion that clearly breaches fundamental values and principles congealed in provisions of the Constitution.

6. ID.; ID.; ID.; ID.; ID.; ID.; THE EXPANDED POWER OF JUDICIAL REVIEW MAY BE EXERCISED TO RESOLVE THE VALIDITY OF THE USE OF THE PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) WHICH CAN AFFECT CONSTITUTIONAL PRINCIPLES OF ACCOUNTABILITY AND SEPARATION OF POWERS; CASE AT BAR.— The current Priority Development Assistance Fund amounts to twenty four (24) billion pesos; the alternative uses of this amount have great impact. Its wastage also will have lasting effects. To get a sense of its magnitude, we can compare it with the proposed budgetary allocation for the entire Judiciary. All courts get a collective budget that is about eighteen (18) billion pesos. The whole system of adjudication is dwarfed by a system that allocates funds for unclear political motives. The concepts of accountability and separation of powers are fundamental values in our constitutional democracy. The effect of the use of the Priority Development Assistance Fund can have repercussions on these principles. Yet, it is difficult to discover anomalies if any. It took the Commission on Audit some time to make its special report for a period ending in 2009. It is difficult to expect such detail from ordinary citizens who wish to avail their rights as taxpayers. Clearly, had it not been for reports in both mainstream and social media, the public would not have been made aware of the magnitude. What the present Petitions present is an opportune occasion to exercise the expanded power of judicial review. Due course should be given because these Petitions suggest a case where (a) there may be indications that there are pervasive breaches of the Constitution; (b) there is no doubt that there is a large and lasting impact on our societies; (c) what are at stake are fundamental values of our constitutional order; (d) there are obstacles to timely discovering facts which would serve as basis

for regular constitutional challenges; and (e) the conditions are such that any delay in our resolution of the case to await action by the political branches will not entirely address the violations. With respect to the latter, our Decision will prevent the repetition of the same acts which have been historically shown to be "capable of repetition" and yet "evading review." Our Decision today will also provide guidance for bench and bar.

7. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF *STARE DECISIS;* A FUNCTIONAL DOCTRINE NECESSARY FOR COURTS COMMITTED TO THE RULE OF LAW; IT IS NOT, HOWEVER, AN ENCRUSTED AND INFLEXIBLE CANON.— Respondents also argued that we should continue to respect our precedents. They invoke the doctrine of *stare decisis*. *Stare decisis* is a functional doctrine necessary for courts committed to the rule of law. It is not, however, an encrusted and inflexible canon. Slavishly adhering to precedent potentially undermines the value of a Judiciary. *Stare decisis* is based on the logical concept of analogy. It usually applies for two concepts. The first is the meaning that is authoritatively given to a text of a provision of law with an established set of facts. The second may be the choices or methods of interpretation to arrive at a meaning of a certain kind of rule. This case concerns itself with the first kind of *stare decisis*; that is, whether recommendations made by members of Congress with respect to the projects to be funded by the President continue to be constitutional. Ruling by precedent assists the members of the public in ordering their lives in accordance with law and the authoritative meanings promulgated by our courts. It provides reasonable expectations. Ruling by precedent provides the necessary comfort to the public that courts will be objective. At the very least, courts will have to provide clear and lucid reasons should it not apply a given precedent in a specific case.

8. ID.; ID.; ID.; ID.; ID.; PRECEDENTS ALSO NEED TO BE ABANDONED WHEN THE COURT DISCERNS, AFTER FULL DELIBERATION, THAT A CONTINUING ERROR IN THE INTERPRETATION OF THE SPIRIT AND INTENT OF A CONSTITUTIONAL PROVISION EXISTS, ESPECIALLY WHEN IT CONCERNS ONE OF THE FUNDAMENTAL VALUES OR PREMISES OF OUR

CONSTITUTIONAL DEMOCRACY.— However, the use of precedents is never mechanical. Some assumptions normally creep into the facts established for past cases. These assumptions may later on prove to be inaccurate or to be accurate only for a given historical period. Sometimes, the effects assumed by justices who decide past cases do not necessarily happen. Assumed effects are given primacy whenever the spirit or intent of the law is considered in the interpretation of a legal provision. Some aspect of the facts or the context of these facts would not have been fully considered. It is also possible that doctrines in other aspects of the law related to a precedent may have also evolved. In such cases, the use of precedents will unduly burden the parties or produce absurd or unworkable outcomes. Precedents will not be useful to achieve the purposes for which the law would have been passed. Precedents also need to be abandoned when this Court discerns, after full deliberation, that a continuing error in the interpretation of the spirit and intent of a constitutional provision exists, especially when it concerns one of the fundamental values or premises of our constitutional democracy. The failure of this Court to do so would be to renege on its duty to give full effect to the Constitution.

9. ID.; ID.; ID.; ID.; ID.; *PHILCONSA V. ENRIQUEZ* PERPETUATES AN ERROR IN THE INTERPRETATION OF SOME OF THE FUNDAMENTAL PREMISES OF OUR CONSTITUTION; AT THESE TIMES, CONSISTENCY WITH PRINCIPLE REQUIRES THAT WE REJECT WHAT APPEARS AS *STARE DECISIS*.— There are some indications that this Court's holding in *PHILCONSA* suffered from a lack of factual context. The *ponencia* describes a history of increasing restrictions on the prerogative of members of the House of Representatives and the Senate to recommend projects. There was no reliance simply on the dicta in *PHILCONSA*. This shows that successive administrations saw the need to prevent abuses. There are indicators of the failure of both Congress and the Executive to stem these abuses. Just last September, this Court's *En Banc* unanimously found in *Delos Santos v. Commission on Audit* that there was irregular disbursement of the Priority Development Assistance Fund of then Congressman Antonio V. Cuenco. x x x While the special report of the Commission on Audit may not definitively be

used to establish the facts that it alleges, it may be one of the indicators that we should consider in concluding that the context of the Decision in *PHILCONSA* may have changed. In addition, but no less important, is that *PHILCONSA* perpetuates an error in the interpretation of some of the fundamental premises of our Constitution. To give life and fully live the values contained in the words of the Constitution, this Court must be open to timely re-evaluation of doctrine when the opportunity presents itself. We should be ready to set things right so that what becomes final is truly relevant to the lives of our people and consistent with our laws. Mechanical application of *stare decisis*, at times, is not consistency with principle. At these times, consistency with principle requires that we reject what appears as *stare decisis*.

10. ID.; ID.; ID.; ID.; ID.; PRINCIPLE OF SEPARATION OF POWERS; NOWHERE IN THE CONSTITUTION DOES IT ALLOW SPECIFIC MEMBERS OF THE HOUSE OF REPRESENTATIVES OR THE SENATE TO IMPLEMENT PROJECTS AND PROGRAMS; IT IS THE LOCAL GOVERNMENT UNITS THAT ARE GIVEN THE PREROGATIVE TO EXECUTE PROJECTS AND PROGRAMS.— What is readily apparent from the provisions of the Constitution is a clear distinction between the role of the Legislature and that of the Executive when it comes to the budget process. The Executive is given the task of preparing the budget and the prerogative to spend from an authorized budget. The Legislature, on the other hand, is given the power to authorize a budget for the coming fiscal year. This power to authorize is given to the Legislature collectively. Nowhere in the Constitution does it allow specific members of the House of Representatives or the Senate to implement projects and programs. Their role is clear. Rather, it is the local government units that are given the prerogative to execute projects and programs.

11. ID.; ID.; ID.; ID.; ID.; ANY SYSTEM WHERE MEMBERS OF CONGRESS PARTICIPATE IN THE EXECUTION OF PROJECTS IN ANY WAY COMPROMISES THEM AS IT ENCROACHES ON THEIR ABILITY TO DO THEIR CONSTITUTIONAL DUTIES.— Any system where members of Congress participate in the execution of projects ***in any way*** compromises them. It encroaches on their ability to do

their constitutional duties. The violation is apparent in two ways: their ability to efficiently make judgments to authorize a budget and the interference in the constitutional mandate of the President to be the Executive. Besides, interference in any government project other than that of congressional activities is a direct violation of Article VI, Section 14 of the 1987 Constitution in so far as Title XLIV of the 2013 General Appropriations Act allows participation by Congress. Article VI, Section 14 provides: No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including government owned or controlled corporation, or its subsidiary, during his term of office. ***He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.***

12. ID.; ID.; ID.; ID.; ID.; THE PARTICIPATION OF MEMBERS OF CONGRESS IN THE IMPLEMENTATION OF A LAW — EVEN IF ONLY TO RECOMMEND — AMOUNTS TO AN UNCONSTITUTIONAL POST-ENACTMENT INTERFERENCE IN THE ROLE OF THE EXECUTIVE.— Even a textual reading of the Special Provisions of the Priority Development Assistance Fund under the General Appropriations Act of 2013 shows that the identification of projects and endorsements by the Chairman of the Senate Committee on Finance and the Chairman of the Committee on Appropriations of the House of Representatives are mandatory. The Special Provisions use the word, "shall." Respondents argue that the participation of members of Congress in the allocation and release of the Priority Development Assistance Fund is merely recommendatory upon the Executive. However, respondents failed to substantiate in any manner their arguments. x x x Besides, it is the recommendation itself which constitutes the evil. It is that interference which amounts to a constitutional violation. This Court has implied that the participation of Congress is limited to the exercise of its power of oversight. Any post-enactment congressional measure such

as this should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following: 1. scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation and 2. investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation. x x x As such, it is only upon its effectivity that a law may be executed and the executive branch acquires the duties and powers to execute the said law. Before that point, the role of the executive branch, particularly of the President, is limited to approving or vetoing the law. From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional. x x x **The participation of members of Congress — even if only to recommend — amounts to an unconstitutional post-enactment interference in the role of the Executive. It also defeats the purpose of the powers granted by the Constitution to Congress to authorize a budget.**

13. ID.; ID.; ID.; ID.; ID.; ID.; THE PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) ITEM IN THE GENERAL APPROPRIATIONS ACT OF 2013 IS INVALID BECAUSE IT IS AN APPROPRIATION FOR EACH MEMBER OF THE HOUSE OF REPRESENTATIVE AND EACH SENATOR; THE POWER TO SPEND IS AN EXECUTIVE CONSTITUTIONAL DISCRETION, NOT A LEGISLATIVE ONE.— Also, the Priority Development Assistance Fund has no discernable purpose. The lack of purpose can readily be seen. x x x Had it been to address the developmental needs of the Legislative districts, then the amounts would have varied based on the needs of such districts. Hence, the poorest district would receive the largest share as compared to its well-off counterparts. If it were to address the needs of the constituents, then the amounts allocated would have varied in relation to population. Thus, the more populous areas would have the larger allocation in comparison with areas which have a sparse population. There is no attempt to do any

of these. The equal allocation among members of the House of Representatives and more so among Senators shows the true color of the Priority Development Assistance Fund. It is to give a lump sum for each member of the House of Representatives and the Senate for them to spend on projects of their own choosing. This is usually for any purpose whether among their constituents and whether for the present or future. ***In short, the Priority Development Assistance Fund is an appropriation for each Member of the House of Representative and each Senator.*** This is why this item in the General Appropriations Act of 2013 is an invalid appropriation. It is allocated for use which is not inherent in the role of a member of Congress. The power to spend is an Executive constitutional discretion — not a Legislative one.

14. ID.; ID.; ID.; ID.; ID.; ID.; A VALID ITEM IS AN AUTHORIZED AMOUNT THAT MAY BE SPENT FOR A DISCERNIBLE PURPOSE; AN ITEM BECOMES INVALID WHEN IT IS JUST AN AMOUNT ALLOCATED TO AN OFFICIAL ABSENT A PURPOSE; THE SAID ITEM FACILITATES AN UNCONSTITUTIONAL DELEGATION OF THE POWER TO AUTHORIZE A BUDGET.— *A valid item is an authorized amount that may be spent for a discernible purpose.* An item becomes invalid when it is just an amount allocated to an official absent a purpose. In such a case, the item facilitates an unconstitutional delegation of the power to authorize a budget. Instead of Congress acting collectively with its elected representatives deciding on the magnitude of the amounts for spending, it will be the officer who either recommends or spends who decides what the budget will be. This is not what is meant when the Constitution provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." When no discernible purpose is defined in the law, money is paid out for a public official and not in pursuance of an appropriation. This is exactly the nature of the Priority Development Assistance Fund. Seventy million pesos of taxpayers' money is appropriated for each member of the House of Representatives while two hundred million pesos is authorized for each Senator. The purpose is not discernible. The menu of options does not relate to each other in order to reveal a discernible purpose. Each legislator chooses the amounts that

will be spent as well as the projects. The projects may not relate to each other. They will not be the subject of a purposive spending program envisioned to create a result. It is a kitty — a mini-budget — allowed to each legislator. That each legislator has his or her own mini-budget makes the situation worse. Again, those who should check on the expenditures of all offices of government are compromised. They will not have the high moral ground to exact efficiency when there is none that can be evaluated from their allocation under the Priority Development Assistance Fund.

15. ID.; ID.; ID.; ID.; ID.; CONSTITUTIONALITY OF SECTION 8 OF P.D. NO. 910 (MALAMPAYA FUND); THE PHRASE "FOR SUCH OTHER PURPOSES AS MAY HEREAFTER DIRECTED BY THE PRESIDENT" IS NULL AND VOID; SINCE IT PRESCRIBES ALL, IT PRESCRIBES NONE.— The Constitution in Article VI, Section 29 (3) provides for another type of appropriations act, thus: All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the government. This provision provides the basis for special laws that create special funds and to this extent qualifies my concurrence with the ponencia's result in so far as Section 8 of Presidential Decree No. 910 is concerned. x x x As has been the practice in the past administration, monies coming from this special provision have been used for various purposes which do not in any way relate to "the energy resource development and exploitation programs and projects of the government." Some of these expenditures are embodied in Administrative Order No. 244 dated October 23, 2008; and Executive Orders 254, 254-A, and 405 dated December 8, 2003, March 3, 2004, and February 1, 2005, respectively. The phrase "for such other purposes as may hereafter directed by the President" has, thus, been read as all the infinite possibilities of any project or program. ***Since it prescribes all, it prescribes none***. Thus, I concur with the *ponencia* in treating this portion of Section 8, Presidential Decree No. 910, which allows the expenditures of that special fund "for other purposes as may be hereafter directed by the President," as null and void.

16. ID.; ID.; ID.; ID.; ID.; CONSTITUTIONALITY OF SECTION 12 OF P.D. NO. 1869, AS AMENDED BY P.D. 1993 (PRESIDENTIAL SOCIAL FUND); THE PHRASE "PRIORITY INFRASTRUCTURE PROJECTS" MAY BE TOO BROAD SO AS TO ACTUALLY ENCOMPASS EVERYTHING ELSE.— The same vice infects a portion of the law providing for a Presidential Social Fund. Section 12 of Presidential Decree No. 1869 as amended by Presidential Decree No. 1993 provides that the fund may be used "to finance the priority infrastructure projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines." Two uses are contemplated by the provision: one, to finance "priority infrastructure projects," and two, to provide the Executive with flexibility in times of calamities. I agree that "priority infrastructure projects" may be too broad so as to actually encompass everything else. The questions that readily come to mind are which kinds of infrastructure projects are not covered and what kinds of parameters will be used to determine the priorities. These are not textually discoverable, and therefore, allow an incumbent to have broad leeway. This amounts to an unconstitutional delegation of the determination of the purpose for which the special levies resulting in the creation of the special fund. This certainly was not contemplated by Article VI, Section 29(3) of the Constitution.

BRION, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; DOCTRINE OF SEPARATION OF POWERS; UNDUE DELEGATION OF POWER; NO BRANCH OF GOVERNMENT MAY DELEGATE ITS CONSTITUTIONALLY-ASSIGNED POWERS AND THEREBY DISRUPT THE CONSTITUTION'S CAREFULLY LAID OUT PLAN OF GOVERNANCE.— The powers of government are generally divided into the executive, the legislative and the judicial, and are distributed among these three great branches under carefully defined terms, to ensure that no branch becomes so powerful that it can dominate the others, all for the good of the people that the government serves. [U]nder our republican system of government, – [this] essentially made operational by two basic doctrines: the **doctrine of**

separation of powers and the **doctrine of checks and balances**. Governmental powers are distributed and made *distinctly separate from one another* so that these different branches may check and balance each other, again to ensure proper, balanced and accountable governance. A necessary corollary to this arrangement is that **no branch of government may delegate its constitutionally-assigned powers** and thereby disrupt the Constitution's carefully laid out plan of governance. Neither may one branch or any combination of branches **deny the other or others their constitutionally mandated prerogatives** – either through the exercise of sheer political dominance or through collusive practices – without committing a breach that must be addressed through our constitutional process.

2. ID.; ID.; ID.; TEST TO DETERMINE IF AN UNDUE OR PROHIBITED DELEGATION HAS BEEN MADE; COMPLETENESS TEST AND SUFFICIENT STANDARD TEST.— In terms of congressional powers, the test to determine if an undue or prohibited delegation has been made is the **completeness test** which asks the question: **is the law complete in all its terms and conditions when it leaves the legislature such that the delegate is confined to its implementation and has no need to determine for and by himself or herself what the terms or the conditions of the law should be**? An aspect of implementation notably left for the delegate's determination is the question of *how* the law may be enforced. To cover the gray area that seemingly arises as a law transits from formulation to implementation, jurisprudence has established the rule that for as long as the law has provided sufficient implementation standards to guide the delegate, the latter may fill in the details that the law needs for its prompt, efficient and orderly implementation. This is generally referred to as the **sufficient standard test**. The question in every case is whether there is or are adequate standards, guidelines or limitations in the law to map out the boundaries of the delegate's authority and thus prevent the delegation from spilling into the area that is essentially law or policy formulation.

3. ID.; ID.; ID.; LEGISLATIVE POWER OF APPROPRIATION; "POWER OF THE PURSE"; EXPOUNDED.— Under our system of government, part of the legislative powers of Congress is the **power of the purse** which, broadly described, is the

power to determine the areas of national life where government shall devote its funds; to define the amount of these funds and authorize their expenditure; and to provide measures to raise revenues to defray the amounts to be spent. This power is regarded as the "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people." x x x Consistent with the separation of powers and the check and balance doctrines, the power of the purse also allows Congress to ***control executive spending*** as the Executive actually disburses the money that Congress sets aside and determines to be available for spending. Congress carries out the power of the purse through the appropriation of funds under a general appropriations law (titled as the *General Appropriations Act* or the GAA) that can easily be characterized as one of the most important pieces of legislation that Congress enacts each year. For this reason, the 1987 Constitution (and previous Constitutions) has laid down the general framework by which Congress and the Executive make important decisions on how public funds are raised and spent - from the policy-making phase to the actual spending phase, including the raising of revenues as source of government funds.

4. ID.; ID.; ID.; ID.; CHECK AND BALANCE DOCTRINE AS APPLIED IN THE BUDGETING PROCESS.— The budgeting process demonstrates, not only how the Constitution canalizes governmental powers to achieve its purpose of effective governance, but also how this separation checks and balances the exercise of powers by the different branches of government. In this process, the Executive initially participates through its role in **budget preparation and proposal** which starts the whole process. it is the Executive who lays out the budget proposal that serves as basis for Congress to act upon. This function is expressed under the Constitution in the following terms: Article VII, Section 22. The President shall submit to the Congress, within thirty days from the opening of every regular session as the basis for the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures. A notable feature of this provision that impacts on the present case is the requirement that revenue sources be reported to Congress. Notably, too, the President's recommended appropriations may not be increased by Congress pursuant to Section 25, Article

VI of the Constitution – a feature that immeasurably heightens the power and participation of the President in the budget process. x x x Actual appropriation or **budget legislation** is undertaken by Congress under the strict terms of Section 25, Article VI of the Constitution. A theme that runs through the various subdivisions of this provision is the Constitution's strict treatment of the budget process, apparently in its desire to plug all holes that have appeared through our years of constitutional history and to ensure that funds are used according to congressional intent. Of special interest in the present case are Sections 25(2) which speaks of the need for particularity in an appropriation; Section 25(4) on special appropriation bill and its purpose; and Section 25(6) on discretionary funds and the special purpose they require. x x x Check and balance measures are evident in passing the budget as the President is constitutionally given the opportunity to exercise his line item veto, *i.e.*, the authority to reject specific items in the budget bill while approving the whole bill. The check and balance measure, of course, runs both ways. In the same manner that Congress cannot deny the President his authority to exercise his line veto power except through an override of the veto, the President cannot also deny Congress its share in national policymaking by including lump sum appropriations in its recommended expenditure program.

5. ID.; ID.; ID.; ID.; ID.; LUMP SUM APPROPRIATIONS LIKE THE PDAF AND THE PRESIDENT'S OWN PORK BARREL ARE CONSTITUTIONALLY ANOMALOUS PRACTICES THAT REQUIRE COURT INTERVENTION.— Lump sum appropriations, in the words of J. Perlas-Bernabe, is wrong as it leaves the President with *"no item"* to act on and denies him the exercise of his line item veto power. The option when this happens and if he rejects an appropriation, is therefore not the veto of a specific item but the veto of the whole lump sum appropriation. A lump sum appropriation like the PDAF cannot and should not pass Congress unless the Executive and the Legislative branches collude, in which case, the turn of this Court to be an active constitutional player in the budget process comes into play. The PDAF, as explained in the Opinions of Justice Carpio and Bernabe, is a prime example of a lump sum appropriation that, over the years, for reasons beneficial to both branches of government, have

successfully negotiated the congressional legislative process, to the detriment of the general public. x x x Additionally, current practices that Congress has given [the President] his own pork barrel – generally, lump sum funds that he can utilize at his discretion without passing through the congressional mill and without meaningful congressional scrutiny x x x [are] **constitutionally anomalous practices that require Court intervention as the budgetary partners will allow matters to remain as they unless externally restrained by legally binding actions.**

6. ID.; ID.; ID.; ID.; ID.; ID.; THE AIMS OF THE BUDGETARY PRACTICE CANNOT BE ACHIEVED, TO THE EVENTUAL DETRIMENT OF THE PEOPLE THE GOVERNMENT SERVES, IF INTRUSION INTO POWERS AND THE RELAXATION OF BUILT-IN CHECKS ARE ALLOWED.— If, as current newspaper headlines and accounts now vividly banner and narrate, irregularities have transpired as a consequence of the budgetary process, these anomalies are more attributable to the officials acting in the process than to the system the Constitution designed; the men and women who are charged with their constitutional duties have simply not paid close attention to what their duties require. Thus, as things are now, the budgetary process the Constitution provided the nation can only be effective if the basic constitutionally-designed safeguards, particularly the doctrines of separation of powers and checks and balances, are observed. Or, more plainly stated, **the aims of the budgetary process cannot be achieved, *to the eventual detriment of the people the government serves,* if intrusion into powers and the relaxation of built-in checks are allowed.**

7. ID.; ID.; ID.; ID.; CONSTITUTIONALITY OF SECTION 12 OF P.D. NO. 1869, AS AMENDED; WHICH INFRASTRUCTURE DEVELOPMENT PROJECT MUST BE PRIORITIZED IS A QUESTION THAT THE PRESIDENT ALONE CANNOT DECIDE, BUT IT IS A MATTER APPROPRIATE FOR NATIONAL POLICY CONSIDERATION SINCE NATIONAL FUNDS ARE INVOLVED AND MUST HAVE THE IMPRIMATUR OF CONGRESS.— Unlike its earlier wording, P.D. No. 1869, as amended, no longer identifies and specifies the "infrastructure and socio-civic projects that can serve as a model for the

structures to which the fund shall be devoted. Instead, the decree now generally refers to "priority infrastructure development projects," unsupported by any listing that gave the previous unamended version a taint of specificity. Thus, what these "priority infrastructure development projects" are, P.D. No. 1869 does not identify and state with particularity. This deficiency is rendered worse by the absence of defined legislative parameters, assuming that legislative purpose can be supplied through parameters. In fact, neither does P.D. No. 1869's *Whereas* clauses sufficiently disclose the decree's legislative purpose to save the objectionable portion of this law. Even granting *arguendo* that these "infrastructure and development projects" may be validly determined by the President himself as part of his law-execution authority, the question of which "infrastructure and development projects" should receive "priority" treatment is a matter that the legislature itself has not determined. xxx Which infrastructure development project must be prioritized is a question that the President alone cannot decide. Strictly, it is a matter appropriate for national policy consideration since national funds are involved, and must have the imprimatur of Congress which has the power of the purse and is the repository of plenary legislative power.

8. ID.; ID.; ID.; ID.; ID.; UNDER THE AMENDED P.D. NO. 1869, THE PRESIDENT WOULD ENJOY THE NON-DELEGABLE ASPECT OF THE LEGISLATIVE POWER OF APPROPRIATION THAT IS DENIED HIM BY THE CONSTITUTION.— From another perspective, while Congress' authority to identify the project or activity to be funded is indisputable. Contrary to the Court's ruling in *Philippine Constitution Association v. Enriquez* (*Philconsa*), this authority cannot be "as broad as Congress wants it to be." If the President can exercise the **power to prioritize** at all, such power is limited to his choice of which *of the already identified projects* must be given preferential attention **in a situation *when there are not enough funds to allocate for each project because of budgetary shortfall***. Additionally, unlike President Marcos during his time, the present President, indisputably exercises only executive powers under the 1987 Constitution and now labors under the constitutional limits in the exercise of his executive powers, as discussed above.

He cannot enjoy, therefore, the practically unlimited scope of governmental power that the former President enjoyed. As matters now stand, the President would enjoy, under the amended P.D. No. 1869, the non-delegable aspect of the legislative power of appropriation that is denied him by the Constitution. Consequently, we have to strike down this aspect of the law.

9. ID.; ID.; ID.; ID.; CONSTITUTIONALITY OF SECTION 8 OF P.D. NO. 910 (MALAMPAYA FUND); THE SECOND PHRASE "FOR SUCH OTHER PURPOSES AS MAY BE…DIRECTED BY THE PRESIDENT" IS A COMPLETE NULLITY AS IT IS AN UNDUE DELEGATION OF LEGISLATIVE POWER; IT IS ADDITIONALLY OBJECTIONABLE FOR BEING A PART OF CONSTITUTIONALLY OBJECTIONABLE LUMP SUM PAYMENT THAT VIOLATES THE SEPARATION OF POWERS DOCTRINE.— The Section 8, P.D. No. 910 funds or the Malampaya Fund consist of two components: the funds *"to be used to finance energy resource development and exploitation programs and projects,"* and the funds *"for such other purposes as may be…directed by the President."* I join Justice Carpio in the view that the second "*for such other purposes*" component is a complete nullity as it is an undue delegation of legislative power. I submit that this is additionally objectionable for being a part of a constitutionally objectionable lump sum payment that violates the separation of powers doctrine. x x x I vote to strike down the *"energy"* component of Section 8, P.D. No. 910 as it is a discretionary lump sum fund that is not saved at all by its *energy development and exploitation* purpose. It is a pure and simple pork barrel granted to the President under a martial law regime decree that could have escaped invalidity then under the 1973 Constitution and the prevailing unusual times, but should be struck down now for being out of step with the requirements of the 1987 Constitution. As a fund, it is a prohibited lump sum because it consists of a fund of indefinite size that has now grown to gigantic proportions, whose accounts and accounting are far from the usual in government, and which is made available to the President for his disposition, from year to year, with very vague controls, and free from the legal constraints of the budget process now in place under the 1987 Constitution. Admittedly, it is a fund raised and intended for special purposes but the

characterization "special purpose" is not reason enough and is not a magical abracadabra phrase that could whisk a fund out of the constitutional budget process, defying even common reason in the process.

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D E C I S I O N

PERLAS-BERNABE, *J.*:

"Experience is the oracle of truth."[1]

- James Madison

Before the Court are consolidated petitions[2] taken under Rule 65 of the Rules of Court, all of which assail the constitutionality of the Pork Barrel System. Due to the complexity of the subject matter, the Court shall heretofore discuss the system's conceptual underpinnings before detailing the particulars of the constitutional challenge.

The Facts

I. Pork Barrel: General Concept.

"Pork Barrel" is political parlance of American-English origin.[3] Historically, its usage may be traced to the degrading ritual of

[1] The Federalist Papers, Federalist No. 20.

[2] *Rollo* (G.R. No. 208566), pp. 3-51; *rollo* (G.R. No. 208493), pp. 3-11; and *rollo* (G.R. No. 209251), pp. 2-8.

[3] "'[P]ork barrel spending,' a term that traces its origins back to the era of slavery before the U.S. Civil War, when slave owners occasionally would present a barrel of salt pork as a gift to their slaves. In the modern usage, the term refers to congressmen scrambling to set aside money for pet projects in their districts." (Drudge, Michael W. "'Pork Barrel' Spending Emerging as Presidential Campaign Issue," August 1, 2008 <http://iipdigital.usembassy.gov/

rolling out a barrel stuffed with pork to a multitude of black slaves who would cast their famished bodies into the porcine feast to assuage their hunger with morsels coming from the generosity of their well-fed master.[4] This practice was later compared to the actions of American legislators in trying to direct federal budgets in favor of their districts.[5] While the advent of refrigeration has made the actual pork barrel obsolete, it persists in reference to political bills that "bring home the bacon" to a legislator's district and constituents.[6] In a more technical sense, "Pork Barrel" refers to **an appropriation of government spending meant for localized projects** and **secured solely or primarily to bring money to a representative's district**.[7] Some scholars on the subject further use it to refer to **legislative control of local appropriations**.[8]

In the Philippines, "Pork Barrel" has been commonly referred to as lump-sum, discretionary funds of Members of the

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[4] Bernas, Joaquin G., S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 Edition, p. 786, citing Bernas, "From Pork Barrel to Bronze Caskets," *Today*, January 30, 1994.

[5] Heaser, Jason, "Pulled Pork: The Three Part Attack on Non-Statutory Earmarks," *Journal of Legislation*, 35 J. Legis. 32 (2009). <http://heinonline.org/HOL/LandingPage?collection=&handle =hein.journals/jleg35&div=6&id=&page=> (visited October 17, 2013).

[6] Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" p. 2.<http://www.congress.gov.ph/download/14th/pork_barrel.pdf> (visited October 17, 2013).

[7] Chua, Yvonne T. and Cruz, Booma, B., "Pork is a Political, Not A Developmental, Tool." <http://pcij.org/stories/2004/pork.html> [visited October 22, 2013].) See also *rollo* (G.R. No. 208566), pp. 328-329.

[8] Morton, Jean, "What is a Pork Barrel?" *Global Granary*, Lifestyle Magazine and Common Place Book Online: Something for Everyone, August 19, 2013. <http://www.globalgranary.org/2013/08/19/what-is-a-pork-barrel/#.UnrnhFNavcw> (visited October 17, 2013).

Legislature,[9] although, as will be later discussed, its usage would evolve in reference to certain funds of the Executive.

II. History of Congressional Pork Barrel in the Philippines.

A. Pre-Martial Law Era (1922-1972).

Act 3044,[10] or the Public Works Act of **1922**, is considered[11] as the earliest form of "Congressional Pork Barrel" in the Philippines since the utilization of the funds appropriated therein were subjected to post-enactment legislator approval. Particularly, in the area of fund release, Section 3[12] provides that the sums

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[9] Jison, John Raymond, "What does the 'pork barrel' scam suggest about the Philippine government?" *International Association for Political Science Students,* September 10, 2013. <http://www.iapss.org/index.php/articles/item/93-what-does-the-pork-barrel-scam-suggest-about-the-philippine-government> (visited October 17, 2013). See also Llanes, Jonathan, "Pork barrel — Knowing the issue," Sunstar Baguio, October 23, 2013. <http://www.sunstar.com.ph/baguio/opinion/2013/09/05/llanes-pork-barrel-knowing-issue-301598> (visited October 17, 2013).

[10] Entitled "AN ACT MAKING APPROPRIATIONS FOR PUBLIC WORKS," approved on March 10, 1922.

[11] "**Act 3044, the first pork barrel appropriation**, essentially divided public works projects into two types. The first type — national and other buildings, roads and bridges in provinces, and lighthouses, buoys and beacons, and necessary mechanical equipment of lighthouses — fell directly under the jurisdiction of the director of public works, for which his office received appropriations. The second group — police barracks, normal school and other public buildings, and certain types of roads and bridges, artesian wells, wharves, piers and other shore protection works, and cable, telegraph, and telephone lines — is the forerunner of the infamous pork barrel.

Although the projects falling under the second type were to be distributed **at the discretion of the secretary of commerce and communications, he needed prior approval from a joint committee elected by the Senate and House of Representatives. The nod of either the joint committee or a committee member it had authorized was also required before the commerce and communications secretary could transfer unspent portions of one item to another item.**" (Emphases supplied) (Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. <http://verafiles.org/pork-by-any-name/> [visited October 14, 2013]).

[12] Sec. 3. The sums appropriated in paragraphs (*c*), (*g*), (*l*), and (*s*) of this Act shall be available for immediate expenditure by the Director of Public Works, but those appropriated in the other paragraphs **shall be**

appropriated for certain public works projects[13] "shall be distributed x x x **subject to the approval of a joint committee elected by the Senate and the House of Representatives**." "[T]he committee from each House may [also] authorize one of its **members to approve the distribution** made by the Secretary of Commerce and Communications."[14] Also, in the area of fund realignment, the same section provides that the said secretary, "**with the approval of said joint committee, or of the authorized members thereof**, may, for the purposes of said distribution, **transfer unexpended portions** of any item of appropriation under this Act to any other item hereunder."

In **1950**, it has been documented[15] that post-enactment legislator participation broadened from the areas of fund release and realignment to the area of project identification. During that year, the mechanics of the public works act was modified to the extent that the discretion of choosing projects was transferred from the Secretary of Commerce and Communications to legislators. "For the first time, the law carried a list of projects selected by Members of Congress, they 'being the representatives of the people, either on their own account or by consultation with local officials or civil leaders.'"[16] During this period, the pork barrel process commenced with local government councils, civil groups, and individuals appealing to Congressmen or

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distributed in the discretion of the Secretary of Commerce and Communications, **subject to the approval of a joint committee elected by the Senate and the House of Representatives. The committee from each House may authorize one of its members to approve the distribution made by the Secretary of Commerce and Communications**, who **with the approval of said joint committee, or of the authorized members thereof may**, for the purposes of said distribution, t**ransfer unexpended portions** of any item of appropriation. (Emphases supplied)

[13] Those Section 1 (*c*), (*g*), (*l*), and (*s*) of Act 3044 "shall be available for immediate expenditure by the Director of Public Works."

[14] Section 3, Act 3044.

[15] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," *VERA Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

[16] *Id*.

Senators for projects. Petitions that were accommodated formed part of a legislator's allocation, and the amount each legislator would eventually get is determined in a caucus convened by the majority. The amount was then integrated into the administration bill prepared by the Department of Public Works and Communications. Thereafter, the Senate and the House of Representatives added their own provisions to the bill until it was signed into law by the President — the Public Works Act.[17] In the **1960**'s, however, pork barrel legislation reportedly ceased in view of the stalemate between the House of Representatives and the Senate.[18]

B. Martial Law Era (1972-1986).

While the previous "Congressional Pork Barrel" was apparently discontinued in **1972** after Martial Law was declared, an era when "one man controlled the legislature,"[19] the reprieve was only temporary. By **1982**, the Batasang Pambansa had already introduced a new item in the General Appropriations Act (GAA) called the "**Support for Local Development Projects**" (SLDP) under the article on "National Aid to Local Government Units". Based on reports,[20] it was under the SLDP that **the practice of giving lump-sum allocations to individual legislators began**, with each assemblyman receiving ₱500,000.00. Thereafter, assemblymen would **communicate their project preferences** to the Ministry of Budget and Management for approval. Then, the said ministry would release the allocation papers to the Ministry of Local Governments, which would, in turn, issue the checks to the city or municipal treasurers in the assemblyman's locality. It has been further reported that

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[17] *Id*.

[18] *Id*.

[19] Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" <http://www.congress.gov.ph/download/14th/pork_barrel.pdf> (visited October 17, 2013).

[20] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," *VERA Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

"Congressional Pork Barrel" projects under the SLDP also began to cover not only public works projects, or so-called "hard projects", but also "soft projects",[21] or non-public works projects such as those which would fall under the categories of, among others, education, health and livelihood.[22]

C. Post-Martial Law Era: Corazon Cojuangco Aquino Administration (1986-1992).

After the EDSA People Power Revolution in 1986 and the restoration of Philippine democracy, "Congressional Pork Barrel" was revived in the form of the "**Mindanao Development Fund**" and the "**Visayas Development Fund**" which were created with **lump-sum appropriations** of ₱480 Million and ₱240 Million, respectively, for the funding of development projects in the Mindanao and Visayas areas in **1989**. It has been documented[23] that the clamor raised by the Senators and the Luzon legislators for a similar funding, prompted the creation of the "**Countrywide Development Fund**" (CDF) which was integrated into the **1990** GAA[24] with an initial funding of ₱2.3 Billion to cover "small local infrastructure and other priority community projects."

Under the GAAs for the years **1991** and **1992**,[25] CDF funds were, with the approval of the President, to be released directly

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[21] *Id*.

[22] Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP), Special Audits Office Report No. 2012-03, August 14, 2013 (CoA Report), p. 2.

[23] Ilagan, Karol, "Data A Day; CIA, CDF, PDAF? Pork is pork is pork," Moneypolitics, A Date Journalism Project for the Philippine Center for Investigative Journalism, August 1, 2013 <http://moneypolitics.pcij.org/data-a-day/cia-cdf-pdaf-pork-is-pork-is-pork/> (visited October 14, 2013).

[24] Republic Act No. (RA) 6831.

[25] Special Provision 1, Article XLIV, RA 7078 (1991 CDF Article), and Special Provision 1, Article XLII (1992), RA 7180 (1992 CDF Article) are **similarly worded** as follows:

Special Provision

1. **Use and Release of Funds**. The amount herein appropriated shall be used for infrastructure and other priority projects and activities

to the implementing agencies but "**subject to the submission of the required list of projects and activities**." Although the GAAs from 1990 to 1992 were silent as to the amounts of allocations of the individual legislators, as well as their participation in the identification of projects, it has been reported[26] that by **1992**, Representatives were receiving ₱12.5 Million each in CDF funds, while Senators were receiving ₱18 Million each, without any limitation or qualification, and that **they could identify any kind of project**, from hard or infrastructure projects such as roads, bridges, and buildings to "soft projects" such as textbooks, medicines, and scholarships.[27]

D. Fidel Valdez Ramos (Ramos) Administration (1992-1998).

The following year, or in **1993**,[28] the GAA explicitly stated that the release of CDF funds was to be made **upon the submission of the list of projects and activities identified by, among others, individual legislators**. For the first time, the

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upon approval by the President of the Philippines and shall be released directly to the appropriate implementing agency [(xxx for 1991)], **subject to the submission of the required list of projects and activities**. (Emphases supplied)

[26] Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," *VERA Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

[27] *Id*.

[28] Special Provision 1, Article XXXVIII, RA 7645 (1993 CDF Article) provides:

Special Provision

1. **Use and Release of Funds**. The amount herein appropriated shall be used for infrastructure and other priority projects and activities as **proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each; Vice-President, ₱20,000,000.**

The fund shall be automatically released quarterly by way of Advice of Allotment and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter **upon submission of the list of projects and activities by the officials concerned**. (Emphases supplied)

1993 CDF Article **included an allocation for the Vice-President**.[29] As such, Representatives were allocated ₱12.5 Million each in CDF funds, Senators, ₱18 Million each, and the Vice-President, ₱20 Million.

In **1994**,[30] **1995**,[31] and **1996**,[32] the GAAs contained the same provisions on project identification and fund release as found

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[29] See Special Provision 1, 1993 CDF Article; *id*.

[30] Special Provision 1, Article XLI, RA 7663 (1994 CDF Article) provides:

Special Provisions

1. **Use and Release of Funds**. The amount herein appropriated shall be used for infrastructure, purchase of ambulances and computers and other priority projects and activities, and credit facilities to qualified beneficiaries **as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each**; Vice-President, ₱20,000,000; PROVIDED, That, the said credit facilities shall be constituted as a revolving fund to be administered by a government financial institution (GFI) as a trust fund for lending operations. Prior years releases to local government units and national government agencies for this purpose shall be turned over to the government financial institution which shall be the sole administrator of credit facilities released from this fund.

The fund shall be automatically released quarterly by way of Advice of Allotments and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

[31] Special Provision 1, Article XLII, RA 7845 (1995 CDF Article) provides:

Special Provisions

1. **Use and Release of Funds**. The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities **as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each**; Vice-President, ₱20,000,000.

The fund shall be automatically released semi-annually by way of Advice of Allotment and Notice of Cash Allocation directly to the designated implementing agency not later than five (5) days after the beginning of each semester **upon submission of the list of projects and activities by the officials concerned**. (Emphases supplied)

[32] Special Provision 1, Article XLII, RA 8174 (1996 CDF Article) provides:

in the 1993 CDF Article. In addition, however, the Department of Budget and Management (DBM) was directed to **submit reports** to the **Senate Committee on Finance** and the **House Committee on Appropriations** on the **releases** made from the funds.[33]

Under the **1997**[34] CDF Article, Members of Congress and the Vice-President, **in consultation with the implementing**

Special Provisions

1. **Use and Release of Fund**. The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities, including current operating expenditures, except creation of new plantilla positions, **as proposed and identified by officials concerned according to the following allocations: Representatives, Twelve Million Five Hundred Thousand Pesos (₱12,500,000) each**; Senators, Eighteen Million Pesos (₱18,000,000) each; Vice-President, Twenty Million Pesos (₱20,000,000).

The Fund shall be released semi-annually by way of Special Allotment Release Order and Notice of Cash Allocation directly to the designated implementing agency not later than thirty (30) days after the beginning of each semester **upon submission of the list of projects and activities by the officials concerned**. (Emphases supplied)

[33] Special Provision 2 of the 1994 CDF Article, Special Provision 2 of the 1995 CDF Article and Special Provision 2 of the 1996 CDF Article are similarly worded as follows:

2. **Submission of [Quarterly (1994)/Semi-Annual (1995 and 1996)] Reports**. The Department of Budget and Management shall submit within thirty (30) days after the end of each [quarter (1994)/semester (1995 and 1996)] **a report to the House Committee on Appropriations and the Senate Committee on Finance on the releases made from this Fund. The report shall include the listing of the projects, locations, implementing agencies** [stated (order of committees interchanged in 1994 and 1996)] **and the endorsing officials**. (Emphases supplied)

[34] Special Provision 2, Article XLII, RA 8250 (1997 CDF Article) provides:

Special Provisions

xxx xxx xxx

2. **Publication of Countrywide Development Fund Projects.** Within thirty (30) days after the signing of this Act into law, the **Members of Congress and the Vice-President shall, in consultation with the implementing agency concerned, submit to the Department of Budget and Management the list of fifty percent (50%) of projects to be funded from the allocation from the**

agency concerned, were directed to submit to the DBM the list of 50% of projects to be funded from their respective CDF allocations which shall be duly endorsed by (*a*) the Senate President and the Chairman of the Committee on Finance, in the case of the Senate, and (*b*) the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations, in the case of the House of Representatives; while the list for the remaining 50% was to be submitted within six (6) months thereafter. The same article also stated that the project list, which would be published by the DBM,[35] "**shall be the basis for the release of funds**" and that **"[n]o funds appropriated herein shall be disbursed for projects not included in the list herein required."**

The following year, or in **1998**,[36] the foregoing provisions regarding the required lists and endorsements were reproduced, except that the publication of the project list was no longer required as **the list itself sufficed for the release of CDF Funds**.

The CDF was not, however, the lone form of "Congressional Pork Barrel" at that time. Other forms of "Congressional Pork Barrel" were reportedly fashioned and inserted into the GAA

Countrywide Development Fund which shall be duly endorsed by the Senate President and the Chairman of the Committee on Finance in the case of the Senate and the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations in the case of the House of Representatives, and the remaining fifty percent (50%) within six (6) months thereafter. The list shall identify the specific projects, location, implementing agencies, and target beneficiaries and **shall be the basis for the release of funds**. The said list shall be published in a newspaper of general circulation by the Department of Budget and Management. **No funds appropriated herein shall be disbursed for projects not included in the list herein required**. (Emphases supplied)

[35] See Special Provision 2, 1997 CDF Article; *id*.

[36] Special Provision 2, Article XLII, RA 8522 (1998 CDF Article) provides:

Special Provisions

xxx xxx xxx

2. **Publication of Countrywide Development Fund Projects. xxx PROVIDED, That said publication is not a requirement for the release of funds**. xxx (Emphases supplied)

(called "**Congressional Insertions**" or "CIs") in order to perpetuate the administration's political agenda.[37] It has been articulated that since CIs "formed **part and parcel of the budgets of executive departments**, they were **not easily identifiable and were thus harder to monitor**." Nonetheless, the lawmakers themselves as well as the finance and budget officials of the implementing agencies, as well as the DBM, purportedly knew about the insertions.[38] Examples of these CIs are the Department of Education (DepEd) School Building Fund, the Congressional Initiative Allocations, the Public Works Fund, the El Niño Fund, and the Poverty Alleviation Fund.[39] The allocations for the School Building Fund, particularly, "shall be made upon **prior consultation with the representative of the legislative district** concerned."[40] Similarly, **the legislators had the power to direct how, where and when** these appropriations were to be spent.[41]

E. Joseph Ejercito Estrada (Estrada) Administration (1998-2001).

In 1999,[42] the CDF was removed in the GAA and replaced by three (3) separate forms of CIs, namely, the "Food Security Program Fund,"[43] the "*Lingap Para Sa Mahihirap* Program

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[37] Chua, Yvonne T. and Cruz, Booma, "Pork by any name," *VERA Files*, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

[38] *Id*.

[39] *Rollo* (G.R. No. 208566), pp. 335-336, citing Parreño, Earl, "Perils of Pork," Philippine Center for Investigative Journalism, June 3-4, 1998. Available at <http://pcij.org/stories/1998/pork.html>

[40] *Id*.

[41] *Id*.

[42] RA 8745 entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY ONE, NINETEEN HUNDRED NINETY NINE, AND FOR OTHER PURPOSES."

[43] Special Provision 1, Article XLII, Food Security Program Fund, RA 8745 provides:

Special Provision

Fund,"[44] and the "Rural/Urban Development Infrastructure Program Fund,"[45] all of which contained a special provision **requiring "prior consultation" with the Members of Congress for the release of the funds.**

It was in the year **2000**[46] that the "**Priority Development Assistance Fund**" (PDAF) appeared in the GAA. The requirement

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1. **Use and Release of Fund.** The amount herein authorized shall be used to support the Food Security Program of the government, which shall include farm-to-market roads, post harvest facilities and other agricultural related infrastructures. Releases from this fund shall be made directly to the implementing agency **subject to prior consultation with the Members of Congress concerned**. (Emphases supplied)

[44] Special Provision 1, Article XLIX, *Lingap Para sa Mahihirap* Program Fund, RA 8745 provides:

Special Provision

1. **Use and Release of Fund**. The amount herein appropriated for the *Lingap Para sa Mahihirap* Program Fund shall be used exclusively to satisfy the minimum basic needs of poor communities and disadvantaged sectors: PROVIDED, That such amount shall be released directly to the implementing agency **upon prior consultation with the Members of Congress concerned**. (Emphases supplied)

[45] Special Provision 1, Article L, Rural/Urban Development Infrastructure Program Fund, RA 8745 provides:

Special Provision

1. **Use and Release of Fund**. The amount herein authorized shall be used to fund infrastructure requirements of the rural/urban areas which shall be released directly to the implementing agency **upon prior consultation with the respective Members of Congress**. (Emphases supplied)

[46] Special Provision 1, Article XLIX, RA 8760 (2000 PDAF Article) provides:

Special Provision

1. **Use and release of the Fund**. The amount herein appropriated shall be used to fund priority programs and projects as indicated under Purpose 1: PROVIDED, That such amount shall be released directly to the implementing agency concerned **upon prior consultation with the respective Representative of the District**: PROVIDED, FURTHER, That the herein **allocation may be realigned as necessary to any expense category: PROVIDED, FINALLY, That no amount shall be used to fund personal services and other personal benefits**. (Emphases supplied)

of "**prior consultation with the respective Representative of the District**" before PDAF funds were directly released to the implementing agency concerned was explicitly stated in the 2000 PDAF Article. Moreover, **realignment of funds** to any expense category was expressly allowed, with the sole condition that no amount shall be used to fund personal services and other personnel benefits.[47] The succeeding PDAF provisions remained the same in view of the re-enactment[48] of the 2000 GAA for the year **2001**.

F. Gloria Macapagal-Arroyo (Arroyo) Administration (2001-2010).

The **2002**[49] PDAF Article was brief and straightforward as it merely contained a single special provision ordering the release of the funds directly to the implementing agency or local government unit concerned, without further qualifications. The following year, **2003**,[50] the same single provision was present,

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[47] See Special Provision 1, 2000 PDAF Article; *id.*

[48] Section 25 (7), Article VI, of the 1987 Philippine Constitution (1987 Constitution) provides that "[i]f, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year **shall be deemed reenacted** and shall remain in force and effect until the general appropriations bill is passed by the Congress." (Emphasis supplied)

[49] Special Provision 1, Article L, RA 9162 (2002 PDAF Article) provides:

1. **Use and Release of the Fund**. The amount herein appropriated shall be used to fund priority programs and projects or to fund counterpart for foreign-assisted programs and projects: **PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned**. (Emphases supplied)

[50] Special Provision 1, Article XLVII, RA 9206, 2003 GAA (2003 PDAF Article) provides:

Special Provision

1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned: PROVIDED, FURTHER, That the allocations authorized herein may be realigned to any expense class, if deemed necessary: PROVIDED,

with simply an expansion of purpose and express authority to realign. Nevertheless, the provisions in the 2003 budgets of the Department of Public Works and Highways[51] (DPWH) and the DepEd[52] **required prior consultation with Members of Congress** on the aspects of implementation delegation and project list submission, respectively. In **2004**, the 2003 GAA was re-enacted.[53]

In **2005**,[54] the PDAF Article provided that the PDAF shall be used "to fund priority programs and projects under the ten point agenda of the national government and shall be released directly to the implementing agencies." It also introduced the

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FURTHERMORE, That a maximum of ten percent (10%) of the authorized allocations by district may be used for the procurement of rice and other basic commodities which shall be purchased from the National Food Authority.

[51] Special Provision 1, Article XVIII, RA 9206 provides:

Special Provision No. 1 — Restriction on the Delegation of Project Implementation

The implementation of the projects funded herein shall not be delegated to other agencies, except those projects to be implemented by the Engineering Brigades of the AFP and inter-department projects undertaken by other offices and agencies including local government units with demonstrated capability to actually implement the projects by themselves **upon consultation with the Members of Congress concerned**. In all cases the DPWH shall exercise technical supervision over projects. (Emphasis supplied)

[52] Special Provision 3, Article XLII, RA 9206 provides:

Special Provision No. 3 — Submission of the List of School Buildings

Within 30 days after the signing of this Act into law, (DepEd) **after consultation with the representative of the legislative district concerned**, shall submit to DBM the list of 50% of school buildings to be constructed every municipality xxx. The list as submitted shall be the basis for the release of funds. (Emphasis supplied)

[53] *Rollo* (G.R. No. 208566), p. 557.

[54] Special Provision 1, Article L, RA 9336 (2005 PDAF Article) provides:

Special Provision(s)

1. Use and Release of the Fund. The amount appropriated herein **shall be used to fund priority programs and projects under the ten point agenda of the national government and shall be released directly to the implementing agencies** as indicated hereunder, to wit:

PARTICULARS	PROGRAM/PROJECT	IMPLEMENTING AGENCY
A. Education	Purchase of IT Equipment	DepEd/TESDA/ CHED/SUCs/LGUs
	Scholarship	TESDA/CHED/ SUCs/LGUs
B. Health	Assistance to Indigent Patients Confined at the Hospitals under DOH Including Specialty Hospitals	DOH/Specialty Hospitals
	Assistance to Indigent Patients at the Hospitals Devolved to LGUs and RHUs	LGUs
	Insurance Premium	Philhealth
C. Livelihood/ CIDSS	Small & Medium Enterprise/Livelihood	DTI/TLRC/DA/ CDA
	Comprehensive Integrated Delivery of Social Services	DSWD
D. Rural Electrification	*Barangay*/Rural Electrification	DOE/NEA
E. Water Supply	Construction of Water System	DPWH
	Installation of Pipes/Pumps/Tanks	LGUs
F. Financial Assistance	Specific Programs and Projects to Address the Pro-Poor Programs of Government	LGUs
G. Public Works	Construction/Repair/ Rehabilitation of the following: Roads and Bridges/Flood Control/School buildings Hospitals Health Facilities/Public Markets/ Multi-Purpose Buildings/ Multi-Purpose Pavements	DPWH

program menu concept,[55] which is essentially a **list of general programs** and implementing agencies **from which a particular PDAF project may be subsequently chosen by the identifying authority**. The 2005 GAA was re-enacted[56] in 2006 and hence, operated on the same bases. In similar regard, the program menu concept was consistently integrated into the **2007**,[57] **2008**,[58] **2009**,[59] and **2010**[60] GAAs.

Textually, the PDAF Articles from 2002 to 2010 were **silent** with respect to the specific amounts allocated for the individual legislators, as well as their participation in the proposal and identification of PDAF projects to be funded. In contrast to the PDAF Articles, however, the provisions under the DepEd School Building Program and the DPWH budget, similar to its predecessors, explicitly required **prior consultation with the concerned Member of Congress**[61] anent certain aspects of project implementation.

H. Irrigation	Construction/Repair/ Rehabilitation of Irrigation Facilities	DA-NIA

(Emphasis supplied)

[55] *Id*.

[56] *Rollo* (G.R. No. 208566), p. 558.

[57] See Special Provision 1, Article XLVII, RA 9401.

[58] See Special Provision 1, Article XLVI, RA 9498.

[59] See Special Provision 1, Article XLIX, RA 9524.

[60] See Special Provision 1, Article XLVII, RA 9970.

[61] For instance, Special Provisions 2 and 3, Article XLIII, RA 9336 providing for the 2005 DepEd School Building Program, and Special Provisions 1 and 16, Article XVIII, RA 9401 providing for the 2007 DPWH Regular Budget respectively state:

2005 DepEd School Building Program

> Special Provision No. 2 — Allocation of School Buildings: The amount allotted under Purpose 1 shall be apportioned as follows: (1) fifty percent (50%) to be allocated pro-rata according to each legislative districts student population xxx ; (2) forty percent (40%) to be allocated only among those legislative districts with classroom

Significantly, it was during this era that provisions **which allowed formal participation of non-governmental organizations (NGO) in the implementation of government projects** were introduced. In the Supplemental Budget for 2006, with respect to the appropriation for school buildings, NGOs were, by law, encouraged to participate. For such purpose, the law stated that "the amount of at least ₱250 Million of the ₱500 Million allotted for the construction and completion of school buildings **shall be made available to NGOs** including the Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. for its "Operation Barrio School" program[,] with capability and proven track records in the construction of public school buildings xxx."[62] The same allocation was made available to NGOs in the 2007 and 2009 GAAs under the DepEd Budget.[63] Also, it was in 2007 that the **Government Procurement**

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shortages xxx; (3) ten percent (10%) to be allocated in accordance xxx.

Special Provision No. 3 — Submission of the List of School Buildings: Within 30 days after the signing of this Act into law, the DepEd **after consultation with the representative of the legislative districts concerned,** shall submit to DBM the list of fifty percent (50%) of school buildings to be constructed in every municipality xxx. **The list as submitted shall be the basis for the release of funds** xxx. (Emphases supplied)

2007 DPWH Regular Budget

Special Provision No. 1 — Restriction on Delegation of Project Implementation: The implementation of the project funded herein shall not be delegated to other agencies, except those projects to be implemented by the AFP Corps of Engineers, and inter-department projects to be undertaken by other offices and agencies, including local government units (LGUs) with demonstrated capability to actually implement the project by themselves upon consultation with the representative of the legislative district concerned xxx.

Special Provision No. 16 — Realignment of Funds: The Secretary of Public Works and Highways is authorized to realign funds released from appropriations xxx from one project/scope of work to another: PROVIDED, that xxx (iii) **the request is with the concurrence of the legislator concerned** xxx. (Emphasis supplied)

[62] *Rollo* (G.R. No. 208566), p. 559, citing Section 2.A of RA 9358, otherwise known as the "Supplemental Budget for 2006."

[63] *Id.* at 559-560.

Policy Board[64] (GPPB) issued **Resolution No. 12-2007 dated June 29, 2007** (GPPB Resolution 12-2007), amending the implementing rules and regulations[65] of RA 9184,[66] the Government Procurement Reform Act, to include, as a form of negotiated procurement,[67] the procedure whereby the Procuring

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[64] "As a primary aspect of the Philippine Government's public procurement reform agenda, the Government Procurement Policy Board (GPPB) was established by virtue of Republic Act No. 9184 (R.A. 9184) as an independent inter-agency body that is impartial, transparent and effective, with private sector representation. As established in Section 63 of R.A. 9184, the GPPB shall have the following duties and responsibilities: 1. To protect national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations; 2. To formulate and amend public procurement policies, rules and regulations, and amend, whenever necessary, the implementing rules and regulations Part A (IRR-A); 3. To prepare a generic procurement manual and standard bidding forms for procurement; 4. To ensure the proper implementation by the procuring entities of the Act, its IRR-A and all other relevant rules and regulations pertaining to public procurement; 5. To establish a sustainable training program to develop the capacity of Government procurement officers and employees, and to ensure the conduct of regular procurement training programs by the procuring entities; and 6. To conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary.

xxx" <http://www.gppb.gov.ph/about_us/gppb.html> (visited October 23, 2013).

[65] Entitled "AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND REGULATIONS PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT," approved June 29, 2007.

[66] Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES."

[67] Sec. 48. Alternative Methods. — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

xxx xxx xxx

(e) *Negotiated Procurement* — a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53

Entity[68] (the implementing agency) may enter into a **memorandum of agreement** with an NGO, provided that "an appropriation law or ordinance earmarks an amount to be specifically contracted out to NGOs."[69]

G. Present Administration (2010-Present).

Differing from previous PDAF Articles but similar to the CDF Articles, the **2011**[70] PDAF Article included an express statement on lump-sum amounts allocated for individual legislators and the Vice-President: Representatives were given ₱70 Million each, broken down into ₱40 Million for "hard projects" and ₱30 Million for "soft projects"; while ₱200 Million was given to each Senator as well as the Vice-President, with a ₱100 Million allocation each for "hard" and "soft projects." Likewise, a provision on realignment of funds was included, but with the qualification that it may be allowed only once. The same provision also allowed the Secretaries of Education,

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of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

xxx xxx xxx

[68] As defined in Section 5 (o) of RA 9184, the term "Procuring Entity" refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or — controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

[69] *Rollo* (G.R. No. 208566), p. 564, citing GPPB Resolution 12-2007.

[70] Special Provision 2, Article XLIV, RA 10147 (2011 PDAF Article) provides:

2. Allocation of Funds. The total projects to be identified by legislators and the Vice-President shall not exceed the following amounts:

a. Total of Seventy Million Pesos (₱70,000,000) broken down into Forty Million Pesos (₱40,000,000) for Infrastructure Projects and Thirty Million Pesos (₱30,000,000) for soft projects of Congressional Districts or Party List Representatives;

b. Total of Two Hundred Million Pesos (₱200,000,000) broken down into One Hundred Million Pesos (₱100,000,000) for Infrastructure Projects and One Hundred Million Pesos (₱100,000,000) for soft projects of Senators and the Vice President.

Health, Social Welfare and Development, Interior and Local Government, Environment and Natural Resources, Energy, and Public Works and Highways to realign PDAF Funds, with the further conditions that: (*a*) realignment is within the same implementing unit and same project category as the original project, for infrastructure projects; (*b*) allotment released has not yet been obligated for the original scope of work, and (*c*) **the request for realignment is with the concurrence of the legislator concerned.**[71]

In the **2012**[72] and **2013**[73] PDAF Articles, it is stated that the "[i]dentification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency [(priority list requirement)] xxx." However, as practiced, it would still be the individual legislator who would choose and identify the project from the said priority list.[74]

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[71] See Special Provision 4, 2011 PDAF Article.

[72] Special Provision 2, Article XLIV, RA 10155 (2012 PDAF Article) provides:

> 2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency. Furthermore, preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the National Household Targeting System for Poverty Reduction by the DSWD. **For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act**. (Emphasis supplied)

[73] RA 10352, passed and approved by Congress on December 19, 2012 and signed into law by the President on December 19, 2012. Special Provision 2, Article XLIV, RA 10352 (2013 PDAF Article) provides:

> 2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the NHTS-PR by the DSWD. **For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act**. (Emphasis supplied)

[74] The permissive treatment of the priority list requirement in practice was revealed during the Oral Arguments (TSN, October 10, 2013, p. 143):

Provisions on legislator allocations[75] as well as fund realignment [76] were included in the 2012 and 2013 PDAF Articles;

Justice Leonen: xxx In Section 2 [meaning, Special Provision 2], it mentions priority list of implementing agencies. Have the implementing agencies indeed presented priority list to the Members of Congress before disbursement?

Solicitor General Jardeleza: My understanding is, is not really, Your Honor.

Justice Leonen: So, in other words, the PDAF was expended without the priority list requirements of the implementing agencies?

Solicitor General Jardeleza: That is so much in the CoA Report, Your Honor.

[75] See Special Provision 3 of the 2012 PDAF Article and Special Provision 3 of the 2013 PDAF Article.

[76] Special Provision 6 of the 2012 PDAF Article provides:

> 6. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Environment and Natural Resources, Health, Interior and Local Government, Public Works and Highways, and Social Welfare and Development are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) **request is with the concurrence of the legislator concerned**. The DBM must be informed in writing of any realignment approved within five (5) calendar days from its approval.

Special Provision 4 of the 2013 PDAF Article provides:

> 4. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) **request is with the concurrence of the legislator concerned**. The DBM must be informed in writing of any realignment approved within five (5) calendar days from approval thereof: PROVIDED, That any realignment under this

but the allocation for the Vice-President, which was pegged at ₱200 Million in the 2011 GAA, had been deleted. In addition, the 2013 PDAF Article now **allowed LGUs to be identified as implementing agencies** if they have the technical capability to implement the projects.[77] Legislators were also allowed to identify programs/projects, except for assistance to indigent patients and scholarships, **outside of his legislative district** provided that he secures the written concurrence of the legislator of the intended outside-district, endorsed by the Speaker of the House.[78]

Fund shall be limited within the same classification of soft or hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr.

Any realignment, modification and revision of the project identification shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the DBM or the implementing agency, as the case may be. (Emphases supplied)

[77] Special Provision 1 of the 2013 PDAF Article provides:

Special Provision(s)

1. Use of Fund. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

xxx xxx xxx

PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, **That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same**. (Emphasis supplied)

[78] Special Provision 2 of the 2013 PDAF Article provides:

2. Project Identification. xxx.

xxx xxx xxx

All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside of his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.

Finally, **any realignment of PDAF funds, modification and revision of project identification**, as well as **requests for release of funds**, were all required to be **favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance**, as the case may be.[79]

III. History of Presidential Pork Barrel in the Philippines.

While the term "Pork Barrel" has been typically associated with lump-sum, discretionary funds of Members of Congress, the present cases and the recent controversies on the matter have, however, shown that the term's usage has expanded to include certain funds of the President such as the Malampaya Funds and the Presidential Social Fund.

On the one hand, the Malampaya Funds was created as a special fund under Section 8[80] of Presidential Decree No. (PD) 910,[81] issued by then President Ferdinand E. Marcos (Marcos) on March 22, 1976. In enacting the said law, Marcos recognized the need to set up a special fund to help intensify, strengthen,

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[79] See Special Provision 4 of the 2013 PDAF Article; *supra* note 76.

[80] Sec. 8. *Appropriations*. — The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and **similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government** and for such other purposes as may be hereafter directed by the President. (Emphasis supplied)

[81] Entitled "CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFOR, AND FOR OTHER PURPOSES."

and consolidate government efforts relating to the exploration, exploitation, and development of indigenous energy resources vital to economic growth.[82] Due to the energy-related activities of the government in the Malampaya natural gas field in Palawan, or the "Malampaya Deep Water Gas-to-Power Project",[83] the special fund created under PD 910 has been currently labeled as Malampaya Funds.

On the other hand the Presidential Social Fund was created under Section 12, Title IV[84] of PD 1869,[85] or the Charter of the Philippine Amusement and Gaming Corporation (PAGCOR). PD 1869 was similarly issued by Marcos on July 11, 1983. **More than two (2) years after, he amended PD 1869 and**

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[82] See First Whereas Clause of PD 910.

[83] See <http://malampaya.com/> (visited October 17, 2013).

[84] Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civil projects within the Metropolitan Manila Area:

(a) Flood Control
(b) Sewerage and Sewage
(c) Nutritional Control
(d) Population Control
(e) Tulungan ng Bayan Centers
(f) Beautification
(g) Kilusang Kabuhayan at Kaunlaran (KKK) projects; provided, that should the aggregate gross earning be less than ₱150,000,000.00, the amount to be allocated to fund the above-mentioned project shall be equivalent to sixty (60%) percent of the aggregate gross earning.

In addition to the priority infrastructure and socio-civic projects with the Metropolitan Manila specifically enumerated above, the share of the Government in the aggregate gross earnings derived by the Corporate from this Franchise may also be appropriated and allocated to fund and finance infrastructure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines.

[85] Entitled "CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)."

accordingly issued PD 1993 on October 31, 1985, [86] **amending Section 12**[87] **of the former law.** As it stands, the Presidential Social Fund has been described as a special funding facility managed and administered by the Presidential Management Staff through which the President provides direct assistance to priority programs and projects not funded under the regular budget. It is sourced from the share of the government in the aggregate gross earnings of PAGCOR.[88]

IV. Controversies in the Philippines.

Over the decades, "pork" funds in the Philippines have increased tremendously,[89] owing in no small part to previous

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[86] Entitled "AMENDING SECTION TWELVE OF PRESIDENTIAL DECREE NO. 1869 — CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)." While the parties have confined their discussion to Section 12 of PD 1869, the Court takes judicial notice of its amendment and perforce deems it apt to resolve the constitutionality of the amendatory provision.

[87] Section 12 of PD 1869, as amended by PD 1993, now reads:

> Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00 shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.

[88] *Rollo* (G.R. No. 208566), p. 301.

[89] CDF/PDAF ALLOCATION FROM 1990-2013.

1990	.....	₱2,300,000,000.00
1991	.....	₱2,300,000,000.00
1992	.....	P2,480,000,000.00
1993	.....	₱2,952,000,000.00
1994	.....	₱2,977,000,000.00
1995	.....	₱3,002,000,000.00

Presidents who reportedly used the "Pork Barrel" in order to gain congressional support.[90] It was in 1996 when the first

1996	.....	₱3,014,500,000.00
1997	.....	₱2,583,450,000.00
1998	.....	₱2,324,250,000.00
1999	.....	₱1,517,800,000.00 (Food Security Program Fund)
	.....	₱2,500,000,000.00 (Lingap Para Sa Mahihirap Program Fund)
	.....	₱5,458,277,000.00 (Rural/Urban Development Infrastructure Program Fund)
2000	.....	₱3,330,000,000.00
2001	.....	2000 GAA re-enacted
2002	.....	₱5,677,500,000.00
2003	.....	₱8,327,000,000.00
2004	.....	2003 GAA re-enacted
2005	.....	₱6,100,000,000.00
2006	.....	2005 GAA re-enacted
2007	.....	₱11,445,645,000.00
2008	.....	₱7,892,500,000.00
2009	.....	₱9,665,027,000.00
2010	.....	₱10,861,211,000.00
2011	.....	₱24,620,000,000.00
2012	.....	₱24,890,000,000.00
2013	.....	₱24,790,000,000.00

[90] "Pork as a tool for political patronage, however, can extend as far as the executive branch. It is no accident, for instance, that the release of the allocations often coincides with the passage of a Palace-sponsored bill.

That pork funds have grown by leaps and bounds in the last decade can be traced to presidents in need of Congress support. The rise in pork was particularly notable during the Ramos administration, when the president and House Speaker Jose de Venecia, Jr. used generous fund releases to convince congressmen to support Malacañang-initiated legislation. The Ramos era, in fact, became known as the 'golden age of pork.'

Through the years, though, congressmen have also taken care to look after their very own. More often than not, pork-barrel funds are funneled to projects in towns and cities where the lawmakers' own relatives have been elected to public office; thus, pork is a tool for building family power as well, COA has come across many instances where pork-funded projects ended up directly benefiting no less than the lawmaker or his or her relatives." (CHUA, YVONNE T. and CRUZ, BOOMA, "Pork is a Political, Not A Developmental, Tool." <http://pcij.org/stories/2004/pork.html> [visited October 22, 2013].)

controversy surrounding the "Pork Barrel" erupted. Former Marikina City Representative Romeo Candazo (Candazo), then an anonymous source, "blew the lid on the huge sums of government money that regularly went into the pockets of legislators in the form of kickbacks." [91] He said that "the kickbacks were 'SOP' (standard operating procedure) among legislators and ranged from a low 19 percent to a high 52 percent of the cost of each project, which could be anything from dredging, rip rapping, asphalting, concreting, and construction of school buildings." [92] "Other sources of kickbacks that Candazo identified were public funds intended for medicines and textbooks. A few days later, the tale of the money trail became the banner story of the [Philippine Daily] Inquirer issue of [August] 13, 1996, accompanied by an illustration of a roasted pig."[93] "The publication of the stories, including those about congressional initiative allocations of certain lawmakers, including ₱3.6 [B]illion for a [C]ongressman, sparked public outrage."[94]

Thereafter, or in 2004, several concerned citizens sought the nullification of the PDAF as enacted in the 2004 GAA for being unconstitutional. Unfortunately, for lack of "any pertinent evidentiary support that illegal misuse of PDAF in the form of kickbacks has become a common exercise of unscrupulous Members of Congress," the petition was dismissed.[95]

Recently, or in July of the present year, the National Bureau of Investigation (NBI) began its probe into allegations that "the government has been defrauded of some ₱10 Billion over the past 10 years by a syndicate using funds from the pork barrel

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[91] With reports from Inquirer Research and Salaverria, Leila, "Candazo, first whistle-blower on pork barrel scam, dies; 61," Philippine Daily Inquirer, August 20, 2013, <http://newsinfo. inquirer.net/469439/candazo-first-whistle-blower-on-pork-barrel-scam-dies-61> (visited October 21, 2013.)

[92] *Id*.

[93] *Id*.

[94] *Id*.

[95] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 387.

of lawmakers and various government agencies for scores of ghost projects."[96] The investigation was spawned by sworn affidavits of six (6) whistle-blowers who declared that JLN Corporation — "JLN" standing for Janet Lim Napoles (Napoles) — had swindled billions of pesos from the public coffers for "ghost projects" using no fewer than 20 dummy NGOs for an entire decade. While the NGOs were supposedly the ultimate recipients of PDAF funds, the whistle-blowers declared that the money was diverted into Napoles' private accounts.[97] Thus, after its investigation on the Napoles controversy, criminal complaints were filed before the Office of the Ombudsman, charging five (5) lawmakers for Plunder, and three (3) other lawmakers for Malversation, Direct Bribery, and Violation of the Anti-Graft and Corrupt Practices Act. Also recommended to be charged in the complaints are some of the lawmakers' chiefs-of-staff or representatives, the heads and other officials of three (3) implementing agencies, and the several presidents of the NGOs set up by Napoles.[98]

On August 16, 2013, the Commission on Audit (CoA) released the results of a three-year audit investigation[99] covering the use of legislators' PDAF from 2007 to 2009, or during the last three (3) years of the Arroyo administration. The purpose of the audit was to determine the propriety of releases of funds under PDAF and the Various Infrastructures including Local Projects (VILP)[100] by the DBM, the application of these funds and the implementation of projects by the appropriate implementing agencies and several government-owned-and-

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[96] Carvajal, Nancy, "NBI probes ₱10-B scam," Philippine Daily Inquirer, July 12, 2013 <http://newsinfo.inquirer.net/443297/nbi-probes-p10-b-scam> (visited October 21, 2013).

[97] *Id*.

[98] See NBI Executive Summary. <http://www.gov.ph/2013/09/16/executive-summary-by-the-nbi-on-the-pdaf-complaints-filed-against-janet-lim-napoles-et-al/> (visited October 22, 2013).

[99] Pursuant to Office Order No. 2010-309 dated May 13, 2010.

[100] During the Oral Arguments, the CoA Chairperson referred to the VILP as "the source of the so called HARD project, hard portion xxx "under the title the Budget of the DPWH." TSN, October 8, 2013, p. 69.

controlled corporations (GOCCs).[101] The total releases covered by the audit amounted to ₱8.374 Billion in PDAF and ₱32.664 Billion in VILP, representing 58% and 32%, respectively, of the total PDAF and VILP releases that were found to have been made nationwide during the audit period.[102] Accordingly, the CoA's findings contained in its Report No. 2012-03 (CoA Report), entitled "Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)," were made public, the highlights of which are as follows:[103]

- Amounts released for projects identified by a considerable number of legislators significantly exceeded their respective allocations.
- Amounts were released for projects outside of legislative districts of sponsoring members of the Lower House.
- Total VILP releases for the period exceeded the total amount appropriated under the 2007 to 2009 GAAs.
- Infrastructure projects were constructed on private lots without these having been turned over to the government.
- Significant amounts were released to [implementing agencies] without the latter's endorsement and without considering their mandated functions, administrative and technical capabilities to implement projects.
- Implementation of most livelihood projects was not undertaken by the [implementing agencies] themselves but by [NGOs] endorsed by the proponent legislators to which the Funds were transferred.

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[101] These implementing agencies included the Department of Agriculture, DPWH and the Department of Social Welfare and Development (DSWD). The GOCCs included Technology and Livelihood Resource Center (TLRC)/ Technology Resource Center (TRC), National Livelihood Development Corporation (NLDC), National Agribusiness Corporation (NABCOR), and the Zamboanga del Norte Agricultural College (ZNAC) Rubber Estate Corporation (ZREC). CoA Chairperson's Memorandum. *Rollo* (G.R. No. 208566), p. 546. See also CoA Report, p. 14.

[102] *Id*.

[103] *Id*. at 546-547.

- The funds were transferred to the NGOs in spite of the absence of any appropriation law or ordinance.
- Selection of the NGOs were not compliant with law and regulations.
- Eighty-Two (82) NGOs entrusted with implementation of seven hundred seventy two (772) projects amount to [₱]6.156 Billion were either found questionable, or submitted questionable/spurious documents, or failed to liquidate in whole or in part their utilization of the Funds.
- Procurement by the NGOs, as well as some implementing agencies, of goods and services reportedly used in the projects were not compliant with law.

As for the "Presidential Pork Barrel", whistle-blowers alleged that "[a]t least ₱900 Million from royalties in the operation of the Malampaya gas project off Palawan province intended for agrarian reform beneficiaries has gone into a dummy [NGO]."[104] According to incumbent CoA Chairperson Maria Gracia Pulido Tan (CoA Chairperson), the CoA is, as of this writing, in the process of preparing "one consolidated report" on the Malampaya Funds.[105]

V. The Procedural Antecedents.

Spurred in large part by the findings contained in the CoA Report and the Napoles controversy, several petitions were lodged before the Court similarly seeking that the "Pork Barrel System" be declared unconstitutional. To recount, the relevant procedural antecedents in these cases are as follows:

On August 28, 2013, petitioner Samson S. Alcantara (Alcantara), President of the Social Justice Society, filed a Petition for Prohibition of even date under Rule 65 of the Rules of Court (Alcantara Petition), seeking that the "Pork Barrel System" be

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[104] Carvajal, Nancy, "Malampaya fund lost ₱900M in JLN racket", *Philippine Daily Inquirer*, July 16, 2013 <http://newsinfo.inquirer.net/445585/malampaya-fund-lost-p900m-in-jln-racket> (visited October 21, 2013.)

[105] TSN, October 8, 2013, p. 119.

declared unconstitutional, and a writ of prohibition be issued permanently restraining respondents Franklin M. Drilon and Feliciano S. Belmonte, Jr., in their respective capacities as the incumbent Senate President and Speaker of the House of Representatives, from further taking any steps to enact legislation appropriating funds for the "Pork Barrel System," in whatever form and by whatever name it may be called, and from approving further releases pursuant thereto.[106] The Alcantara Petition was docketed as **G.R. No. 208493.**

On September 3, 2013, petitioners Greco Antonious Beda B. Belgica, Jose L. Gonzalez, Reuben M. Abante, Quintin Paredes San Diego (Belgica, *et al*.), and Jose M. Villegas, Jr. (Villegas) filed an Urgent Petition for *Certiorari* and Prohibition with Prayer for the Immediate Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction dated August 27, 2013 under Rule 65 of the Rules of Court (Belgica Petition), seeking that the annual "Pork Barrel System," presently embodied in the provisions of the GAA of 2013 which provided for the 2013 PDAF, and the Executive's lump-sum, discretionary funds, such as the Malampaya Funds and the Presidential Social Fund,[107] be declared unconstitutional and null and void for being acts constituting grave abuse of discretion. Also, they pray that the Court issue a TRO against respondents Paquito N. Ochoa, Jr.,

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[106] *Rollo* (G.R. No. 208493), pp. 9 and 341.

[107] The Court observes that petitioners have not presented sufficient averments on the "remittances from the Philippine Charity Sweepstakes Office" nor have defined the scope of "the Executive's Lump Sum Discretionary Funds" (See *rollo* [G.R. No. 208566], pp. 47-49) which appears to be too broad and all-encompassing. Also, while Villegas filed a Supplemental Petition dated October 1, 2013 (Supplemental Petition, see *rollo* [G.R. No. 208566], pp. 213-220, and pp. 462-464) particularly presenting their arguments on the Disbursement Acceleration Program, the same is the main subject of G.R. Nos. 209135, 209136, 209155, 209164, 209260, 209287, 209442, 209517, and 209569 and thus, must be properly resolved therein. Hence, for these reasons, insofar as the Presidential Pork Barrel is concerned, the Court is constrained **not to delve on any issue related to the above-mentioned funds** and consequently confine its discussion only with respect to the issues pertaining to the Malampaya Funds and the Presidential Social Fund.

Florencio B. Abad (Secretary Abad) and Rosalia V. De Leon, in their respective capacities as the incumbent Executive Secretary, Secretary of the Department of Budget and Management (DBM), and National Treasurer, or their agents, for them to immediately cease any expenditure under the aforesaid funds. Further, they pray that the Court order the foregoing respondents to release to the CoA and to the public: (*a*) "the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto"; and (*b*) "the use of the Executive's [lump-sum, discretionary] funds, including the proceeds from the xxx Malampaya Fund[s] [and] remittances from the [PAGCOR] xxx from 2003 to 2013, specifying the xxx project or activity and the recipient entities or individuals, and all pertinent data thereto."[108] Also, they pray for the "inclusion in budgetary deliberations with the Congress of all presently off-budget, [lump-sum], discretionary funds including, but not limited to, proceeds from the Malampaya Fund[s] [and] remittances from the [PAGCOR]."[109] The Belgica Petition was docketed as **G.R. No. 208566.**[110]

Lastly, on September 5, 2013, petitioner Pedrito M. Nepomuceno (Nepomuceno), filed a Petition dated August 23, 2012 (Nepomuceno Petition), seeking that the PDAF be declared unconstitutional, and a cease and desist order be issued restraining President Benigno Simeon S. Aquino III (President Aquino) and Secretary Abad from releasing such funds to Members of Congress and, instead, allow their release to fund priority projects identified and approved by the Local Development Councils in consultation with the executive departments, such as the DPWH, the Department of Tourism, the Department of Health, the Department of Transportation, and Communication and the

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[108] *Rollo* (G.R. No. 208566), pp. 48-49.

[109] *Id.* at 48.

[110] To note, Villegas' Supplemental Petition was filed on October 2, 2013.

National Economic Development Authority.[111] The Nepomuceno Petition was docketed as **UDK-14951**.[112]

On September 10, 2013, the Court issued a Resolution of even date (*a*) consolidating all cases; (*b*) requiring public respondents to comment on the consolidated petitions; (*c*) issuing a TRO (September 10, 2013 TRO) enjoining the DBM, National Treasurer, the Executive Secretary, or any of the persons acting under their authority from releasing (1) the remaining PDAF allocated to Members of Congress under the GAA of 2013, and (2) Malampaya Funds under the phrase "for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of PD 910 but not for the purpose of "financ[ing] energy resource development and exploitation programs and projects of the government" under the same provision; and (*d*) setting the consolidated cases for Oral Arguments on October 8, 2013.

On September 23, 2013, the Office of the Solicitor General (OSG) filed a Consolidated Comment (Comment) of even date before the Court, seeking the lifting, or in the alternative, the partial lifting with respect to educational and medical assistance purposes, of the Court's September 10, 2013 TRO, and that the consolidated petitions be dismissed for lack of merit.[113]

On September 24, 2013, the Court issued a Resolution of even date directing petitioners to reply to the Comment.

Petitioners, with the exception of Nepomuceno, filed their respective replies to the Comment: (*a*) on September 30, 2013, Villegas filed a separate Reply dated September 27, 2013 (Villegas Reply); (*b*) on October 1, 2013, Belgica, *et al*. filed a Reply dated September 30, 2013 (Belgica Reply); and (*c*) on October 2, 2013, Alcantara filed a Reply dated October 1, 2013.

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[111] *Rollo* (G.R. No. 208566), p. 342; and *rollo* (G.R. No. 209251), pp. 6-7.

[112] Re-docketed as G.R. No. 209251 upon Nepomuceno's payment of docket fees on October 16, 2013 as reflected on the Official Receipt No. 0079340. *Rollo* (G.R. No. 209251) p. 409.

[113] *Rollo* (G.R. No. 208566) p. 97.

On October 1, 2013, the Court issued an Advisory providing for the guidelines to be observed by the parties for the Oral Arguments scheduled on October 8, 2013. In view of the technicality of the issues material to the present cases, incumbent Solicitor General Francis H. Jardeleza (Solicitor General) was directed to bring with him during the Oral Arguments representative/s from the DBM and Congress who would be able to competently and completely answer questions related to, among others, the budgeting process and its implementation. Further, the CoA Chairperson was appointed as *amicus curiae* and thereby requested to appear before the Court during the Oral Arguments.

On October 8 and 10, 2013, the Oral Arguments were conducted. Thereafter, the Court directed the parties to submit their respective memoranda within a period of seven (7) days, or until October 17, 2013, which the parties subsequently did.

The Issues Before the Court

Based on the pleadings, and as refined during the Oral Arguments, the following are the **main issues** for the Court's resolution:

I. Procedural Issues.

Whether or not (*a*) the issues raised in the consolidated petitions involve an actual and justiciable controversy; (*b*) the issues raised in the consolidated petitions are matters of policy not subject to judicial review; (*c*) petitioners have legal standing to sue; and (*d*) the Court's Decision dated August 19, 1994 in G.R. Nos. 113105, 113174, 113766, and 113888, entitled "*Philippine Constitution Association v. Enriquez*" [114] (*Philconsa*) and Decision dated April 24, 2012 in G.R. No. 164987, entitled "*Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management*"[115] (*LAMP*) bar the re-litigation of the issue of constitutionality of the "Pork Barrel System" under the principles of *res judicata* and *stare decisis*.

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[114] G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506.

[115] *Supra* note 95.

II. Substantive Issues on the "Congressional Pork Barrel."

Whether or not the 2013 PDAF Article and all other Congressional Pork Barrel Laws similar thereto are unconstitutional considering that they violate the principles of/ constitutional provisions on (*a*) separation of powers; (*b*) non-delegability of legislative power; (*c*) checks and balances; (*d*) accountability; (*e*) political dynasties; and (*f*) local autonomy.

III. Substantive Issues on the "Presidential Pork Barrel."

Whether or not the phrases (*a*) "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910,[116] relating to the Malampaya Funds, and (*b*) "to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines" under Section 12 of PD 1869, as amended by PD 1993, relating to the Presidential Social Fund, are unconstitutional insofar as they constitute undue delegations of legislative power.

These main issues shall be resolved in the order that they have been stated. In addition, the Court shall also tackle certain **ancillary issues** as prompted by the present cases.

The Court's Ruling

The petitions are partly granted.

I. Procedural Issues.

The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry,[117] namely: (*a*) there must be an **actual case or controversy** calling for the

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[116] Entitled "CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFOR, AND FOR OTHER PURPOSES."

[117] *Joya v. Presidential Commission on Good Government*, G.R. No. 96541, August 24, 1993, 225 SCRA 568, 575.

exercise of judicial power; (*b*) the person challenging the act must have the **standing** to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the **earliest opportunity**; and (*d*) the issue of constitutionality must be the very ***lis mota*** of the case.[118] Of these requisites, case law states that the first two are the most important[119] and, therefore, shall be discussed forthwith.

A. Existence of an Actual Case or Controversy.

By constitutional fiat, judicial power operates only when there is an actual case or controversy.[120] This is embodied in Section 1, Article VIII of the 1987 Constitution which pertinently states that "[j]udicial power includes the duty of the courts of justice **to settle actual controversies involving rights which are legally demandable and enforceable** xxx." Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute."[121] In other words, "[t]here must be **a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence**."[122] Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished

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[118] *Biraogo v. Philippine Truth Commission* of *2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 148.

[119] *Joya v. Presidential Commission on Good Government*, *supra* note 117, at 575.

[120] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. Nos. 178552, 178554, 178581, 178890, 179157, and 179461, October 5, 2010, 632 SCRA 146, 175.

[121] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain* (*GRP*), G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402, 450.

[122] *Id*. at 450-451.

or performed by either branch before a court may come into the picture, and the petitioner must allege the **existence of an immediate or threatened injury to itself as a result of the challenged action**."[123] "Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions."[124]

Based on these principles, the Court finds that there exists an actual and justiciable controversy in these cases.

The requirement of contrariety of legal rights is clearly satisfied by the antagonistic positions of the parties on the constitutionality of the "Pork Barrel System." Also, the questions in these consolidated cases are ripe for adjudication since the challenged funds and the provisions allowing for their utilization — such as the 2013 GAA for the PDAF, PD 910 for the Malampaya Funds and PD 1869, as amended by PD 1993, for the Presidential Social Fund — are currently existing and operational; hence, there exists an immediate or threatened injury to petitioners as a result of the unconstitutional use of these public funds.

As for the PDAF, the Court must dispel the notion that the issues related thereto had been rendered moot and academic by the reforms undertaken by respondents. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits.[125] Differing from this description, the Court observes that respondents' proposed line-item budgeting scheme would not terminate the controversy nor diminish the useful purpose for its resolution since said reform is geared towards the 2014 budget, and not the 2013 PDAF Article which, being **a distinct subject matter**, remains legally effective and existing. Neither will the

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[123] *Francisco, Jr. v. Toll Regulatory Board*, G.R. Nos. 166910, 169917, 173630, and 183599, October 19, 2010, 633 SCRA 470, 493, citing *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402, 405.

[124] *Id*. at 492, citing *Muskrat v. U.S.*, 219 U.S. 346 (1913).

[125] *Baldo, Jr. v. Commission on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310.

President's declaration that he had already "abolished the PDAF" render the issues on PDAF moot precisely because the Executive branch of government has no constitutional authority to nullify or annul its legal existence. By constitutional design, the annulment or nullification of a law may be done either by Congress, through the passage of a repealing law, or by the Court, through a declaration of unconstitutionality. Instructive on this point is the following exchange between Associate Justice Antonio T. Carpio (Justice Carpio) and the Solicitor General during the Oral Arguments:[126]

Justice Carpio: **[T]he President has taken an oath to faithfully execute the law**,[127] correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Carpio: And so the President cannot refuse to implement the General Appropriations Act, correct?

Solicitor General Jardeleza: Well, that is our answer, Your Honor. In the case, for example of the PDAF, **the President has a duty to execute the laws** but in the face of the outrage over PDAF, the President was saying, "I am not sure that I will continue the release of the soft projects," and that started, Your Honor. Now, whether or not that . . . (interrupted)

Justice Carpio: Yeah. I will grant the President if there are anomalies in the project, he has the power to stop the releases in the meantime, to investigate, and that is Section [38] of Chapter 5 of Book 6 of the Revised Administrative Code[128] xxx. So at most the President can

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[126] TSN, October 10, 2013, pp. 79-81.

[127] Section 17, Article VII of the 1987 Constitution reads:

Sec. 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[128] Sec. 38. Suspension of Expenditure of Appropriations. — Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees.

suspend, now if the President believes that the PDAF is unconstitutional, can he just refuse to implement it?

Solicitor General Jardeleza: No, Your Honor, as we were trying to say in the specific case of the PDAF because of the CoA Report, because of the reported irregularities and this Court can take judicial notice, even outside, outside of the COA Report, you have the report of the whistle-blowers, the President was just exercising precisely the duty . . .

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Justice Carpio: Yes, and that is correct. You've seen the CoA Report, there are anomalies, you stop and investigate, and prosecute, he has done that. **But, does that mean that PDAF has been repealed**?

Solicitor General Jardeleza: No, Your Honor xxx.

xxx xxx xxx

Justice Carpio: **So that PDAF can be legally abolished only in two (2) cases. Congress passes a law to repeal it, or this Court declares it unconstitutional, correct?**

Solicitor General Jardeleza: Yes, Your Honor.

Justice Carpio: **The President has no power to legally abolish PDAF**. (Emphases supplied)

Even on the assumption of mootness, jurisprudence, nevertheless, dictates that "the 'moot and academic' principle is not a magical formula that can automatically dissuade the Court in resolving a case." The Court will decide cases, otherwise moot, if: **first**, there is a grave violation of the Constitution; **second**, the exceptional character of the situation and the paramount public interest is involved; **third**, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and **fourth**, the case is capable of repetition yet evading review.[129]

The applicability of the **first exception** is clear from the fundamental posture of petitioners — they essentially allege

[129] *Mattel, Inc. v. Francisco*, G.R. No. 166886, July 30, 2008, 560 SCRA 504, 514, citing *Constantino v. Sandiganbayan (First Division)*, G.R. Nos. 140656 and 154482, September 13, 2007, 533 SCRA 205, 219-220.

grave violations of the Constitution with respect to, *inter alia*, the principles of separation of powers, non-delegability of legislative power, checks and balances, accountability and local autonomy.

The applicability of the **second exception** is also apparent from the nature of the interests involved — the constitutionality of the very system within which significant amounts of public funds have been and continue to be utilized and expended undoubtedly presents a situation of exceptional character as well as a matter of paramount public interest. The present petitions, in fact, have been lodged at a time when the system's flaws have never before been magnified. To the Court's mind, the coalescence of the CoA Report, the accounts of numerous whistle-blowers, and the government's own recognition that reforms are needed "to address the reported abuses of the PDAF"[130] **demonstrates a *prima facie* pattern of abuse** which only underscores the importance of the matter. It is also by this finding that the Court finds petitioners' claims as not merely theorized, speculative or hypothetical. Of note is the weight accorded by the Court to the findings made by the CoA which is the constitutionally-mandated audit arm of the government. In *Delos Santos v. CoA*,[131] a recent case wherein the Court upheld the CoA's disallowance of irregularly disbursed PDAF funds, it was emphasized that:

> **[T]he CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary,** excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. **The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.**
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> [I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, **not only on the basis of the doctrine of**

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[130] *Rollo* (G.R. No. 208566), p. 292.

[131] G.R. No. 198457, August 13, 2013.

separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. xxx. (Emphases supplied)

Thus, **if only for the purpose of validating the existence of an actual and justiciable controversy in these cases**, the Court deems the findings under the CoA Report to be sufficient.

The Court also finds the **third exception** to be applicable largely due to the practical need for a definitive ruling on the system's constitutionality. As disclosed during the Oral Arguments, the CoA Chairperson estimates that thousands of notices of disallowances will be issued by her office in connection with the findings made in the CoA Report. In this relation, Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen) pointed out that all of these would eventually find their way to the courts.[132] Accordingly, there is a compelling need to formulate controlling principles relative to the issues raised herein in order to guide the bench, the bar, and the public, not just for the expeditious resolution of the anticipated disallowance cases, but more importantly, so that the government may be guided on how public funds should be utilized in accordance with constitutional principles.

Finally, the application of the **fourth exception** is called for by the recognition that the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurrence.[133] The relevance of the issues before the Court does

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[132] TSN, October 10, 2013, p. 134.

[133] Section 22, Article VII of the 1987 Constitution provides:

Sec. 22. The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

not cease with the passage of a "PDAF-free budget for 2014."[134] The evolution of the "Pork Barrel System," by its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar."[135] In *Sanlakas v. Executive Secretary*,[136] the government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "[t]o prevent similar questions from re-emerging."[137] The situation similarly holds true to these cases. Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.

B. Matters of Policy: The Political Question Doctrine.

The "limitation on the power of judicial review to actual cases and controversies" carries the assurance that "the courts will not intrude into areas committed to the other branches of government."[138] Essentially, the foregoing limitation is a restatement of the political question doctrine which, under the classic formulation of *Baker v. Carr*,[139] applies when there is found, among others, "a textually demonstrable constitutional commitment of the issue to a coordinate political department," "a lack of judicially discoverable and manageable standards for resolving it" or "the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion." Cast against this light, respondents submit that the "[t]he political branches are in the best position not only to perform budget-related reforms but also to do them in response to the specific demands of their constituents" and, as such, "urge [the Court] not to impose a solution at this stage."[140]

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[134] *Rollo* (G.R. No. 208566), p. 294.

[135] *Id*. at 5.

[136] G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[137] *Id*. at 665.

[138] See *Francisco, Jr. v. Toll Regulatory Board, supra* note 123, at 492.

[139] 369 US 186 82, S. Ct. 691, L. Ed. 2d. 663 [1962].

[140] *Rollo* (G.R. No. 208566), pp. 295-296.

The Court must deny respondents' submission.

Suffice it to state that the issues raised before the Court do not present political but legal questions which are within its province to resolve. A political question refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure."[141] **The intrinsic constitutionality of the "Pork Barrel System" is not an issue dependent upon the wisdom of the political branches of government but rather a legal one which the Constitution itself has commanded the Court to act upon**. Scrutinizing the contours of the system along constitutional lines is a task that the political branches of government are incapable of rendering precisely because it is an exercise of judicial power. More importantly, the present Constitution has not only vested the Judiciary the right to exercise judicial power but essentially makes it a duty to proceed therewith. Section 1, Article VIII of the 1987 Constitution cannot be any clearer: "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. [It] includes **the duty** of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." In *Estrada v. Desierto,*[142] the expanded concept of judicial power under the 1987 Constitution and its effect on the political question doctrine was explained as follows:[143]

To a great degree, the 1987 Constitution has **narrowed the reach of the political question doctrine** when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable **but also to determine whether or not there has been a grave abuse**

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[141] *Tañada v. Cuenco,* 100 Phil. 1101 (1957) unreported case.

[142] 406 Phil. 1 (2001).

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

of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. **Clearly, the new provision did not just grant the Court power of doing nothing**. xxx (Emphases supplied)

It must also be borne in mind that "when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; does not in reality nullify or invalidate an act of the legislature [or the executive], but only asserts the solemn and sacred obligation assigned to it by the Constitution."[144] To a great extent, the Court is laudably cognizant of the reforms undertaken by its co-equal branches of government. But it is by constitutional force that the Court must faithfully perform its duty. Ultimately, it is the Court's avowed intention that a resolution of these cases would not arrest or in any manner impede the endeavors of the two other branches but, in fact, help ensure that the pillars of change are erected on firm constitutional grounds. After all, it is in the best interest of the people that each great branch of government, within its own sphere, contributes its share towards achieving a holistic and genuine solution to the problems of society. For all these reasons, the Court cannot heed respondents' plea for judicial restraint.

C. *Locus Standi.*

"The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing."[145]

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[144] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[145] *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*, 465 Phil. 860, 890 (2004).

Petitioners have come before the Court in their respective capacities as citizen-taxpayers and accordingly, assert that they "dutifully contribute to the coffers of the National Treasury."[146] Clearly, as taxpayers, they possess the requisite standing to question the validity of the existing "Pork Barrel System" under which the taxes they pay have been and continue to be utilized. It is undeniable that petitioners, as taxpayers, are bound to suffer from the unconstitutional usage of public funds, if the Court so rules. Invariably, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law,[147] as in these cases.

Moreover, as citizens, petitioners have equally fulfilled the standing requirement given that the issues they have raised may be classified as matters "of transcendental importance, of overreaching significance to society, or of paramount public interest."[148] The CoA Chairperson's statement during the Oral Arguments that the present controversy involves "not [merely] a systems failure" but a "complete breakdown of controls"[149] amplifies, in addition to the matters above-discussed, the seriousness of the issues involved herein. Indeed, of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.[150] All told, petitioners have sufficient *locus standi* to file the instant cases.

D. *Res Judicata* and *Stare Decisis*.

Res judicata (which means a "matter adjudged") and *stare decisis non quieta et movere* ([or simply, *stare decisis*] which

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[146] *Rollo* (G.R. No. 208566), p. 349.

[147] *Public Interest Center, Inc. v. Honorable Vicente Q. Roxas, in his capacity as Presiding Judge, RTC of Quezon City, Branch 227*, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.

[148] *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. No. 157870, November 3, 2008, 570 SCRA 410, 421.

[149] TSN, October 8, 2013, pp. 184-185.

[150] *People v. Vera*, 65 Phil. 56, 89 (1937).

means "follow past precedents and do not disturb what has been settled") are general procedural law principles which both deal with the effects of previous but factually similar dispositions to subsequent cases. For the cases at bar, the Court examines the applicability of these principles in relation to its prior rulings in *Philconsa* and *LAMP*.

The focal point of res judicata is the judgment. The principle states that a **judgment on the merits** in a previous case rendered by a court of competent jurisdiction would bind a subsequent case if, between the first and second actions, **there exists an identity of parties, of subject matter, and of causes of action**.[151] This required identity is not, however, attendant hereto since *Philconsa* and *LAMP*, respectively involved constitutional challenges against the **1994 CDF Article** and **2004 PDAF Article**, whereas the cases at bar call for a broader constitutional scrutiny of the **entire** "**Pork Barrel System**." Also, the ruling in *LAMP* is essentially a dismissal based on a procedural technicality — and, thus, hardly a judgment on the merits — in that petitioners therein failed to present any "convincing proof xxx showing that, indeed, there were **direct releases of funds** to the Members of Congress, who actually spend them according to their sole discretion" or "pertinent evidentiary support [to demonstrate the] **illegal misuse of PDAF** in the form of kickbacks [and] has become a common exercise of unscrupulous Members of Congress." As such, the Court upheld, in view of the presumption of constitutionality accorded to every law, the 2004 PDAF Article, and saw "no need to review or reverse the standing pronouncements in the said case." Hence, for the foregoing reasons, the *res judicata* principle, insofar as the *Philconsa* and *LAMP* cases are concerned, cannot apply.

On the other hand, **the focal point of *stare decisis* is the doctrine created.** The principle, entrenched under Article 8[152] of the Civil Code, evokes the general rule that, for the sake of

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[151] See *Lanuza v. CA*, G.R. No. 131394, March 28, 2005, 454 SCRA 54, 61-62.

[152] ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike**. Thus, where the **same questions** relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to re-litigate the same issue.[153]

Philconsa was the first case where a constitutional challenge against a Pork Barrel provision, *i.e.*, the 1994 CDF Article, was resolved by the Court. To properly understand its context, petitioners' posturing was that "the power given to the [M]embers of Congress to propose and identify projects and activities to be funded by the [CDF] is an encroachment by the legislature on executive power, since said power in an appropriation act is in implementation of the law" and that "the proposal and identification of the projects do not involve the making of laws or the repeal and amendment thereof, the only function given to the Congress by the Constitution."[154] In deference to the foregoing submissions, the Court reached the following main conclusions: one, under the Constitution, the power of appropriation, or the "power of the purse," belongs to Congress; two, the power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law and it can be detailed and as broad as Congress wants it to be; and, three, the proposals and identifications made by Members of Congress are merely recommendatory. At once, it is apparent that the Philconsa resolution was a **limited response to a separation of powers problem, specifically on the propriety of conferring post-enactment identification authority to Members of Congress**. On the contrary, the present cases call for a more holistic examination of *(a)* the inter-relation between the CDF and PDAF Articles with each other, formative as they

[153] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008, 550 SCRA 180, 197-198.

[154] *Philconsa v. Enriquez, supra* note 114, at 522.

are of the entire "Pork Barrel System" as well as *(b)* **the intra-relation** of post-enactment measures contained within a particular CDF or PDAF Article, including not only those related to the area of project identification but also to the areas of fund release and realignment. The complexity of the issues and the broader legal analyses herein warranted may be, therefore, considered as a powerful countervailing reason against a wholesale application of the *stare decisis* principle.

In addition, the Court observes that the *Philconsa* ruling was actually riddled with inherent constitutional inconsistencies which similarly countervail against a full resort to *stare decisis*. As may be deduced from the main conclusions of the case, *Philconsa's* fundamental premise in allowing Members of Congress to propose and identify of projects would be that the said identification authority is but an aspect of the power of appropriation which has been constitutionally lodged in Congress. From this premise, the contradictions may be easily seen. If the authority to identify projects is an **aspect of appropriation** and the power of appropriation is **a form of legislative power** thereby lodged in **Congress**, then it follows that: ***(a)*** it is Congress which should exercise such authority, and not its individual Members; ***(b)*** such authority must be exercised within the prescribed procedure of law passage and, hence, should not be exercised after the GAA has already been passed; and ***(c)*** such authority, as embodied in the GAA, has the force of law and, hence, cannot be merely recommendatory. Justice Vitug's Concurring Opinion in the same case sums up the *Philconsa* quandary in this wise: "Neither would it be objectionable for Congress, by law, to appropriate funds for such specific projects as it may be minded; to give that authority, however, to the individual members of Congress in whatever guise, I am afraid, would be constitutionally impermissible." As the Court now largely benefits from hindsight and current findings on the matter, among others, the CoA Report, the Court must partially abandon its previous ruling in *Philconsa* **insofar as it validated the post-enactment identification authority of Members of Congress on the guise that the same was merely recommendatory**. This postulate raises serious constitutional inconsistencies which

cannot be simply excused on the ground that such mechanism is "imaginative as it is innovative." Moreover, it must be pointed out that the recent case of *Abakada Guro Party List v. Purisima*[155] (*Abakada*) has effectively overturned *Philconsa's* allowance of post-enactment legislator participation in view of the separation of powers principle. These constitutional inconsistencies and the *Abakada* rule will be discussed in greater detail in the ensuing section of this Decision.

As for *LAMP*, suffice it to restate that the said case was dismissed on a procedural technicality and, hence, has not set any controlling doctrine susceptible of current application to the substantive issues in these cases. In fine, *stare decisis* would not apply.

II. Substantive Issues.

A. Definition of Terms.

Before the Court proceeds to resolve the substantive issues of these cases, it must first define the terms "Pork Barrel System," "Congressional Pork Barrel," and "Presidential Pork Barrel" as they are essential to the ensuing discourse.

Petitioners define the term "Pork Barrel System" as the "collusion between the Legislative and Executive branches of government to accumulate lump-sum public funds in their offices with unchecked discretionary powers to determine its distribution as political largesse."[156] They assert that the following elements make up the Pork Barrel System: (*a*) lump-sum funds are allocated through the appropriations process to an individual officer; (*b*) the officer is given sole and broad discretion in determining how the funds will be used or expended; (*c*) the guidelines on how to spend or use the funds in the appropriation are either vague, overbroad or inexistent; and (*d*) projects funded are intended to benefit a definite constituency in a particular part of the country and to help the political careers of the disbursing official by yielding rich patronage benefits.[157] They further state

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[155] G.R. No. 166715, August 14, 2008, 562 SCRA 251.

[156] *Rollo* (G.R. No. 208566), p. 325.

[157] *Id*.

that the Pork Barrel System is comprised of two (2) kinds of discretionary public funds: first, the Congressional (or Legislative) Pork Barrel, currently known as the PDAF;[158] and, second, the Presidential (or Executive) Pork Barrel, specifically, the Malampaya Funds under PD 910 and the Presidential Social Fund under PD 1869, as amended by PD 1993.[159]

Considering petitioners' submission and in reference to its local concept and legal history, the Court defines the **Pork Barrel System as the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government, including its members.** The Pork Barrel System involves two (2) kinds of lump-sum discretionary funds:

First, there is **the Congressional Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund wherein legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund's utilization through various post-enactment measures and/or practices.** In particular, petitioners consider the PDAF, as it appears under the 2013 GAA, as Congressional Pork Barrel since it is, *inter alia*, a post-enactment measure that allows individual legislators to wield a collective power;[160] and

Second, there is **the Presidential Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund which allows the President to determine the manner of its utilization.** For reasons earlier stated,[161] the Court shall delimit the use of such term to refer only to the Malampaya Funds and the Presidential Social Fund.

With these definitions in mind, the Court shall now proceed to discuss the substantive issues of these cases.

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[158] *Id*. at 329.

[159] *Id*. at 339.

[160] *Id*. at 338.

[161] See note 107.

B. Substantive Issues on the Congressional Pork Barrel.

1. Separation of Powers.

a. Statement of Principle.

The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government. In the celebrated words of Justice Laurel in *Angara v. Electoral Commission*,[162] it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government."[163] To the legislative branch of government, through Congress,[164] belongs the power to make laws; to the executive branch of government, through the President,[165] belongs the power to enforce laws; and to the judicial branch of government, through the Court,[166] belongs the power to interpret laws. Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere."[167] Thus, "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law."[168] The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry.[169] To achieve this purpose,

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[162] *Angara v. Electoral Commission, supra* note 144, at 139.

[163] *Id.* at 157.

[164] Section 1, Article VI, 1987 Constitution.

[165] Section 1, Article VII, 1987 Constitution.

[166] Section 1, Article VIII, 1987 Constitution.

[167] *Angara v. Electoral Commission, supra* note 144, at 156.

[168] *Government of the Philippine Islands v. Springer*, 277 U.S. 189, 203 (1928).

[169] *Re: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/Associate Justices of the Supreme*

the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.[170]

Broadly speaking, there is a violation of the separation of powers principle when one branch of government unduly encroaches on the domain of another. US Supreme Court decisions instruct that the principle of separation of powers may be violated in two (2) ways: firstly, "**[o]ne branch may interfere impermissibly with the other's performance of its constitutionally assigned function";**[171] and "[a]lternatively, the doctrine may be violated **when one branch** assumes a function **that more properly is entrusted to another**."[172] In other words, there is a violation of the principle when there is impermissible *(a)* **interference** with and/or *(b)* **assumption** of another department's functions.

The enforcement of the national budget, as primarily contained in the GAA, is indisputably a function both constitutionally assigned and properly entrusted to the Executive branch of government. In *Guingona, Jr. v. Hon. Caragu*e [173] (*Guingona, Jr.*), the Court explained that the phase of budget execution "covers the **various *operational* aspects of budgeting"** and

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Court, A.M. No. 11-7-10-SC, July 31, 2012, 678 SCRA 1, 9-10, citing Carl Baar, *Separate But Subservient: Court Budgeting in the American States* 149-52 (1975), cited in Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 Md. L. Rev. 217 (1993).

[170] *Id*. at 10, citing Jeffrey Jackson, Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers, 52 Md. L. Rev. 217 (1993).

[171] See *Nixon v. Administrator of General Services*, 433 U.S. 425, 441-446 and 451-452 (1977) and *United States v. Nixon*, 418 U.S. 683 (1974), cited in Justice Powell's concurring opinion in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

[172] See *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579, 587 (1952), *Springer v. Philippine Islands*, 277 U.S. 189, 203 (1928) cited in Justice Powell's concurring opinion in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

[173] 273 Phil. 443 (1991).

accordingly includes **"the evaluation of work and financial plans for individual activities,"** the "**regulation and release of funds**" as well as all "**other related activities**" that comprise the budget execution cycle.[174] This is rooted in the principle that the allocation of power in the three principal branches of government is a grant of all powers inherent in them.[175] Thus, unless the Constitution provides otherwise, the Executive department should exclusively exercise all roles and prerogatives which go into the implementation of the national budget as provided under the GAA as well as any other appropriation law.

In view of the foregoing, the Legislative branch of government, much more any of its members, should not cross over the field of implementing the national budget since, as earlier stated, the same is properly the domain of the Executive. Again, in *Guingona, Jr.*, the Court stated that "Congress enters the picture [when it] deliberates or *acts* on the budget proposals of the President. Thereafter, Congress, "in the exercise of its own judgment and wisdom, *formulates* an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law." Upon approval and passage of the GAA, Congress' law-making role necessarily comes to an end and from there the Executive's role of implementing the national budget begins. So as not to blur the constitutional boundaries between them, Congress must "not concern itself with details for implementation by the Executive."[176]

The foregoing cardinal postulates were definitively enunciated in *Abakada* where the Court held that "**[f]rom the moment the**

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[174] *Id*. at 461. "3. *Budget Executio*n. Tasked on the Executive, the third phase of the budget process covers the various operational aspects of budgeting. The establishment of obligation authority ceilings, the evaluation of work and financial plans for individual activities, the continuing review of government fiscal position, the regulation of funds releases, the implementation of cash payment schedules, and other related activities comprise this phase of the budget cycle."

[175] *Biraogo v. Philippine Truth Commission of 2010, supra* note 118, at 158.

[176] *Guingona, Jr. v. Carague, supra* note 173, at 460-461.

law becomes effective, any provision of law that empowers Congress or any of its members to play <u>any role in the implementation or enforcement of the law</u> violates the principle of separation of powers and is thus unconstitutional."[177] It must be clarified, however, that since the restriction only pertains to "any role in the implementation or enforcement of the law," Congress may still exercise its oversight function which is a mechanism of checks and balances that the Constitution itself allows. But it must be made clear that Congress' role must be confined to mere oversight. Any post-enactment-measure allowing legislator participation beyond oversight is bereft of any constitutional basis and hence, tantamount to impermissible interference and/or assumption of executive functions. As the Court ruled in *Abakada*:[178]

[A]ny post-enactment congressional measure x x x should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:

> (1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; and
>
> (2) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.

Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution. (Emphases supplied)

b. Application.

In these cases, petitioners submit that the Congressional Pork Barrel — among others, the 2013 PDAF Article — "wrecks the assignment of responsibilities between the political branches"

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[177] *Abakada Guro Party List v. Purisima, supra* note 155, at 294-296.

[178] *Id.* at 287.

as it is designed to allow individual legislators to interfere "way past the time it should have ceased" or, particularly, "after the GAA is passed."[179] They state that the findings and recommendations in the CoA Report provide "an illustration of how absolute and definitive the power of legislators wield over project implementation in complete violation of the constitutional [principle of separation of powers.]"[180] Further, they point out that the Court in the *Philconsa* case only allowed the CDF to exist on the condition that individual legislators limited their role to recommending projects and not if they actually dictate their implementation.[181]

For their part, respondents counter that the separations of powers principle has not been violated since the President maintains "ultimate authority to control the execution of the GAA" and that he "retains the final discretion to reject" the legislators' proposals.[182] They maintain that the Court, in *Philconsa*, "upheld the constitutionality of the power of members of Congress to propose and identify projects so long as such proposal and identification are recommendatory."[183] As such, they claim that "[e]verything in the Special Provisions [of the 2013 PDAF Article] follows the *Philconsa* framework, and hence, remains constitutional."[184]

The Court rules in favor of petitioners.

As may be observed from its legal history, the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation.

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[179] *Rollo* (G.R. No. 208566), p. 179.

[180] *Id*. at 29.

[181] *Id*. at 24.

[182] *Id*. at 86.

[183] *Id*. at 308.

[184] *Id*.

At its core, legislators — may it be through project lists,[185] prior consultations[186] or program menus[187] — have been consistently accorded post-enactment authority to **identify the projects** they desire to be funded through various Congressional Pork Barrel allocations. Under the 2013 PDAF Article, the statutory authority of legislators to identify projects post-GAA may be construed from the import of Special Provisions 1 to 3 as well as the second paragraph of Special Provision 4. To elucidate, Special Provision 1 embodies the program menu feature which, as evinced from past PDAF Articles, allows individual legislators to identify PDAF projects for as long as the identified project falls under a general program listed in the said menu. Relatedly, Special Provision 2 provides that the implementing agencies shall, within 90 days from the GAA is passed, submit to Congress a more detailed priority list, standard or design prepared and submitted by implementing agencies from which the legislator may make his choice. The same provision further authorizes legislators to identify PDAF projects outside his district for as long as the representative of the district concerned concurs in writing. Meanwhile, Special Provision 3 clarifies that PDAF projects refer to "projects to be identified by legislators"[188] and thereunder provides the allocation limit for the total amount of projects identified by each legislator. Finally, paragraph 2 of Special Provision 4 requires that any modification and revision

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[185] See CDF Articles for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998.

[186] See PDAF Article for the year 2000 which was re-enacted in 2001. See also the following 1999 CIAs: "Food Security Program Fund," the "*Lingap Para Sa Mahihirap* Program Fund," and the "Rural/Urban Development Infrastructure Program Fund." See further the 1997 DepEd School Building Fund.

[187] See PDAF Article for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2013.

[188] Also, in Section 2.1 of DBM Circular No. 547 dated January 18, 2013 (DBM Circular 547-13), or the "Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for FY 2013," it is explicitly stated that the "PDAF shall be used to fund priority programs and projects **identified by the Legislators** from the Project Menu." (Emphasis supplied)

of the project identification "shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be." From the foregoing special provisions, it cannot be seriously doubted that legislators have been accorded post-enactment authority to identify PDAF projects.

Aside from the area of project identification, legislators have also been accorded post-enactment authority in the areas of fund release and realignment. Under the 2013 PDAF Article, the statutory authority of legislators to participate in the area of **fund release** through congressional committees is contained in Special Provision 5 which explicitly states that "[a]ll request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by House Committee on Appropriations and the Senate Committee on Finance, as the case may be"; while their statutory authority to participate in the area of **fund realignment** is contained in: **first**, paragraph 2, Special Provision 4[189] which explicitly states, among others, that "[a]ny realignment [of funds] shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be"; and, **second**, paragraph 1, also of Special Provision 4 which authorizes the "Secretaries of Agriculture, Education, Energy, Interior and

[189] To note, Special Provision 4 cannot — as respondents submit — refer to realignment of projects since the same provision subjects the realignment to the condition that the "**allotment released has not yet been obligated** for the original project/scope of work". The foregoing proviso should be read as a textual reference to the savings requirement stated under Section 25 (5), Article VI of the 1987 Constitution which pertinently provides that "xxx the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from **savings** in other items of their respective appropriations. In addition, Sections 4.2.3, 4.2.4 and 4.3.3 of DBM Circular 547-13, the implementing rules of the 2013 PDAF Article, respectively require that: (*a*) "the **allotment** is still valid or has not yet lapsed"; (*b*) "[r]equests for realignment of **unobligated allotment** as of December 31, 2012 treated

Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry[190] x x x to approve realignment from one project/scope

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as continuing appropriations in FY 2013 shall be submitted to the DBM not later than June 30, 2013"; and (*c*) requests for realignment shall be supported with, among others, a "[c]ertification of availability of funds." As the letter of the law and the guidelines related thereto evoke the legal concept of **savings**, Special Provision 4 must be construed to be a provision on realignment of PDAF funds, which would necessarily but only incidentally include the projects for which the funds have been allotted to. To construe it otherwise would effectively allow PDAF funds to be realigned outside the ambit of the foregoing provision, thereby sanctioning a constitutional aberration.

[190] Aside from the sharing of the executive's realignment authority with legislators in violation of the separation of powers principle, it must be pointed out that Special Provision 4, insofar as it confers fund realignment authority to department secretaries, is already unconstitutional by itself. As recently held in *Nazareth v. Villar* (*Nazareth*), G.R. No. 188635, January 29, 2013, 689 SCRA 385, 403-404, Section 25 (5), Article VI of the 1987 Constitution, limiting the authority to augment, is "strictly but reasonably construed as exclusive" in **favor of the high officials named therein**. As such, the authority to realign funds allocated to the implementing agencies is exclusively vested in the President, *viz*.:

> **It bears emphasizing that the exception in favor of the high officials named in Section 25 (5), Article VI of the Constitution limiting the authority to transfer savings only to augment another item in the GAA is strictly but reasonably construed as** exclusive. As the Court has expounded in *Lokin, Jr. v. Commission on Elections*:
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> **When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but reasonably construed**. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others, although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice.
>
> The appropriate and natural office of the exception is to exempt something from the scope of the general words of a statute, which is otherwise within the scope and meaning of such general words. **Consequently, the existence of an exception in a statute clarifies**

to another within the allotment received from this Fund, subject to [among others] (iii) the request is with the concurrence of the legislator concerned."

Clearly, these post-enactment measures which govern the areas of project identification, fund release and fund realignment are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Indeed, by virtue of the foregoing, legislators have been, in one form or another, authorized to participate in — as *Guingona, Jr.* puts it — "the **various *operational* aspects of budgeting**," including "**the evaluation of work and financial plans for individual activities**" and the "**regulation and release of funds**" in violation of the separation of powers principle. The fundamental rule, as categorically articulated in *Abakada*, cannot be overstated — from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.[191] That the said authority is treated as merely

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the intent that the statute shall apply to all cases not excepted. Exceptions are subject to the rule of strict construction; hence, any doubt will be resolved in favor of the general provision and against the exception. Indeed, the liberal construction of a statute will seem to require in many circumstances that the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction. (Emphases and underscoring supplied)

The cogence of the *Nazareth* dictum is not enfeebled by an invocation of the doctrine of qualified political agency (otherwise known as the "alter ego doctrine") for the bare reason that the same **is not applicable when the Constitution itself requires the President himself to act on a particular matter**, such as that instructed under Section 25 (5), Article VI of the Constitution. As held in the landmark case of *Villena v. Secretary of Interior* (67 Phil. 451 [1987]), constitutional imprimatur is precisely one of the exceptions to the application of the alter ego doctrine, *viz.*:

> After serious reflection, we have decided to sustain the contention of the government in this case on the board proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, Section 12, Article

recommendatory in nature does not alter its unconstitutional tenor since the prohibition, to repeat, covers any role **in the implementation or enforcement of the law**. Towards this end, the Court must therefore abandon its ruling in *Philconsa* which sanctioned the conduct of legislator identification on the guise that the same is merely recommendatory and, as such, respondents' reliance on the same falters altogether.

Besides, it must be pointed out that respondents have nonetheless failed to substantiate their position that the identification authority of legislators is only of recommendatory import. Quite the contrary, respondents — through the statements of the Solicitor General during the Oral Arguments — have admitted that the identification of the legislator constitutes a mandatory requirement before his PDAF can be tapped as a funding source, thereby highlighting the indispensability of the said act to the entire budget execution process:[192]

Justice Bernabe: Now, **without the individual legislator's identification of the project, can the PDAF of the legislator be utilized?**

Solicitor General Jardeleza: **No**, Your Honor.

Justice Bernabe: It cannot?

Solicitor General Jardeleza: It cannot. . . (interrupted)

VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and **except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally**, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (Emphases and underscoring supplied; citations omitted)

[191] *Abakada Guro Party List v. Purisima, supra* note 155, at 294-296.

[192] TSN, October 10, 2013, pp. 16, 17, 18, and 23.

Justice Bernabe: **So meaning you should have the identification of the project by the individual legislator**?

Solicitor General Jardeleza: **Yes, Your Honor**.

xxx xxx xxx

Justice Bernabe:In short, the act of identification is **mandatory**?

Solicitor General Jardeleza: **Yes, Your Honor. In the sense that if it is not done and then there is no identification**.

xxx xxx xxx

Justice Bernabe: Now, would you know of specific instances when a project was implemented without the identification by the individual legislator?

Solicitor General Jardeleza: I do not know, Your Honor; I do not think so but I have no specific examples. I would doubt very much, Your Honor, because to implement, there is a need [for] a SARO and the NCA. And **the SARO and the NCA are triggered by an identification from the legislator**.

xxx xxx xxx

Solicitor General Jardeleza: What we mean by mandatory, Your Honor, is we were replying to a question, "How can a legislator make sure that he is able to get PDAF Funds?" It is mandatory in the sense that he must identify, in that sense, Your Honor. Otherwise, if he does not identify, he cannot avail of the PDAF Funds and his district would not be able to have PDAF Funds, only in that sense, Your Honor. (Emphases supplied)

Thus, for all the foregoing reasons, the Court hereby declares the 2013 PDAF Article as well as all other provisions of law which similarly allow legislators to wield **any form of post-enactment authority in the implementation or enforcement of the budget**, unrelated to congressional oversight, as violative of the separation of powers principle and thus unconstitutional. Corollary thereto, informal practices, through which legislators have effectively intruded into the proper phases of budget execution, must be deemed as **acts of grave abuse of discretion** amounting to lack or excess of jurisdiction and, hence, accorded the same unconstitutional treatment. That such informal practices

do exist and have, in fact, been constantly observed throughout the years has not been substantially disputed here. As pointed out by Chief Justice Maria Lourdes P.A. Sereno (Chief Justice Sereno) during the Oral Arguments of these cases:[193]

> Chief Justice Sereno:
>
> Now, from the responses of the representative of both, the DBM and two (2) Houses of Congress, if we enforces the initial thought that I have, after I had seen the extent of this research made by my staff, that neither the Executive nor Congress frontally faced the question of constitutional compatibility of how they were engineering the budget process. In fact, the words you have been using, as the three lawyers [of the DBM, and both Houses of Congress] has also been using is surprise; surprised that all of these things are now surfacing. In fact, I thought that **what the 2013 PDAF provisions did was to codify in one section all the past practice that [had] been done since 1991**. In a certain sense, we should be thankful that they are all now in the PDAF Special Provisions. x x x (Emphasis and underscoring supplied)

Ultimately, legislators cannot exercise powers which they do not have, whether through formal measures written into the law or informal practices institutionalized in government agencies, else the Executive department be deprived of what the Constitution has vested as its own.

2. Non-delegability of Legislative Power.

a. Statement of Principle.

As an adjunct to the separation of powers principle,[194] legislative power shall be exclusively exercised by the body to

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[193] TSN, October 10, 2013, pp. 72-73.

[194] Aside from its conceptual origins related to the separation of powers principle, Corwin, in his commentary on Constitution of the United States made the following observations:

> At least **three distinct ideas** have contributed **to the development of the principle that legislative power cannot be delegated**. One is the doctrine of **separation of powers**: Why go to the trouble of separating the three powers of government if they can

which the Constitution has conferred the same. In particular, Section 1, Article VI of the 1987 Constitution states that such power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.[195] Based on this provision, it is clear that only Congress, acting as a bicameral body, and the people, through the process of initiative and referendum, may constitutionally wield legislative power and no other. This premise embodies the principle of non-delegability of legislative power, and the only recognized exceptions thereto would be: *(a)* delegated legislative power to local governments which, by immemorial practice, are allowed to legislate on purely local matters;[196] and *(b)* constitutionally-grafted exceptions such as the authority of

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straightway remerge on their own motion? The second is the concept of **due process of law**, which precludes the transfer of regulatory functions to private persons. Lastly, there is the maxim of agency "***Delegata potestas non potest delegari***," which John Locke borrowed and formulated as a dogma of political science . . . Chief Justice Taft offered the following explanation of the origin and limitations of this idea as a postulate of constitutional law: "The well-known maxim '*delegata potestas non potest delefari*,' applicable to the law of agency in the general common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law . . . The Federal Constitution and State Constitutions of this country divide the governmental power into three branches . . . In carrying out that constitutional division . . . it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or **if by law it attempts to invest itself or its members** with either executive power of judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental coordination. (Emphases supplied)

[195] Section 1, Article VI, 1987 Constitution.

[196] See *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 702 (1919).

the President to, by law, exercise powers necessary and proper to carry out a declared national policy in times of war or other national emergency,[197] or fix within specified limits, and subject to such limitations and restrictions as Congress may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.[198]

Notably, the principle of non-delegability should not be confused as a restriction to **delegate rule-making** authority to implementing agencies for the **limited purpose** of either filling up the details of the law for its enforcement (**supplementary rule-making**) or ascertaining facts to bring the law into actual operation (**contingent rule-making**).[199] The conceptual treatment and limitations of delegated rule-making were explained in the case of *People v. Maceren*[200] as follows:

> The grant of the rule-making power to administrative agencies is a **relaxation of the principle of separation of powers** and is an exception to the nondelegation of legislative powers. Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law."
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> xxx xxx xxx
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> [**Nevertheless, it must be emphasized that] [t]he rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted**. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (Emphases supplied)

b. Application.

In the cases at bar, the Court observes that the 2013 PDAF Article, insofar as it confers post-enactment identification

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[197] See Section 23 (2), Article VI of the 1987 Constitution.

[198] See Section 28 (2), Article VI of the 1987 Constitution.

[199] *Abakada Guro Party List v. Purisima, supra* note 155, at 288.

[200] 169 Phil. 437, 447-448 (1977).

authority to individual legislators, violates the principle of non-delegability since said legislators are effectively allowed to **individually** exercise the **power of appropriation**, which — as settled in *Philconsa* — is **lodged in Congress**.[201] That the power to appropriate must be exercised only through legislation is clear from Section 29 (1), Article VI of the 1987 Constitution which states that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made **by law**." To understand what constitutes an act of appropriation, the Court, in *Bengzon v. Secretary of Justice and Insular Auditor*[202] *(Bengzon)*, held that the power of appropriation involves ***(a)*** the **setting apart by law of a certain sum** from the public revenue for ***(b)*** a **specified purpose**. Essentially, under the 2013 PDAF Article, individual legislators are given a personal lump-sum fund from which they are able to dictate ***(a)*** **how much** from such fund would go to ***(b)*** a **specific project or beneficiary** that they themselves also determine. As these two (2) acts comprise the exercise of the power of appropriation as described in *Bengzon*, and given that the 2013 PDAF Article authorizes individual legislators to perform the same, undoubtedly, said legislators have been conferred the power to legislate which the Constitution does not, however, allow. Thus, keeping with the principle of non-delegability of legislative power, the Court hereby declares the 2013 PDAF Article, as well as all other forms of Congressional Pork Barrel which contain the similar legislative identification feature as herein discussed, as unconstitutional.

3. Checks and Balances.

a. Statement of Principle; Item-Veto Power.

The fact that the three great powers of government are intended to be kept separate and distinct does not mean that they are

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[201] *Philippine Constitution Association v. Enriquez, supra* note 114, at 522.

[202] *Bengzon v. Secretary of Justice and Insular Auditor*, 62 Phil. 912, 916 (1936).

absolutely unrestrained and independent of each other. The Constitution has also provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.[203]

A prime example of a constitutional check and balance would be the **President's power to veto an item written into an appropriation, revenue or tariff bill** submitted to him by Congress for approval through a process known as "bill presentment." The President's item-veto power is found in Section 27(2), Article VI of the 1987 Constitution which reads as follows:

> Sec. 27. x x x.
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> xxx xxx xxx
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> (2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

The presentment of appropriation, revenue or tariff bills to the President, wherein he may exercise his power of item-veto, forms part of the "**single, finely wrought and exhaustively considered, procedures**" for law-passage as specified under the Constitution.[204] As stated in *Abakada*, the final step in the law-making process is the "submission [of the bill] to the President for approval. Once approved, it takes effect as law after the required publication."[205] Elaborating on the President's item-veto power and its relevance as a check on the legislature, the Court, in *Bengzon*, explained that:[206]

> The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law-making power. **His disapproval of a bill, commonly known as a**

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[203] *Angara v. Electoral Commission, supra* note 144, at 156.

[204] *Abakada Guro Party List v. Purisima, supra* note 155, at 287.

[205] *Id.* at 292.

[206] *Bengzon v. Secretary of Justice and Insular Auditor, supra* note 202, at 916-917.

veto, is essentially a legislative act. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that his will be a broader point of view.

The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department. The Legislature has the affirmative power to enact laws; the **Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the Legislature**. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts will indulge every intendment in favor of the constitutionality of a veto [in the same manner] as they will presume the constitutionality of an act as originally passed by the Legislature. (Emphases supplied)

The justification for the President's item-veto power rests on a variety of policy goals such as to prevent log-rolling legislation,[207] impose fiscal restrictions on the legislature, as well as to fortify the executive branch's role in the budgetary process. [208] In *Immigration and Naturalization Service v. Chadha*, the US Supreme Court characterized the President's item-power as "a salutary check upon the legislative body, calculated to guard the community against the effects of factions, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body"; phrased differently,

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[207] "Log-rolling legislation refers to the process in which several provisions supported by an individual legislator or minority of legislators are combined into a single piece of legislation supported by a majority of legislators on a *quid pro quo* basis: no one provision may command majority support, but the total package will." See *Rollo* (G.R. No. 208566), p. 420, citing Briffault, Richard, *"The Item Veto in State Courts,"* 66 Temp. L. Rev. 1171, 1177 (1993).

[208] Passarello, Nicholas, *"The Item Veto and the Threat of Appropriations Bundling in Alaska,"* 30 Alaska Law Review 128 (2013), citing *Black's Law Dictionary* 1700 (9th ed. 2009). <http://scholarship.law.duke.edu/alr/vol30/issl/5> (visited October 23, 2013).

it is meant to "increase the chances in favor of the community **against the passing of bad laws**, through haste, inadvertence, or design."[209]

For the President to exercise his item-veto power, it necessarily follows that there exists a proper "item" which may be the object of the veto. An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of *Bengzon v. Secretary of Justice of the Philippine Islands*,[210] the US Supreme Court characterized an item of appropriation as follows:

> An item of an appropriation bill obviously means an item which, in itself, is a **specific appropriation of money, not some general provision of law** which happens to be put into an appropriation bill. (Emphases supplied)

On this premise, it may be concluded that an appropriation bill, **to ensure that the President may be able to exercise his power of item veto**, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.

Further, it is significant to point out that an item of appropriation must be an item characterized by **singular correspondence** — meaning an allocation of a **specified singular amount for a specified singular purpose**, otherwise known as a "**line-item**."[211] This treatment not only allows the item to be consistent with its definition as a "specific appropriation of

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[209] *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

[210] 299 U.S. 410 (1937).

[211] To note, in *Gonzales v. Macaraig, Jr.* (G.R. No. 87636, November 19, 1990, 191 SCRA 452, 465), citing *Commonwealth v. Dodson* (11 S.E., 2d 120, 176 Va. 281), the Court defined an item of appropriation as "an indivisible sum of money dedicated to a stated purpose." In this relation, Justice Carpio astutely explained that an "item" is indivisible because the amount cannot be divided for any purpose other than the specific purpose stated in the item.

money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation **may be validly apportioned into component percentages or values**; however, it is crucial that **each percentage or value must be allocated for its own corresponding purpose** for such component to be considered as a proper line-item. Moreover, as Justice Carpio correctly pointed out, a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.*, MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power. Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto **for as long as they follow the rule on singular correspondence** as herein discussed. Anent special purpose funds, it must be added that Section 25 (4), Article VI of the 1987 Constitution requires that the "special appropriations bill **shall specify the purpose for which it is intended**, and **shall be supported by funds actually available as certified by the National Treasurer,** or **to be raised by a corresponding revenue proposal therein**." Meanwhile, with respect to discretionary funds, Section 25 (6), Article VI of the 1987 Constitution requires that said funds "shall be disbursed only for public purposes to be **supported by appropriate vouchers** and **subject to such guidelines as may be prescribed by law**."

In contrast, what beckons constitutional infirmity are appropriations which merely provide for a **singular lump-sum amount** to be tapped as a source of funding for **multiple purposes**. Since such appropriation type necessitates the further determination of **both** the **actual amount** to be expended **and** the **actual purpose** of the appropriation which must still be chosen from the multiple purposes stated in the law, it cannot be said that the appropriation law already indicates a "specific

appropriation of money" and hence, without a proper line-item which the President may veto. As a practical result, the President would then be faced with the predicament of either vetoing the entire appropriation if he finds some of its purposes wasteful or undesirable, or approving the entire appropriation so as not to hinder some of its legitimate purposes. Finally, it may not be amiss to state that such arrangement also raises non-delegability issues considering that the implementing authority would still have to determine, again, both the actual amount to be expended and the actual purpose of the appropriation. Since the foregoing determinations constitute the integral aspects of the power to appropriate, the implementing authority would, in effect, be exercising legislative prerogatives in violation of the principle of non-delegability.

b. Application.

In these cases, petitioners claim that "[i]n the current x x x system where the PDAF is a lump-sum appropriation, the legislator's identification of the projects after the passage of the GAA denies the President the chance to veto that item later on."[212] Accordingly, they submit that the "item veto power of the President mandates that appropriations bills adopt line-item budgeting" and that "Congress cannot choose a mode of budgeting [which] effectively renders the constitutionally-given power of the President useless."[213]

On the other hand, respondents maintain that the text of the Constitution envisions a process which is intended to meet the demands of a modernizing economy and, as such, lump-sum appropriations are essential to financially address situations which are barely foreseen when a GAA is enacted. They argue that the decision of the Congress to create some lump-sum appropriations is constitutionally allowed and textually-grounded.[214]

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[212] *Rollo* (G.R. No. 208566), p. 421.

[213] *Id*.

[214] *Id*. at 316.

The Court agrees with petitioners.

Under the 2013 PDAF Article, the amount of ₱24.79 Billion only appears as a collective allocation limit since the said amount would be further divided among individual legislators who would then receive personal lump-sum allocations and could, after the GAA is passed, effectively appropriate PDAF funds based on their own discretion. As these intermediate appropriations are made by legislators only after the GAA is passed and hence, outside of the law, it necessarily means that the actual items of PDAF appropriation would not have been written into the General Appropriations Bill and thus effectuated without veto consideration. This kind of **lump-sum/post-enactment legislative identification budgeting system** fosters the creation of a "budget within a budget" which subverts the prescribed procedure of presentment and consequently impairs the President's power of item veto. As petitioners aptly point out, the above-described system forces the President to decide between *(a)* accepting the entire ₱24.79 Billion PDAF allocation without knowing the specific projects of the legislators, which may or may not be consistent with his national agenda and *(b)* rejecting the whole PDAF to the detriment of all other legislators with legitimate projects.[215]

Moreover, even without its post-enactment legislative identification feature, the 2013 PDAF Article would remain constitutionally flawed since it would then operate as a prohibited form of lump-sum appropriation as above-characterized. In particular, the lump-sum amount of ₱24.79 Billion would be treated as a mere funding source allotted for multiple purposes of spending, *i.e.*, scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood control, *etc*. This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, does not readily indicate a discernible item which may be subject to the President's power of item veto.

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[215] *Id.* at 421.

In fact, on the accountability side, the same lump-sum budgeting scheme has, as the CoA Chairperson relays, "limit[ed] state auditors from obtaining relevant data and information that would aid in more stringently auditing the utilization of said Funds."[216] Accordingly, she recommends the adoption of a "line by line budget or amount per proposed program, activity or project, and per implementing agency."[217]

Hence, in view of the reasons above-stated, the Court finds the 2013 PDAF Article, as well as all Congressional Pork Barrel Laws of similar operation, to be unconstitutional. That such budgeting system provides for a greater degree of flexibility to account for future contingencies cannot be an excuse to defeat what the Constitution requires. Clearly, the first and essential truth of the matter is that unconstitutional means do not justify even commendable ends.[218]

c. Accountability.

Petitioners further relate that the system under which various forms of Congressional Pork Barrel operate defies public accountability as it renders Congress incapable of checking itself or its Members. In particular, they point out that the Congressional Pork Barrel "gives each legislator a direct, financial interest in the smooth, speedy passing of the yearly budget" which turns them "from fiscalizers" into "financially-interested partners."[219]

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[216] *Id*. at 566.

[217] *Id*. at 567.

[218] "It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: 'The end does not justify the means.' No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed. The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles. 'The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.'" (*Biraogo v. Philippine Truth Commission of 2010, supra* note 118, 177; citations omitted)

[219] *Rollo* (G.R. No. 208566), p. 406.

They also claim that the system has an effect on re-election as "the PDAF excels in self-perpetuation of elective officials." Finally, they add that the "PDAF impairs the power of impeachment" as such "funds are indeed quite useful, 'to well, accelerate the decisions of senators.'"[220]

The Court agrees in part.

The aphorism forged under Section 1, Article XI of the 1987 Constitution, which states that "public office is a public trust," is an overarching reminder that every instrumentality of government should exercise their official functions only in accordance with the principles of the Constitution which embodies the parameters of the people's trust. The notion of a public trust connotes accountability, [221] hence, the various mechanisms in the Constitution which are designed to exact accountability from public officers.

Among others, an accountability mechanism with which the proper expenditure of public funds may be checked is the power of congressional oversight. As mentioned in *Abakada*,[222] congressional oversight may be performed either through: *(a)* **scrutiny** based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; [223] or *(b)* **investigation and monitoring** of the implementation of laws pursuant to the power of Congress to conduct **inquiries in aid of legislation**.[224]

The Court agrees with petitioners that certain features embedded in some forms of Congressional Pork Barrel, among others the 2013 PDAF Article, has an effect on congressional

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[220] *Id.* at 407.

[221] Bernas, Joaquin G., S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 Edition, p. 1108.

[222] *Abakada Guro Party List v. Purisima*, *supra* note 155.

[223] See Section 22, Article VI, 1987 Constitution.

[224] See Section 21, Article VI, 1987 Constitution.

oversight. The fact that individual legislators are given post-enactment roles in the implementation of the budget makes it difficult for them to become disinterested "observers" when scrutinizing, investigating or monitoring the implementation of the appropriation law. To a certain extent, the conduct of oversight would be tainted as said legislators, who are vested with post-enactment authority, would, in effect, be checking on activities in which they themselves participate. Also, it must be pointed out that this very same concept of post-enactment authorization runs afoul of Section 14, Article VI of the 1987 Constitution which provides that:

> Sec. 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. **He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office**. (Emphasis supplied)

Clearly, allowing legislators to intervene in the various phases of project implementation — a matter before another office of government — renders them susceptible to taking undue advantage of their own office.

The Court, however, cannot completely agree that the same post-enactment authority and/or the individual legislator's control of his PDAF per se would allow him to perpetuate himself in office. Indeed, while the Congressional Pork Barrel and a legislator's use thereof may be linked to this area of interest, the use of his PDAF for re-election purposes is a matter which must be analyzed based on particular facts and on a case-to-case basis.

Finally, while the Court accounts for the possibility that the close operational proximity between legislators and the Executive department, through the former's post-enactment participation,

may affect the process of impeachment, this matter largely borders on the domain of politics and does not strictly concern the Pork Barrel System's intrinsic constitutionality. As such, it is an improper subject of judicial assessment.

In sum, insofar as its post-enactment features dilute congressional oversight and violate Section 14, Article VI of the 1987 Constitution, thus impairing public accountability, the 2013 PDAF Article and other forms of Congressional Pork Barrel of similar nature are deemed as unconstitutional.

4. Political Dynasties.

One of the petitioners submits that the Pork Barrel System enables politicians who are members of political dynasties to accumulate funds to perpetuate themselves in power, in contravention of Section 26, Article II of the 1987 Constitution[225] which states that:

> Sec. 26. The State shall guarantee equal access to opportunities for public service, and **prohibit political dynasties <u>as may be defined by law</u>**. (Emphasis and underscoring supplied)

At the outset, suffice it to state that the foregoing provision is considered as **not self-executing due to the qualifying phrase "as may be defined by law**." In this respect, said provision does not, by and of itself, provide a judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action.[226] Therefore, since there appears to be no standing law which crystallizes the policy on political dynasties for enforcement, the Court must defer from ruling on this issue.

In any event, the Court finds the above-stated argument on this score to be largely speculative since it has not been properly demonstrated how the Pork Barrel System would be able to propagate political dynasties.

5. Local Autonomy.

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[225] *Rollo* (G.R. No. 208493), p. 9.

[226] See *Pamatong v. Commission on Elections*, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-101.

The State's policy on local autonomy is principally stated in Section 25, Article II and Sections 2 and 3, Article X of the 1987 Constitution which read as follows:

ARTICLE II

Sec. 25. The State shall ensure the autonomy of local governments.

ARTICLE X

Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

Pursuant thereto, Congress enacted RA 7160,[227] otherwise known as the "Local Government Code of 1991" (LGC), wherein the policy on local autonomy had been more specifically explicated as follows:

Sec. 2. *Declaration of Policy*. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State **shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals**. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

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(c) It is likewise the policy of the State to **require all national agencies and offices to conduct periodic consultations with**

[227] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991."

appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community **before any project or program is implemented in their respective jurisdictions**. (Emphases and underscoring supplied)

The above-quoted provisions of the Constitution and the LGC reveal the policy of the State to empower local government units (LGUs) to develop and ultimately, become self-sustaining and effective contributors to the national economy. As explained by the Court in *Philippine Gamefowl Commission v. Intermediate Appellate Court*:[228]

> This is as good an occasion as any **to stress the commitment of the Constitution to the policy of local autonomy which is intended to provide the needed impetus and encouragement to the development of our local political subdivisions as "self-reliant communities**." In the words of Jefferson, "Municipal corporations are the small republics from which the great one derives its strength." The vitalization of local governments will enable their inhabitants to fully exploit their resources and more important, imbue them with a deepened sense of involvement in public affairs as members of the body politic. **This objective could be blunted by undue interference by the national government in purely local affairs which are best resolved by the officials and inhabitants of such political units**. The decision we reach today conforms not only to the letter of the pertinent laws but also to the spirit of the Constitution.[229] (Emphases and underscoring supplied)

In the cases at bar, petitioners contend that the Congressional Pork Barrel goes against the constitutional principles on local autonomy since it allows district representatives, who are national officers, to substitute their judgments in utilizing public funds for local development.[230]

The Court agrees with petitioners.

Philconsa described the 1994 CDF as an attempt "to make equal the unequal" and that "[i]t is also a recognition that

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[228] 230 Phil. 379, 387-388 (1986).

[229] *Id*.

[230] *Rollo* (G.R. No. 208566), pp. 95-96.

individual members of Congress, far more than the President and their congressional colleagues, are likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project."[231] Drawing strength from this pronouncement, previous legislators justified its existence by stating that "the relatively small projects implemented under [the Congressional Pork Barrel] complement and link the national development goals to the countryside and grassroots as well as to depressed areas which are overlooked by central agencies which are preoccupied with mega-projects.[232] Similarly, in his August 23, 2013 speech on the "abolition" of PDAF and budgetary reforms, President Aquino mentioned that the Congressional Pork Barrel was originally established for a worthy goal, which is to enable the representatives to identify projects for communities that the LGU concerned cannot afford.[233]

Notwithstanding these declarations, the Court, however, finds an inherent defect in the system which actually belies the avowed intention of "making equal the unequal." In particular, the Court observes that **the gauge of PDAF and CDF allocation/division is based solely on the fact of office, without taking into account the specific interests and peculiarities of the district the legislator represents**. In this regard, the allocation/division limits are clearly not based on genuine parameters of equality, wherein economic or geographic indicators have been taken into consideration. As a result, a district representative of a highly-urbanized metropolis gets the same amount of funding as a district representative of a far-flung rural province which would be relatively "underdeveloped" compared to the former. To add, what rouses graver scrutiny is that even Senators and Party-

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[231] *Philconsa v. Enriquez, supra* note 114, at 523.

[232] Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" <http://www.congress.gov.ph/download/14th/pork_barrel.pdf> (visited October 17, 2013).

[233] <http://www.gov.ph/2013/08/23/english-statement-of-president-aquino-on-the-abolition-of-pdaf-august-23-2013/> (visited October 22, 2013).

List Representatives — and in some years, even the Vice-President — who do not represent any locality, receive funding from the Congressional Pork Barrel as well. These certainly are anathema to the Congressional Pork Barrel's original intent which is "to make equal the unequal." Ultimately, the PDAF and CDF had become personal funds under the effective control of each legislator and given unto them on the sole account of their office.

The Court also observes that this concept of legislator control underlying the CDF and PDAF conflicts with the functions of the various Local Development Councils (LDCs) which are already legally mandated to "assist the corresponding *sanggunian* in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction."[234] Considering that LDCs are instrumentalities whose functions are essentially geared towards managing local affairs,[235] their programs, policies and resolutions should not be overridden nor duplicated by individual legislators, who are national officers that have no law-making authority except only when acting as a body. The undermining effect on local autonomy caused by the post-enactment authority conferred to the latter was succinctly put by petitioners in the following wise:[236]

With PDAF, a Congressman can simply bypass the local development council and initiate projects on his own, and even take sole credit for its execution. Indeed, this type of personality-driven project identification has not only contributed little to the overall development of the district, but has even contributed to "further weakening infrastructure planning and coordination efforts of the government."

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[234] Section 106 of the LGC provides:

Sec. 106. *Local Development Councils*. — (a) Each local government unit shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its sanggunian. For this purpose, the development council at the provincial, city, municipal, or *barangay* level, shall assist the corresponding sanggunian in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction.

[235] See Section 109 of the LGC.

[236] *Rollo* (G.R. No. 208566), p. 423.

Thus, insofar as individual legislators are authorized to intervene in purely local matters and thereby subvert genuine local autonomy, the 2013 PDAF Article as well as all other similar forms of Congressional Pork Barrel is deemed unconstitutional.

With this final issue on the Congressional Pork Barrel resolved, the Court now turns to the substantive issues involving the Presidential Pork Barrel.

C. Substantive Issues on the Presidential Pork Barrel.

1. Validity of Appropriation.

Petitioners preliminarily assail Section 8 of PD 910 and Section 12 of PD1869 (now, amended by PD 1993), which respectively provide for the Malampaya Funds and the Presidential Social Fund, as invalid appropriations laws since they do not have the "primary and specific" purpose of authorizing the release of public funds from the National Treasury. Petitioners submit that Section 8 of PD 910 is not an appropriation law since the "primary and specific" purpose of PD 910 is the creation of an Energy Development Board and Section 8 thereof only created a Special Fund incidental thereto. [237] In similar regard, petitioners argue that Section 12 of PD 1869 is neither a valid appropriations law since the allocation of the Presidential Social Fund is merely incidental to the "primary and specific" purpose of PD 1869 which is the amendment of the Franchise and Powers of PAGCOR.[238] In view of the foregoing, petitioners suppose that such funds are being used without any valid law allowing for their proper appropriation in violation of Section 29 (1), Article VI of the 1987 Constitution which states that: "No money shall be paid out of the Treasury except in pursuance of an **appropriation made by law**." [239]

The Court disagrees.

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[237] *Id*. at 427.

[238] *Id*. at 439-440.

[239] *Id*. at 434 and 441.

"An appropriation made by law" under the contemplation of Section 29 (1), Article VI of the 1987 Constitution exists when a provision of law ***(a)*** sets apart **a determinate or determinable**[240] **amount** of money and ***(b)*** allocates the same for a **particular public purpose**. These two minimum designations of **amount** and **purpose** stem from the very definition of the word "appropriation," which means "to allot, assign, set apart or apply to a particular use or purpose," and hence, if written into the law, **demonstrate that the legislative intent to appropriate exists**. As the Constitution "does not provide or prescribe any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be 'made by law, '"an appropriation law may — according to *Philconsa* — be "detailed and as broad as Congress wants it to be" for as long as the intent to appropriate may be gleaned from the same. As held in the case of *Guingona, Jr.*:[241]

> **[T]here is no provision in our Constitution that provides or prescribes any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be "made by law,"** such as precisely the authorization or appropriation under the questioned presidential decrees. In other words, in terms of time horizons, an appropriation may be made impliedly (as by past but subsisting legislations) as

[240] See *Guingona, Jr. v. Caragu*e, *supra* note 173, where the Court upheld the constitutionality of certain automatic appropriation laws for debt servicing although said laws did not readily indicate the exact amounts to be paid considering that "the amounts nevertheless are made certain by the legislative parameters provided in the decrees"; hence, "[t]he Executive is not of unlimited discretion as to the amounts to be disbursed for debt servicing." To note, such laws vary in great degree with the way the 2013 PDAF Article works considering that: (*a*) individual legislators and not the executive make the determinations; (*b*) the choice of both the amount and the project are to be subsequently made after the law is passed and upon the sole discretion of the legislator, unlike in *Guingona, Jr*. where the amount to be appropriated is dictated by the contingency external to the discretion of the disbursing authority; and (*c*) in *Guingona, Jr*. there is no effective control of the funds since as long as the contingency arises money shall be automatically appropriated therefor, hence what is left is merely law execution and not legislative discretion.

[241] *Id*. at 462.

well as expressly for the current fiscal year (as by enactment of laws by the present Congress), just as said appropriation may be made in general as well as in specific terms. The Congressional authorization may be embodied in annual laws, such as a general appropriations act or in special provisions of laws of general or special application which appropriate public funds for specific public purposes, such as the questioned decrees. **An appropriation measure is sufficient if the legislative intention clearly and certainly appears from the language employed** (In re Continuing Appropriations, 32 P. 272), whether in the past or in the present. (Emphases and underscoring supplied)

Likewise, as ruled by the US Supreme Court in *State of Nevada v. La Grave*:[242]

To constitute an appropriation there must be money placed in a fund applicable to the designated purpose. **The word appropriate means to allot, assign, set apart or apply to a particular use or purpose**. An appropriation in the sense of the constitution means the **setting apart a portion of the public funds for a public purpose. No particular form of words is necessary for the purpose, if the intention to appropriate is plainly manifested**. (Emphases supplied)

Thus, based on the foregoing, the Court cannot sustain the argument that the appropriation must be the "primary and specific" purpose of the law in order for a valid appropriation law to exist. To reiterate, if a legal provision designates a determinate or determinable amount of money and allocates the same for a particular public purpose, then the legislative intent to appropriate becomes apparent and, hence, already sufficient to satisfy the requirement of an "appropriation made by law" under contemplation of the Constitution.

Section 8 of PD 910 pertinently provides:

Section 8. *Appropriations*. x x x

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery

[242] 23 Nev. 25 (1895).

bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used **to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President**. (Emphases supplied)

Whereas Section 12 of PD 1869, as amended by PD 1993, reads:

Sec. 12. Special Condition of Franchise. — **After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00** shall be set aside and shall accrue to the General Fund **to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines**. (Emphases supplied)

Analyzing the legal text *vis-à-vis* the above-mentioned principles, it may then be concluded that (*a*) Section 8 of PD 910, which creates a Special Fund comprised of "all fees, revenues, and receipts of the [Energy Development] Board from any and all sources" (**a determinable amount**) "to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President" (**a specified public purpose**), and (*b*) Section 12 of PD 1869, as amended by PD 1993, which similarly sets aside, "[a]fter deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of [PAGCOR], or 60%[,] if the aggregate gross earnings be less than ₱150,000,000.00" (**also a determinable amount**) "to finance the priority infrastructure development projects and x x x the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President

of the Philippines" (**also a specified public purpose**), are legal appropriations under Section 29 (1), Article VI of the 1987 Constitution.

In this relation, it is apropos to note that the 2013 PDAF Article cannot be properly deemed as a legal appropriation under the said constitutional provision precisely because, as earlier stated, it contains post-enactment measures which effectively create a system of intermediate appropriations. These intermediate appropriations are the actual appropriations meant for enforcement and since they are made by individual legislators after the GAA is passed, they occur outside the law. As such, the Court observes that the real appropriation made under the 2013 PDAF Article is not the ₱24.79 Billion allocated for the entire PDAF, but rather the post-enactment determinations made by the individual legislators which are, to repeat, occurrences outside of the law. Irrefragably, the 2013 PDAF Article does not constitute an "appropriation made by law" since it, in its truest sense, only **authorizes individual legislators to appropriate** in violation of the non-delegability principle as afore-discussed.

2. Undue Delegation.

On a related matter, petitioners contend that Section 8 of PD 910 constitutes an undue delegation of legislative power since the phrase "and for such other purposes as may be hereafter directed by the President" gives the President "unbridled discretion to determine for what purpose the funds will be used."[243] Respondents, on the other hand, urged the Court to apply the principle of *ejusdem generis* to the same section and thus, construe the phrase "and for such other purposes as may be hereafter directed by the President" to refer only to other purposes related "to energy resource development and exploitation programs and projects of the government."[244]

The Court agrees with petitioners' submissions.

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[243] *Rollo* (G.R. No. 208566), p. 438.

[244] *Id*. at 300.

While the designation of a determinate or determinable amount for a particular public purpose is sufficient for a legal appropriation to exist, the appropriation law must contain **adequate legislative guidelines** if the same law delegates rule-making authority to **the Executive**[245] either for the purpose of *(a)* **filling up the details** of the law for its enforcement, known as supplementary rule-making, or *(b)* **ascertaining facts** to bring the law into actual operation, referred to as contingent rule-making.[246] There are two (2) fundamental tests to ensure that the legislative guidelines for delegated rule-making are indeed adequate. The first test is called the "**completeness test**." Case law states that a law is complete when it sets forth therein the policy to be executed, carried out, or implemented by the delegate. On the other hand, the second test is called the "**sufficient standard test**." Jurisprudence holds that a law lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot.[247] To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy, and identify the conditions under which it is to be implemented.[248]

In view of the foregoing, the Court agrees with petitioners that the phrase "and for such other purposes as may be hereafter directed by the President" under **Section 8 of PD 910** constitutes an undue delegation of legislative power insofar as it does not

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[245] The project identifications made by the Executive should always be in the nature of law enforcement and, hence, for the sole purpose of enforcing an existing appropriation law. In relation thereto, it may exercise its rule-making authority to greater particularize the guidelines for such identifications which, in all cases, should not go beyond what the delegating law provides. Also, in all cases, the Executive's identification or rule-making authority, insofar as the field of appropriations is concerned, may only arise if there is a valid appropriation law under the parameters as above-discussed.

[246] *Abakada Guro Party List v. Purisima, supra* note 155.

[247] See Bernas, Joaquin G., *S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary,* 2009 Edition, pp. 686-687, citing *Pelaez v. Auditor General*, 15 SCRA 569, 576-577 (1965).

[248] *Id.* at 277.

lay down a sufficient standard to adequately determine the limits of the President's authority with respect to the purpose for which the Malampaya Funds may be used. **As it reads, the said phrase gives the President wide latitude to use the Malampaya Funds for any other purpose he may direct and, in effect, allows him to unilaterally appropriate public funds beyond the purview of the law**. That the subject phrase may be confined only to "energy resource development and exploitation programs and projects of the government" under the principle of *ejusdem generis*, meaning that the general word or phrase is to be construed to include — or be restricted to — things akin to, resembling, or of the same kind or class as those specifically mentioned,[249] is belied by three (3) reasons: **first**, the phrase "energy resource development and exploitation programs and projects of the government" states a **singular and general class** and hence, cannot be treated as a statutory reference of specific things from which the general phrase "for such other purposes" may be limited; **second**, the said phrase also exhausts the class it represents, namely energy development programs of the government;[250] and, **third**, the Executive department has, in fact, used the Malampaya Funds for non-energy related purposes under the subject phrase, thereby contradicting respondents' own position that it is limited only to "energy resource development and exploitation programs and projects of the government."[251] Thus, while Section 8 of PD 910 may have

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[249] § 438 *Ejusdem Generis* ("of the same kind"); specific words; 82 C.J.S. Statutes § 438.

[250] *Rollo* (G.R. No. 208566), p. 437, citing § 438 *Ejusdem Generis* ("of the same kind"); specific words; 82 C.J.S. Statutes § 438.

[251] Based on a July 5, 2011 posting in the government's website <http://www.gov.ph/2011/07/05/budget-secretary-abad-clarifies-nature-of-malampaya-fund/>; attached as Annex "A" to the Petitioners' Memorandum), the Malampaya Funds were also used for non-energy related projects, to wit:

> The rest of the 98.73 percent or ₱19.39 billion was released for non-energy related projects: 1) in 2006, ₱1 billion for the Armed Forces Modernization Fund; 2) in 2008, ₱4 billion for the Department of Agriculture; 3) in 2009, a total of ₱14.39 billion to various agencies, including: ₱7.07 billion for the Department of Public Works and Highways;

passed the completeness test since the policy of energy development is clearly deducible from its text, the phrase "and for such other purposes as may be hereafter directed by the President" under the same provision of law should nonetheless be stricken down as unconstitutional as it lies independently unfettered by any sufficient standard of the delegating law. This notwithstanding, it must be underscored that the rest of Section 8, insofar as it allows for the use of the Malampaya Funds "to finance energy resource development and exploitation programs and projects of the government," remains legally effective and subsisting. Truth be told, the declared unconstitutionality of the aforementioned phrase is but an assurance that the Malampaya Funds would be used — as it should be used — only in accordance with the avowed purpose and intention of PD 910.

As for the Presidential Social Fund, the Court takes judicial notice of the fact that Section 12 of PD 1869 has already been amended by PD 1993 which thus moots the parties' submissions on the same.[252] Nevertheless, since the amendatory provision

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₱2.14 billion for the Philippine National Police; ₱1.82 billion for [the Department of Agriculture]; ₱1.4 billion for the National Housing Authority; and ₱900 million for the Department of Agrarian Reform.

[252] For academic purposes, the Court expresses its disagreement with petitioners' argument that the previous version of Section 12 of PD 1869 constitutes an undue delegation of legislative power since it allows the President to broadly determine the purpose of the Presidential Social Fund's use and perforce must be declared unconstitutional. Quite the contrary, the 1st paragraph of the said provision clearly indicates that the Presidential Social Fund shall be used to finance specified types of priority infrastructure and socio-civic projects, namely, Flood Control, Sewerage and Sewage, Nutritional Control, Population Control, Tulungan ng Bayan Centers, Beautification and Kilusang Kabuhayan at Kaunlaran (KKK) projects located within the Metropolitan Manila area. However, with regard to the stated geographical-operational limitation, the 2nd paragraph of the same provision nevertheless allows the Presidential Social Fund to finance "priority infrastructure and socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines." It must, however, be qualified that the 2nd paragraph should not be construed to mean that the Office of the President may direct and authorize the use of the Presidential Social Fund to any kind of infrastructure and socio-

may be readily examined under the current parameters of discussion, the Court proceeds to resolve its constitutionality.

Primarily, Section 12 of PD 1869, as amended by PD 1993, indicates that the Presidential Social Fund may be used "to [**first**,] finance the priority infrastructure development projects and [**second**,] to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines." The Court finds that while the second indicated purpose adequately curtails the authority of the President to spend the Presidential Social Fund only for restoration purposes which arise from calamities, the first indicated purpose, however, gives him *carte blanche* authority to use the same fund for any infrastructure project he may so determine as a "priority". Verily, the law does not supply a definition of "priority infrastructure development projects" and hence, leaves the President without any guideline to construe the same. To note, the delimitation of a project as one of "infrastructure" is too broad of a classification since the said term could pertain to any kind of facility. This may be deduced from its lexicographic definition as follows: "[t]he underlying framework of a system, [especially] public services and facilities (such as highways, schools, bridges, sewers, and water-systems) needed to support commerce as well as economic and residential

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civic project throughout the Philippines. Pursuant to the maxim of *noscitur a sociis*, (meaning, that a word or phrase's "correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated"; see *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598-599) the 2nd paragraph should be construed only as an expansion of the geographical-operational limitation stated in the 1st paragraph of the same provision and not a grant of *carte blanche* authority to the President to veer away from the project types specified thereunder. In other words, what the 2nd paragraph merely allows is the use of the Presidential Social Fund for Flood Control, Sewerage and Sewage, Nutritional Control, Population Control, Tulungan ng Bayan Centers, Beautification and Kilusang Kabuhayan at Kaunlaran (KKK) projects even though the same would be located outside the Metropolitan Manila area. To deem it otherwise would be tantamount to unduly expanding the rule-making authority of the President in violation of the sufficient standard test and, ultimately, the principle of non-delegability of legislative power.

development."[253] In fine, the phrase "to finance the priority infrastructure development projects" must be stricken down as unconstitutional since — similar to the above-assailed provision under Section 8 of PD 910 — it lies independently unfettered by any sufficient standard of the delegating law. As they are severable, all other provisions of Section 12 of PD 1869, as amended by PD 1993, remains legally effective and subsisting.

D. Ancillary Prayers.

1. Petitioners' Prayer to be Furnished Lists and Detailed Reports.

Aside from seeking the Court to declare the Pork Barrel System unconstitutional — as the Court did so in the context of its pronouncements made in this Decision — petitioners equally pray that the Executive Secretary and/or the DBM be ordered to release to the CoA and to the public: *(a)* "the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto" (PDAF Use Schedule/List);[254] and *(b)* "the use of the Executive's [lump-sum, discretionary] funds, including the proceeds from the x x x Malampaya Fund[s] [and] remittances from the [PAGCOR] x x x from 2003 to 2013, specifying the x x x project or activity and the recipient entities or individuals, and all pertinent data thereto"[255] (Presidential Pork Use Report). Petitioners' prayer is grounded on Section 28, Article II and Section 7, Article III of the 1987 Constitution which read as follows:

ARTICLE II

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

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[253] *Black's Law Dictionary* (7th Ed., 1999), p. 784.

[254] *Rollo* (G.R. No. 208566), pp. 48-49.

[255] *Id*.

ARTICLE III

Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The Court denies petitioners' submission.

Case law instructs that the proper remedy to invoke the right to information is to file a petition for *mandamus*. As explained in the case of *Legaspi v. Civil Service Commission*:[256]

> [W]hile the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, **its performance may be compelled by a writ of** *mandamus* **in a *proper case*.**
>
> But what is a proper case for *Mandamus* to issue? In the case before Us, the public right to be enforced and the concomitant duty of the State are unequivocably set forth in the Constitution. **The decisive question on the propriety of the issuance of the writ of** *mandamus* **in this case is, whether the information sought by the petitioner is within the ambit of the constitutional guarantee**. (Emphases supplied)

Corollarily, in the case of *Valmonte v. Belmonte Jr.*[257] (*Valmonte*), it has been clarified that the right to information does not include the right to compel the preparation of "lists, abstracts, summaries and the like." In the same case, it was stressed that it is essential that the "applicant has a well-defined, clear and certain legal right to the thing demanded and that it

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[256] 234 Phil. 521, 533-534 (1987).

[257] 252 Phil. 264 (1989).

is the imperative duty of defendant to perform the act required." Hence, without the foregoing substantiations, the Court cannot grant a particular request for information. The pertinent portions of *Valmonte* are hereunder quoted:[258]

> Although citizens are afforded the right to information and, pursuant thereto, are entitled to "access to official records," **the Constitution does not accord them a right to compel custodians of official records to prepare lists, abstracts, summaries and the like in their desire to acquire information on matters of public concern.**
>
> It must be stressed that it is essential for a writ of *mandamus* to issue that **the applicant has a well-defined, clear and certain legal right to the thing demanded and that it is the imperative duty of defendant to perform the act required**. The corresponding duty of the respondent to perform the required act must be clear and specific [*Lemi v. Valencia*, G.R. No. L-20768, November 29, 1968, 126 SCRA 203; *Ocampo v. Subido*, G.R. No. L-28344, August 27, 1976, 72 SCRA 443.] **The request of the petitioners fails to meet this standard, there being no duty on the part of respondent to prepare the list requested**. (Emphases supplied)

In these cases, aside from the fact that none of the petitions are in the nature of *mandamus* actions, the Court finds that petitioners have failed to establish a "a well-defined, clear and certain legal right" to be furnished by the Executive Secretary and/or the DBM of their requested PDAF Use Schedule/List and Presidential Pork Use Report. Neither did petitioners assert any law or administrative issuance which would form the bases of the latter's duty to furnish them with the documents requested. While petitioners pray that said information be equally released to the CoA, it must be pointed out that the CoA has not been impleaded as a party to these cases nor has it filed any petition before the Court to be allowed access to or to compel the release of any official document relevant to the conduct of its audit investigations. While the Court recognizes that the information requested is a matter of significant public concern, however, if only to ensure that the parameters of disclosure are properly foisted and so as not to unduly hamper the equally important

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[258] *Id.* at 279.

interests of the government, it is constrained to deny petitioners' prayer on this score, without prejudice to a proper *mandamus* case which they, or even the CoA, may choose to pursue through a separate petition.

It bears clarification that the Court's denial herein should only cover petitioners' plea to be furnished with such schedule/list and report and not in any way deny them, or the general public, access to official documents which are already existing and of public record. **Subject to reasonable regulation and absent any valid statutory prohibition, access to these documents should not be proscribed**. Thus, in *Valmonte*, while the Court denied the application for *mandamus* towards the preparation of the list requested by petitioners therein, it nonetheless allowed access to the documents sought for by the latter, subject, however, to the custodian's reasonable regulations, *viz*.:[259]

> In fine, petitioners are entitled to access to the documents evidencing loans granted by the GSIS, subject to reasonable regulations that the latter may promulgate relating to the manner and hours of examination, to the end that damage to or loss of the records may be avoided, that undue interference with the duties of the custodian of the records may be prevented and that the right of other persons entitled to inspect the records may be insured [*Legaspi v. Civil Service Commission*, *supra* at p. 538, quoting *Subido v. Ozaeta*, 80 Phil. 383, 387.] The petition, as to the second and third alternative acts sought to be done by petitioners, is meritorious.
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> However, the same cannot be said with regard to the first act sought by petitioners, *i.e*., "to furnish petitioners the list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP-Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos."

The Court, therefore, applies the same treatment here.

2. Petitioners' Prayer to Include Matters in Congressional Deliberations.

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[259] *Id*. at 278.

Petitioners further seek that the Court "[order] the inclusion in budgetary deliberations with the Congress of all presently, off-budget, lump sum, discretionary funds including but not limited to, proceeds from the x x x Malampaya Fund, remittances from the [PAGCOR] and the [PCSO] or the Executive's Social Funds[.]"[260]

Suffice it to state that the above-stated relief sought by petitioners covers a matter which is generally left to the prerogative of the political branches of government. Hence, lest the Court itself overreach, it must equally deny their prayer on this score.

3. Respondents' Prayer to Lift TRO; Consequential Effects of Decision.

The final issue to be resolved stems from the interpretation accorded by the DBM to the concept of released funds. In response to the Court's September 10, 2013 TRO that enjoined the release of the remaining PDAF allocated for the year 2013, the DBM issued Circular Letter No. 2013-8 dated September 27, 2013 (DBM Circular 2013-8) which pertinently reads as follows:

> 3.0 Nonetheless, PDAF projects funded under the FY 2013 GAA, where a Special Allotment Release Order (SARO) has been issued by the DBM and such SARO has been obligated by the implementing agencies prior to the issuance of the TRO, may continually be implemented and disbursements thereto effected by the agencies concerned.

Based on the text of the foregoing, the DBM authorized the continued implementation and disbursement of PDAF funds as long as they are: **first**, covered by a SARO; and, **second**, that said SARO had been obligated by the implementing agency concerned prior to the issuance of the Court's September 10, 2013 TRO.

Petitioners take issue with the foregoing circular, arguing that "the issuance of the SARO does not yet involve the release of funds under the PDAF, as release is only triggered by the

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[260] *Rollo* (G.R. No. 208566), p. 463.

issuance of a Notice of Cash Allocation [(NCA)]."[261] As such, PDAF disbursements, even if covered by an obligated SARO, should remain enjoined.

For their part, respondents espouse that the subject TRO only covers "unreleased and unobligated allotments." They explain that once a SARO has been issued and obligated by the implementing agency concerned, the PDAF funds covered by the same are already "beyond the reach of the TRO because they cannot be considered as 'remaining PDAF.'" They conclude that this is a reasonable interpretation of the TRO by the DBM.[262]

The Court agrees with petitioners in part.

At the outset, it must be observed that the issue of whether or not the Court's September 10, 2013 TRO should be lifted is a matter rendered moot by the present Decision. The unconstitutionality of the 2013 PDAF Article as declared herein has the consequential effect of converting the temporary injunction into a permanent one. **Hence, from the promulgation of this Decision, the release of the remaining PDAF funds for 2013, among others, is now permanently enjoined.**

The propriety of the DBM's interpretation of the concept of "release" must, nevertheless, be resolved as it has a practical impact on the execution of the current Decision. In particular, the Court must resolve the issue of whether or not PDAF funds covered by obligated SAROs, at the time this Decision is promulgated, may still be disbursed following the DBM's interpretation in DBM Circular 2013-8.

On this score, the Court agrees with petitioners' posturing for the fundamental reason that funds covered by an obligated SARO are yet to be "released" under legal contemplation. A SARO, as defined by the DBM itself in its website, is "[a] specific authority issued to identified agencies to **incur obligations** not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures **the release of which is**

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[261] *Id*. at 459-462.

[262] *Id*. at 304-305.

subject to compliance with specific laws or regulations, or is **subject to separate approval or clearance by competent authority**."[263] Based on this definition, it may be gleaned that a SARO only evinces the existence of an obligation and not the directive to pay. Practically speaking, the SARO does not have the direct and immediate effect of placing public funds beyond the control of the disbursing authority. In fact, a SARO may even be withdrawn under certain circumstances which will prevent the actual release of funds. On the other hand, the actual release of funds is brought about by the issuance of the NCA, [264] which is subsequent to the issuance of a SARO. As may be determined from the statements of the DBM representative during the Oral Arguments:[265]

Justice Bernabe: Is the notice of allocation issued simultaneously with the SARO?

xxx xxx xxx

Atty. Ruiz: It comes after. **The SARO, Your Honor, is only the go signal for the agencies to obligate or to enter into commitments. The NCA, Your Honor, is already the go signal to the treasury for us to be able to pay or to liquidate the amounts obligated in the SARO**; **so it comes after**. x x x The NCA, Your Honor, is the go signal for the MDS for the authorized government-disbursing banks to, therefore, pay the payees depending on the projects or projects covered by the SARO and the NCA.

Justice Bernabe: Are there instances that SAROs are cancelled or revoked?

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[263] <http://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2013/Glossary.pdf> (visited November 4, 2013).

[264] Notice of Cash Allocation (NCA). Cash authority issued by the DBM to central, regional and provincial offices and operating units through the authorized government servicing banks of the MDS,* **to cover the cash requirements of the agencies**.

[*] MDS stands for Modified Disbursement Scheme. It is a procedure whereby disbursements by NG agencies chargeable against the account of the Treasurer of the Philippines are effected through GSBs.**

[**] GSB stands for Government Servicing Banks. (*Id.*)

[265] TSN, October 10, 2013, pp. 35-36.

Atty. Ruiz: Your Honor, I would like to instead submit **that there are instances that the SAROs issued are withdrawn by the DBM**.

Justice Bernabe: They are withdrawn?

Atty. Ruiz: Yes, Your Honor xxx. (Emphases and underscoring supplied)

Thus, unless an NCA has been issued, public funds should not be treated as funds which have been "released." In this respect, therefore, the disbursement of 2013 PDAF funds which are only covered by obligated SAROs, and without any corresponding NCAs issued, must, **at the time of this Decision's promulgation**, be enjoined and consequently **reverted to the unappropriated surplus of the general fund**. Verily, in view of the declared unconstitutionality of the 2013 PDAF Article, the funds appropriated pursuant thereto cannot be disbursed even though already obligated, else the Court sanctions the dealing of funds coming from an unconstitutional source.

This same pronouncement must be equally applied to (*a*) the Malampaya Funds which have been obligated but not released — meaning, those merely covered by a SARO — under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of PD 910; and (*b*) funds sourced from the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of PD 1869, as amended by PD 1993, which were altogether declared by the Court as unconstitutional. However, these funds should not be reverted to the general fund as afore-stated but instead, respectively remain under the Malampaya Funds and the Presidential Social Fund to be utilized for their corresponding special purposes not otherwise declared as unconstitutional.

E. Consequential Effects of Decision.

As a final point, it must be stressed that the Court's pronouncement anent the **unconstitutionality** of *(a)* the 2013 PDAF Article and its Special Provisions, *(b)* all other Congressional Pork Barrel provisions similar thereto, and *(c)* the phrases (1) "and for such other purposes as may be hereafter

directed by the President" under Section 8 of PD 910, and (2) "to finance the priority infrastructure development projects" under Section 12 of PD 1869, as amended by PD 1993, must only be treated as **prospective in effect** in view of the **operative fact doctrine.**

To explain, the operative fact doctrine exhorts the recognition that until the judiciary, in an appropriate case, declares the invalidity of a certain legislative or executive act, such act is presumed constitutional and thus, entitled to obedience and respect and should be properly enforced and complied with. As explained in the recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[266] the doctrine merely "reflect[s] awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication."[267] "In the language of an American Supreme Court decision: 'The actual existence of a statute, prior to such a determination [of unconstitutionality], is an **operative fact** and may have consequences which cannot justly be ignored.'"[268]

For these reasons, this Decision should be heretofore applied prospectively.

Conclusion

The Court renders this Decision to rectify an error which has persisted in the chronicles of our history. In the final analysis, the Court must strike down the Pork Barrel System as **unconstitutional** in view of the inherent defects in the rules within which it operates. To recount, insofar as it has allowed

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[266] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013, citing *Serrano de Agbayani v. Philippine National Bank*, 148 Phil. 443, 447-448 (1971).

[267] *Id*.

[268] *Id*.

legislators to wield, in varying gradations, non-oversight, post-enactment authority in vital areas of budget execution, the system has violated the **principle of separation of powers**; insofar as it has conferred unto legislators the power of appropriation by giving them personal, discretionary funds from which they are able to fund specific projects which they themselves determine, it has similarly violated the **principle of non-delegability of legislative power**; insofar as it has created a system of budgeting wherein items are not textualized into the appropriations bill, it has flouted the **prescribed procedure of presentment** and, in the process, **denied the President the power to veto items**; insofar as it has diluted the effectiveness of congressional oversight by giving legislators a stake in the affairs of budget execution, an aspect of governance which they may be called to monitor and scrutinize, the system has equally impaired **public accountability**; insofar as it has authorized legislators, who are national officers, to intervene in affairs of purely local nature, despite the existence of capable local institutions, it has likewise subverted genuine **local autonomy**; and again, insofar as it has conferred to the President the power to appropriate funds intended by law for energy-related purposes only to other purposes he may deem fit as well as other public funds under the broad classification of "priority infrastructure development projects," it has once more transgressed the principle of **non-delegability**.

For as long as this nation adheres to the rule of law, any of the multifarious unconstitutional methods and mechanisms the Court has herein pointed out should never again be adopted in any system of governance, by any name or form, by any semblance or similarity, by any influence or effect. Disconcerting as it is to think that a system so constitutionally unsound has monumentally endured, the Court urges the people and its co-stewards in government to look forward with the optimism of change and the awareness of the past. At a time of great civic unrest and vociferous public debate, the Court fervently hopes that its Decision today, while it may not purge all the wrongs of society nor bring back what has been lost, guides this nation to the path forged by the Constitution so that no one may

heretofore detract from its cause nor stray from its course. After all, this is the Court's bounden duty and no other's.

WHEREFORE, the petitions are **PARTLY GRANTED**. In view of the constitutional violations discussed in this Decision, the Court hereby declares as **UNCONSTITUTIONAL**: **(a)** the entire 2013 PDAF Article; (**b**) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which authorize/d legislators — whether individually or collectively organized into committees — to intervene, assume or participate in any of the various post-enactment stages of the budget execution, such as but not limited to the areas of project identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; (**c**) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which confer/red personal, lump-sum allocations to legislators from which they are able to fund specific projects which they themselves determine; (**d**) all informal practices of similar import and effect, which the Court similarly deems to be acts of grave abuse of discretion amounting to lack or excess of jurisdiction; and (**e**) the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910 and (2) "to finance the priority infrastructure development projects" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, for both failing the sufficient standard test in violation of the principle of non-delegability of legislative power.

Accordingly, the Court's temporary injunction dated September 10, 2013 is hereby declared to be **PERMANENT**. Thus, the disbursement/release of the remaining PDAF funds allocated for the year 2013, as well as for all previous years, and the funds sourced from (1) the Malampaya Funds under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of Presidential Decree

No. 910, and (2) the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, which are, at the time this Decision is promulgated, not covered by Notice of Cash Allocations (NCAs) but only by Special Allotment Release Orders (SAROs), whether obligated or not, are hereby **ENJOINED**. The remaining PDAF funds covered by this permanent injunction shall not be disbursed/released but instead reverted to the unappropriated surplus of the general fund, while the funds under the Malampaya Funds and the Presidential Social Fund shall remain therein to be utilized for their respective special purposes not otherwise declared as unconstitutional.

On the other hand, due to improper recourse and lack of proper substantiation, the Court hereby **DENIES** petitioners' prayer seeking that the Executive Secretary and/or the Department of Budget and Management be ordered to provide the public and the Commission on Audit complete lists/schedules or detailed reports related to the availments and utilization of the funds subject of these cases. Petitioners' access to official documents already available and of public record which are related to these funds must, however, not be prohibited but merely subjected to the custodian's reasonable regulations or any valid statutory prohibition on the same. This denial is without prejudice to a proper mandamus case which they or the Commission on Audit may choose to pursue through a separate petition.

The Court also **DENIES** petitioners' prayer to order the inclusion of the funds subject of these cases in the budgetary deliberations of Congress as the same is a matter left to the prerogative of the political branches of government.

Finally, the Court hereby **DIRECTS** all prosecutorial organs of the government to, within the bounds of reasonable dispatch, investigate and accordingly prosecute all government officials and/or private individuals for possible criminal offenses related to the irregular, improper and/or unlawful disbursement/utilization of all funds under the Pork Barrel System.

This Decision is immediately executory but prospective in effect.

SO ORDERED.

Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, and *Reyes, JJ.,* concur.

Sereno, C.J., Carpio, and *Leonen, JJ.,* see concurring opinion.

Leonardo-de Castro, J., joins the concurring opinion of Justice Carpio.

Abad, *J.*, joins the concurring opinion of A.T. Carpio and the *ponencia*.

Brion, J., joins the opinion of Justice Carpio, subject to *J. Brion's* concurring and dissenting opinion.

Velasco, Jr., J., no part.

CONCURRING OPINION

SERENO, *C.J.*:

I concur in the result of the draft *ponencia*. In striking down the Priority Development Assistance Fund (PDAF) for being unconstitutional and violative of the principle of separation of powers, the Members of this Court have acted as one sober voice of reason amidst the multitude of opinions surrounding the present controversy. It is in the spirit of this need for sobriety and restraint – from which the Court draws its own legitimacy – that I must add essential, clarificatory points.

The Court does not deny that the PDAF had also benefited some of our countrymen who most need the government's assistance. Yet by striking it down, the Court has simply exercised its constitutional duty to re-emphasize the roles of the two political branches of government, in the matter of the needs of the nation and its citizens. The Decision has not denied health and educational assistance to Filipinos; rather, it has emphasized that it is the Executive branch which implements

the State's duty to provide health and education, among others, to its citizens. This is the structure of government under the Constitution, which the Court has merely set aright.

Guided by the incisive Concurring Opinion penned by Justice Florentino Feliciano in the seminal case of *Oposa v. Factoran*, I suggest that the Court circumscribe what may be left for future determination in an appropriate case – lest we inflict what he termed "excessive violence" to the language of the Constitution. Any collegial success in our Decision is measurable by the discipline to rule only on defined issues, and to curb any excess against the mandated limitations of judicial review.

As Justice Feliciano has stated in *Oposa*, in certain areas, "our courts have no claim to special technical competence, experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene."[1] Otherwise, the drastic alternative would be "to propel courts into the uncharted ocean

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[1] *J.* Feliciano stated: "The Court has also declared that the complaint has alleged and focused upon "one specific fundamental legal right — the right to a balanced and healthful ecology" (Decision, p. 14). There is no question that "the right to a balanced and healthful ecology" is "fundamental" and that, accordingly, it has been "constitutionalized." But although it is fundamental in character, I suggest, with very great respect, that it cannot be characterized as "specific," without doing excessive violence to language. It is in fact very difficult to fashion language more comprehensive in scope and generalized in character than a right to "a balanced and healthful ecology."

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When substantive standards as general as "the right to a balanced and healthy ecology" and "the right to health" are combined with remedial standards as broad ranging as "a grave abuse of discretion amounting to lack or excess of jurisdiction," the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy making departments

of social and economic policy making."[2] Thus, I must address the dissonance between what is delineated in the *fallo* of the Decision, as opposed to what some may mistakenly claim to be the implicit consequences of the discussion.

The only question that appears to be a loose end in the *ponencia* was whether we still needed to have an extended discussion on lump-sums versus line-items for this Court to dispose of the main reliefs prayed for, *i.e.*, to strike down portions of the 2013 General Appropriations Act (GAA) regarding the PDAF, the Malampaya Fund or P.D. No. 910, and the Presidential Social Fund or P.D. No. 1869 as amended by P.D. no. 1993 for unconstitutionality.

The remaining concern is founded on the need to adhere to the principle of judicial economy: for the Court to rule only on what it needs to rule on, lest unintended consequences be generated by its extensive discussion on certain long-held budgetary practices that have evolved into full-bodied statutory provisions, and that have even been validated by the Supreme Court in its prior decisions. After, however, it was clarified to the Court by the *ponente* herself that the effect of the *fallo* was only with respect to the appropriation type contained in Article XIV of the 2013 GAA, the unanimous vote of the Court was inevitable. The entire Court therefore supported the *ponencia,* without prejudice to the opinions of various Members, including myself.

As it stands now, the conceptual formulations on lump-sums, while not pronouncing doctrine could be premature and confusing. This is evidenced by the fact that different opinions had different definitions of lump-sum appropriations. Justice Carpio cites Sections 35 and 23 of the Administrative Code to say that the law does not authorize lump-sum appropriations in the GAA.[3]

— the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene." G.R. No. 101083, 30 July 1993, 224 SCRA 792.

[2] *Id*.

[3] Carpio, *J.* (*Concurring Opinion, pp. 22-24)*

But Section 35 itself talks of how to deal with lump-sum appropriations. Justice Brion made no attempt to define the term. Justice Leonen recognized the fact that such discussion needs to be initiated by a proper case.[4]

Even the *ponencia* itself stated that Article XIV of the 2013 GAA is unconstitutional for being, among others, a "prohibited form of lump-sum," which implies that there are allowable forms of lump-sum. This begs the question: what are allowable forms of lump-sum? In the first place, what are lump-sums? Administrative practice and congressional categories have always been liberal about the definition of lump-sums. Has this Court not neglected to accomplish its preliminary task, by first and foremost agreeing on the definition of a lump-sum?

Both Justice Brion[5] and Justice Leonen[6] warned against the possibility of the Court exceeding the bounds set by the actual case and controversy before us. That a total condemnation of lump-sum funding is an "extreme position that disregards the realities of national life," as Justice Brion stated, and that it is by no means doctrinal and "should be clarified further in a more appropriate case," as discussed by Justice Leonen, are correct. In the same spirit, I separately clarify the import of our decision, so that no unnecessary inferences are made.

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[4] Leonen, *J. (Concurring Opinion, pp. 36-37).*

[5] Brion, *J.,* (*Concurring and Dissenting Opinion, p. 17*): "Lest this conclusion be misunderstood, I do not *per se* take the position that all lump sums should be disallowed as this would be an extreme position that disregards the realities of national life. But the use of lump sums, to be allowed, should be within reason acceptable under the processes of the Constitution, respectful of the constitutional safeguards that are now in place, and understandable to the people based on their secular understanding of what is happening in government."

[6] Leonen, *J.*, *Supra* note 4 at 36-37: "I am of the view that our opinions on the generality of the stated purpose should be limited only to the PDAF as it is now in the 2013 General Appropriations Act. The agreement seems to be that that item has no discernible purpose. There may be no need, for now, to go as detailed as to discuss the fine line between "line" and "lump-sum" budgeting."

As worded in the dispositive portion,[7] the following are unconstitutional: first, the entire 2013 PDAF Article; second, all legal provisions, of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions; and third, all informal practices of similar import and effect. The extent of their unconstitutionality has been defined as follows: (1) these authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; (2) these confer/red personal, lump-sum allocations from which they are able to fund specific projects which they themselves determine.

Given the circumscribed parameters of our decision, it is clear that this Court made no doctrinal pronouncement that **all lump-sum appropriations *per se* are unconstitutional.**

At most, the dispositive portion contained the term "lump-sum allocations" which was tied to the specific characterization of the PDAF system found in the body of the decision – that is, "a singular lump-sum amount to be tapped as a source of funding for multiple purposes x x x such appropriation type necessitat[ing] the further determination of **both** the actual amount to be expended **and** the actual purpose of the appropriation which must still be chosen from the multiple purposes stated in the law x x x **[by] individual legislators.**"[8] The *ponencia*, in effect, considers that the PDAF's infirmity is brought about by the confluence of (1) sums dedicated to multiple purposes; (2) requiring post-enactment measures; (3) participated in, not by the Congress, but by its individual Members.

For the Court, it is this three-tiered nature of the PDAF system – as a singular type of lump-sum appropriation for individual legislators – which makes it unconstitutional. Any other type,

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[7] *Decision*, pp. 69-70.

[8] *Decision*, pp. 49-50.

kind, form, or assortment beyond this aggregated formulation of "lump-sum allocation" is not covered by our declaration of unconstitutionality.

Although Commission on Audit Chairperson Maria Gracia M. Pulido Tan recommended the adoption of a "line by line budget or amount per proposed program, activity or project, and per implementing agency:" such remains a mere recommendation. Chairperson Tan made the recommendation to relay to the Court the operational problems faced by state auditors in the conduct of post-audit examination. A policy suggestion made to solve a current problem of budget implementation cannot be the legal basis upon which unwarranted legal conclusions are anchored.

Briefly, I fully support the following pronouncements:

First, that the 2013 Priority Development Assistance Fund (PDAF) is unconstitutional for violating the separation of powers, and;

Second, that the PDAF is unconstitutional for being an undue delegation of legislative functions.

However, I believe that the discussions on lump-sum appropriations, line-item appropriations, and item-veto power are premature.

These discussions were wrought, to my mind, by the blurring of the limits of the power of judicial review, the role of the judiciary in the constitutional landscape of the State, and of the basic principles of appropriation law. Above all, this Court must remember its constitutional mandate, which is to interpret the law and not to create it. We are given the power, during certain instances, to restate the constitutional allocation to the other two branches of government; but this power must be exercised with sufficient respect for the other powers. The Members of this Court are not elected by the people. We are not given the honoured privilege to represent the people in law-making, but are given the sacred duty to defend them by upholding the Constitution. This is the only path the judiciary can tread. We cannot advocate; we adjudicate.

To arrive at an unwarranted conclusion, *i.e*. that all lump-sum appropriations are invalid, whether in the 2013 GAA only or in all appropriation laws, is not sufficiently sensitive to the process of deliberation that the Members of this Court undertook to arrive at a significant resolution. More importantly, this inaccurate inference will jeopardize our constitutional limitation to rule only on actual cases ripe for adjudication fully litigated before the Court.

I. COEQUALITY OF THE THREE BRANCHES NECESSITATES JUDICIAL RESTRAINT

In any dispute before this Court, judicial restraint is the general rule.

Since the *ponencia* crafted a ruling on a highly technical matter, it is only fitting that the nuances, implications, and conclusions on our pronouncement be elucidated. My views are guided by the inherent restraint on the judicial office; as unelected judges, we cannot haphazardly set aside the acts of the Filipino people's representatives. This is the import of the requirement for an actual case or controversy to exist before we may exercise judicial review, as aptly noted by the pre-eminent constitutionalist, former Associate Justice Vicente V. Mendoza:

> Insistence on the existence of a case or controversy before the judiciary undertakes a review of legislation gives it the opportunity, denied to the legislature, of seeing the actual operation of the statute as it is applied to actual facts and thus enables it to reach sounder judgment.[9]

In fact, the guiding principle for the Court should not be to "anticipate a question of constitutional law in advance of the necessity of deciding it,"[10] but rather to treat the function of judicial review as a most important and delicate matter; after all, we cannot replace the wisdom of the elected using our own, by adding qualifications under the guise of constitutional

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[9] VICENTE V. MENDOZA, JUDICIAL REVIEW, p. 92 [hereinafter MENDOZA].

[10] *Id*. at 94, citing *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936).

"interpretation." While it is true that the Constitution must be interpreted both in its written word and underlying intent, the intent must be reflected in taking the Constitution itself as one cohesive, functional whole.

> 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.[11]

In other words, alongside deciding what the law is given a particular set of facts, **we must decide "what not to decide."**[12] Justice Mendoza likens our Supreme Court to the U.S. Supreme Court, in that "its teachings…x x x have peculiar importance because it interprets principles of fact and of value, not merely in the abstract, but in their bearing upon the concrete, immediate problems which are at any given moment puzzling and dividing us… For this reason the court holds a unique place in the cultivation of our national intelligence."[13]

Thus, in matters such as the modality to be employed in crafting the national budget, this Court must be sensitive of the extent and the limits of its pronouncements. As Justice Laurel instructively stated, the structure of government provided by the Constitution sets the general metes and bounds of the powers exercised by the different branches; the judiciary cannot traverse areas where the charter does not allow its entry. We cannot

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[11] *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 and 83815, 22 February 1991, 194 SCRA 317, 325.

[12] MENDOZA, citing Paul A. Freund, *supra* note 9 at 95.

[13] *Id.*, citing Alexander Meiklejohn.

interpret the Constitution's silence in order to conform to a perceived preference on how the budget should be run. After all, it is the Constitution, not the Court, which has "blocked out with deft strokes and in bold lines," the allotment of power among the different branches, *viz*:

> (T)his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. **Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the governments of the government.**
>
> But much as we might postulate on the internal checks of power provided in our Constitution, it ought not the less to be remembered that, in the language of James Madison, the system itself is not "the chief palladium of constitutional liberty . . . the people who are authors of this blessing must also be its guardians . . . their eyes must be ever ready to mark, their voice to pronounce . . . aggression on the authority of their constitution." In the last and ultimate analysis, then, must the success of our government in the unfolding years to come be tested in the crucible of Filipino minds and hearts than in consultation rooms and court chambers."[14] (Emphasis supplied)

Wholesale rejection of lump-sum allocations contrives a rule of constitutional law broader than what is required by the precise facts in the case.

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[14] *Angara v. Electoral Commission*, 63 Phil. 139, 156-159 (1936).

To conclude that a line-item budgeting scheme is a matter of constitutional requirement is to needlessly strain the Constitution's silence on the matter. Foremost among the duties of this Court is, as previously discussed, to proceed based only on what it needs to resolve. Hence, I see no need to create brand new doctrines on budgeting, especially not ones that needlessly restrict the hands of budget-makers according to an apparently indiscriminate condemnation of lump-sum funding. To further create a constitutional obligation of the Executive and Legislative to follow a line-item budgeting procedure, and — more dangerously — give it the strength of a fundamental norm, goes beyond what the petitioners were able to establish, and ascribes a constitutional intent where there is none.

Again, the Court's power of judicial review must be confined only to dispositions which are constitutionally supportable. Aside from the jurisdictional requirements for the exercise thereof, other guidelines are also mandated, i.e., that the question to be answered must be in a form capable of judicial resolution; that as previously discussed, the Court will not anticipate a question in advance of the necessity of deciding it; and, most relevant to the present case, that **the Court "will not formulate a rule of constitutional law broader than is required by the precise facts on which it is to be applied."**[15]

Given a controversy that raises several issues, the tribunal must limit its constitutional construction to the precise facts which have been established. This rule is most applicable "in determining whether one, some or all of the remaining substantial issues should be passed upon."[16] Thus, the Court is not authorized to take cognizance of an issue too far-removed from the other.

The above rule is bolstered by the fact that petitioners have raised other grounds more supportable by the text of the Constitution.

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[15] *Demetria v. Alba,* 232 Phil. 222 (1987), citing *Liverpool. N.Y. & P.S.S. Co. v. Emigration Commissioners*, 113 U.S. 33, 39.

[16] *Id*.

The *lis mota* or the relevant controversy[17] in the present petitions concerns the principles of separation of powers, non-delegability of legislative functions, and checks and balances in relation to the PDAF as applied only to Article XLIV of the 2013 General Appropriations Act or R.A. No. 10352.

In the main, the Court gave three reasons to support the conclusion that the PDAF is unconstitutional.

First, the *ponencia* held that post-enactment measures embedded in the PDAF – project identification, fund release, and fund realignment – are not related to legislative duties, and hence, are encroachments on duties that properly belong to the executive function of budget execution.[18]

The *ponencia* laid the demarcation between the three branches of government, and emphasized the relevant doctrine in *Abakada Guro Party List v. Purisima*,[19] namely: "the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional." Undoubtedly, this holding determines the *lis mota* of the case as it squarely responded to petitioners' claim that the PDAF violated the principle of separation of powers.[20]

Second, the *ponencia* made a finding that these post-enactment measures are effectively exercised by the individual legislators, and not by the Congress as a legislative body.[21]

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[17] In *Macasiano v. National Housing Authority*, G.R. No. 107921, 1 July 1993, 224 SCRA 236: It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that, question is properly raised and presented in appropriate cases and is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented.

[18] *Decision,* pp. 40-41.

[19] 584 Phil. 246, 289-290 (2008).

[20] Urgent Petition for *Certiorari* and Prohibition, pp. 3, 16.

[21] *Decision,* p. 45.

The *ponencia* struck down the PDAF on the basis of the general principle of non-delegability of rule-making functions lodged in the Congress.[22] It then ruled that the individual participation of the Members of the Congress is an express violation of this principle. Again, this ruling is already determinative of the *lis mota* of the case, as it directly addressed petitioners' principal claim that the PDAF unduly delegates legislative power.[23]

Given that the *lis mota* has been squarely disposed of on these thorough, responsive, and determinative constitutional grounds, it was unnecessary to stretch the discussion to include the propriety of lump-sum appropriations in the budget.

The questions surrounding lump-sum appropriations, in the context of how they arose during the interpellation, are not legal questions. Unlike the first two reasons advanced by the *ponencia* in finding for the unconstitutionality of the PDAF, the invalidity of lump-sum appropriations finds no textual support in the Constitution. By its very words, the Constitution does not prohibit lump-sum appropriations. In fact, the history of legislative appropriations suggests otherwise.

As it stands now, the plain text of the Constitution and the Revised Administrative Code renders the modality of budgeting to be a political question.

The Constitution contains provisions that regulate appropriation law, namely: it must originate from the House of Representatives,[24] its items can be vetoed by the President,[25] it is initiated by the Executive,[26] and money can only be paid out of the Treasury by virtue of appropriations provided by

[22] *Id.* at 46.

[23] Urgent Petition for *Certiorari* and Prohibition, pp. 4, 16.

[24] 1987 CONSTITUTION, Article VI, Section 24.

[25] *Id.*, Article VI, Section 27 (2).

[26] *Id.*, Article VII, Section 22.

law.[27] Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.[28]

The form, content, and manner of preparation of the budget must be prescribed by law, and no provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein, and such provision or enactment shall be limited in its operation to the appropriation to which it relates.[29] Procedures involving appropriations must be uniform.[30] A special appropriations bill must be specific in purpose and supported or supportable by funds.[31] Only the heads of the branches of government, as well as the constitutional commissions and fiscally independent bodies may be authorized to augment items in appropriations.[32] Discretionary funds are regulated.[33] Appropriations of the previous year are automatically revived if Congress fails to pass a new law.[34] Appropriations for fiscally autonomous agencies are released automatically.[35] Furthermore, in relation to all this, the Constitution gives to the President the duty to faithfully execute the law.[36]

Beneath this framework runs a sea of options, from which the two political branches must carve a working, functioning fiscal system for the State. So long as these basic tenets are maintained, the political branches can ply the route of the way

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[27] *Id*., Article VI, Section 29(1).

[28] *Id*., Article VI, Section 25(1).

[29] *Id*., Article VI, Section 25(1) & (2).

[30] *Id*., Article VI, Section 25(3).

[31] *Id*., Article VI, Section 25(4).

[32] *Id*., Article VI, Section 25(5).

[33] *Id*., Article VI, Section 25(6).

[34] *Id*., Article VI, Section 25(7).

[35] *Id*., Article X, Section 6; Article IX-A, Section 5; Article XIII, Section 17.

[36] *Id*., Article VII, Sections 17 & 5.

they deem appropriate to achieve the purpose of the government's budget. What are thus clearly set forth are requirements for appropriations, and not the modalities of budgeting which fall squarely under the technical domain of the Executive branch, namely, the Department of Budget and Management (DBM).

When the Constitution gives the political branches a "textually demonstrable constitutional commitment of the issue[,]"[37] or the lack of "judicially discoverable and manageable standards for resolving it[,]"[38] or even the "impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government[,]"[39] then there is a political question that this Court, in the absence of grave abuse of discretion, cannot conclude.[40]

Apart from the provisions already discussed, there are no constitutional restrictions on how the government should prepare and enact its budget. In fact, these restrictions are mostly procedural and not formal. If the Constitution does not impose a specific mode of budgeting, be it purely line-item budgeting, purely lump-sum budgeting, a mixture of the two, or something else entirely, *e.g.* zero balance lump-sum, loan repayment schemes, or even performance-informed budgeting, then neither should this Court impose the line-item budgeting formula on the Executive and Legislative branches.

This confusion appears to have stemmed from the highly limited exchanges in the oral arguments between one of the petitioners and the Chairperson of the Commission on Audit (COA), on one hand, and a Member of the Court, on the other. The argument progressed on the basis of the Member's own suggestion that the item-veto power of the President is negated by lump-sum

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[37] MENDOZA, *supra* note 9 at 314.

[38] *Id*.

[39] *Id*.

[40] This has been exhaustively discussed by former Chief Justice, then-Associate Justice Puno, in his concurring opinion in *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000).

budgeting despite the fact that it was not the very issue identified in the petitions. While it is true that the COA Chairperson opined that line-item is preferred, that statement is an operational standard, not a legal standard. It cannot be used to support a judicial edict that requires Congress to adopt an operational standard preferred, even if suggested by the COA Chairperson.

The Court never asked Congress what its response would be to a wholesale striking down of lump-sum budgeting. It never asked the DBM whether it could submit an expenditure proposal that has nothing but line-item budgets. To reject even very limited forms of lump-sum budgeting without asking whether it can even be operationally done within the very tight timeline of the Constitution for preparing, submitting, and passing into law a national budget is simply plain wrong and most unfair. *It is as if this Court is trying to teach both political branches — who constitute the nation's top 300 elected officials — what they can and cannot do, in a manner that will completely take them by surprise, as lump-sum budgeting was never the lis mota in this case.* At the very least, this is not the case for that matter, if eventually this matter were also to be decided.

II. MODALITIES UNDER THE APPROPRIATIONS LAW

Government accounting takes place through concurrent processes. First is the call to all agencies, including fiscally independent ones, such as the Supreme Court. The deadline for this is usually in March or April. Then the proposals are all collated in a comprehensive document, and vetted by the DBM, and submitted to the President for approval. Alongside this, the government makes a schedule of revenues, with all its economic assumptions and growth targets. Next is the budget formulation, which results in a proposed national expenditure program (NEP) also from the Executive.

The duty to formulate the above documents is given by law to the DBM, in coordination with the National Economic Development Authority (NEDA), the Department of Finance

(DOF), and all the various agencies of the government.[41] After the NEP is finalized, it is submitted to the House of Representatives' Committee on Appropriations no later than thirty days from the opening of every regular session.[42] Thereupon the Committee crafts a draft General Appropriations Act on the basis of the NEP for the specified fiscal year, which is passed on to the Senate Committee on Finance.[43] The Senate is given the power to propose amendments to the House bill under the 1987 Constitution.[44] Finally, after going through the committees involved, which potentially includes a bicameral conference committee for the national budget, the bill is passed into law through the usual course of legislation.

Once the appropriations law is passed, the day-to-day management of the national budget is left to the DBM and DOF, in accordance with the appropriate rules and regulations. Simultaneously, the COA is tasked to conduct auditing and post-auditing throughout the fiscal year, with a final audit report presented to the President and Congress at the end of such year.[45]

In this whole process, an appropriation can be made and has been made at the lump-sum level. While not initially broken down in the budget formulation aspect of the entire expenditure process, the individual expenditures sourced from these lump-sum appropriations are broken down in journal entries after the fact,[46] during the auditing process of the COA, which has the power to issue notices of disallowance should it find a

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[41] ADMINISTRATIVE CODE, Executive Order No. 292, Book VI.

[42] 1987 CONSTITUTION, Article VII, Section 22.

[43] SENATE RULES, Rule X, Section 13 (4).

[44] 1987 CONSTITUTION, Article VI, Section 24.

[45] *Id.*, Article IX-D, Section 4.

[46] See Generally Accepted Accounting Principles and International Financial Reporting Standards, adopted through the Philippine Financial Reporting Standards. *See* http://www.picpa.com.ph/Financial-Reporting-Standards-Council/Philippine-Financial-Reporting-Standards/Philippine-Financial-Reporting-Standards.aspx (last accessed 17 November 2013).

particular expenditure to have been improper under law and accounting rules.

Consequently, a lump-sum appropriation can still be audited and accounted for properly. This recognizes the fact that lump-sum appropriating is a formal concern of the COA, and all other agencies and instrumentalities of the government that take part in the appropriations process. In fact, the Administrative Code gives formal discretion to the President, in the following manner:

> Section 12. Form and Content of the Budget. – xxx The budget shall be presented to the Congress in such form and content as may be approved by the President and may include the following: xxx[47]

It thus appears from the perspective of this process, that the Legislature never considered the form of the budget as being constitutionally infirm for containing lump-sums, an attitude engendered from the birth of the 1987 Constitution, that has lasted up until this case was argued before this Court. It is perplexing to see any eager discussion at this opportunity to make pre-emptive declarations on the invalidity of the lump-sum budgeting form, when no party has raised the issue in the principal petitions.

Lump-sum appropriations are not textually prohibited by the Constitution.

The purported basis for this preference for line-item is that the item-veto power of the President is negated by the existence of lump-sum appropriations. This implication, however, oversimplifies the concept of the item-veto, as understood in the wording of the Constitution as well as jurisprudence.

In the first place, all cases in which this Court ruled on the item-veto power were generated by an actual controversy. In stark contrast, the veto power has *never* been raised as an issue in this case until raised as a possible issue in the oral arguments.

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[47] ADMINISTRATIVE CODE, Executive Order No. 292, Book VI, Sec. 12.

Neither the President (who should be invoking a direct injury if the power were allegedly denied him) nor Congress (whose product would then be tampered with by a presidential veto) is complaining. It behooves this Court to step back and not needlessly create a controversy over the item-veto power when there is none.

The item veto-power of the Governor-General in past appropriation laws originating from the United States was given to the President, Prime Minister, and President respectively in the 1935, 1973, and 1987 Constitutions.[48] The most recent incarnation is stated thusly:

> The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.[49]

It is noteworthy that the veto refers to "any particular item or items" and not "line-items" or "earmarked appropriations." In *Gonzales v. Macaraig*,[50] we declared that the term "item" in the Constitution referred to a specific appropriation of money, dedicated to a stated purpose, and not a general provision of law:

> The terms item and provision in budgetary legislation and practice are concededly different. **An item in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill. It is an indivisible sum of money dedicated to a stated purpose** The United States Supreme Court, in the case of Bengzon v. Secretary of Justice declared "that an 'item' of an appropriation bill obviously **means an item which in itself is a specific appropriation of money, not some general provision of law,** which happens to be put into an appropriation bill." (Citations omitted, emphasis supplied).[51]

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[48] 1935 CONSTITUTION, Article VI, Section 20(3); 1973 CONSTITUTION, Article VIII, Section 20(2); 1987 CONSTITUTION, Article VI, Section 27(2).

[49] 1987 CONSTITUTION, Article VI, Section 27(2).

[50] G.R. No. 87636, 19 November 1990, 191 SCRA 452.

[51] *Id*. at 465.

The Constitution's "item" is, therefore, an allocation of money for a stated purpose, as opposed to a general provision in the appropriations law that does not deal with the appropriation of money, or in the words of *Gonzales*, "inappropriate provisions." Thus, a lump-sum appropriation is an item for purposes of the Presidential veto, considering the fact that it is an appropriation of money for a stated purpose. The constitutional provision does nothing to prohibit the appropriation apart from that. As will be discussed, this is the crucial point, because a lump-sum item as defined does not, as it stands, appear to violate the requirement of stated purpose and specificity.

This Court has, in fact, already ruled on the status of lump-sum appropriation. The vetoed item that was the subject of dispute in *Bengzon v. Drilon*[52] was a lump-sum appropriation for the "general fund adjustment," and that it was "**an item** which appropriates ₱500,000,000.00 to enable the Government to meet certain unavoidable obligations which may have been inadequately funded by the specific items for the different branches, departments, bureaus, agencies, and offices of the government."[53] Since the Court itself in *Bengzon* had defined lump-sum provisions to be constitutional "items," then the item-veto power of the President against lump-sum funds remains intact.

It has been stated that the President's item-veto power is hampered when the "pork barrel" is lumped together with beneficial programs, which thus destroys the check and balance between the Executive and Legislative. This view seems to confuse the actual definition of lump-sum items (as discussed *infra*, items with more than one object) with line-items (singular object). Lump-sum items are not items without a specific purpose. Their stated purpose simply allows the funds to be used on multiple objects. "Specific" should not be equated with "singular." The former is an aspect of quality, the latter quantity.[54] Singularity

[52] G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[53] *Id*. at 144.

[54] Specific means "special or particular." Accessible at http://www.merriam-webster.com/dictionary/specific (last accessed 18 November

and multiplicity qualify the word "object" and not purpose, which are wholly different since a purpose can refer to several objects, *e.g.*, the use of the plural "projects" instead of "project."

In fact, the law journal article cited in the Separate Opinion of Justice Carpio, which was cited to define the "pork barrel" as an "appropriation yielding rich patronage benefits," *itself* acknowledges the validity of lump-sum budgeting, citing the United States' own budgeting practice. It goes even further to highlight the disadvantages inherent in adopting a purely line-item budget, *viz.:*

> Congress has traditionally budgeted appropriations so that each encompasses several projects or activities. Such lump-sum budgeting allows the President and administrative agencies to determine how funds within and sometimes between budget accounts should be spent. Were Congress instead to appropriate narrowly by line-item the President would, in the absence of an item veto, lose much of the discretion and flexibility he modernly enjoys at the appropriation stage.
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> **Lump-sum budgeting allows the President not only to selectively allocate lump sums, but also to transfer funds between budget accounts when necessary to save programs that might otherwise perish because Congress appropriated too little or was unable to anticipate unforeseen developments. More significantly for purposes of comparison with a line-item veto, lump-sum budgeting also authorizes the President to shift funds within a single appropriation account by reprogramming. Unlike a transfer of funds, which typically requires either statutory support or a national emergency, reprogramming is subject to mostly non-statutory controls "to be discovered in committee reports, committee hearings, agency directives, correspondence between subcommittee chairmen and agency officials, and also gentlemen's agreements and understandings that are not part of the public record."** The justification for reprogramming is congressional recognition "that in most instances it is desirable to maintain executive flexibility to shift around funds within a particular lump-sum appropriation

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2013); Singular means "showing or indicating no more than one thing." Accessible at http://www.merriam-webster.com/dictionary/singular (last accessed 18 November 2013).

account so that agencies can make necessary adjustments for 'unforeseen developments, changing requirements... and legislation enacted subsequent to appropriation.'"[55] (Emphasis supplied, citations omitted.)

To restate, *Gonzales* outlined the following legal requirements for valid appropriations on budget items:

First, that an item is "an indivisible sum of money dedicated to a **stated purpose**."[56]

Second, that an item is in itself is a "**specific appropriation** of money, not some general provision of law."[57]

There is therefore no condition that the purpose be singular.[58] As will be demonstrated, the difference between a lump-sum and line-item is just the number of objects a lump-fund may have. After all, even if the purpose has multiple objects, it is still a stated purpose.

The use of the COA Memorandum[59] to buttress the argument that the Constitution requires line-item budgeting is misleading. Again, even if the COA Chairperson prefers line-item budgeting, such preference is not equivalent to a legal standard sufficient for this Court to strike down all forms of lump-sum budgeting.

At this point, there appears to be an attempted transformation of policy recommendations into legal imperatives. No matter how desirable these recommendations on adopting a purely line-item budget may sound – and they may turn out to be the best alternative – we cannot equate seeming consensus on good and desirable policy, with what the law states. The choice of policy

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[55] DENISE C. TWOMEY, *The Constitutionality of a Line-Item Veto: A Comparison with Other Exercises of Executive Discretion Not to Spend,* 34 GOLDEN GATE U.L. REV. 305, 338 (1989).

[56] *Supra* note 52 at 144.

[57] *Supra* note 52 at 143-144.

[58] *Decision,* p. 48.

[59] COA Memorandum, dated 17 October 2013, pp. 22-23 & 25-26.

is not ours to make, no matter how intelligent or practical we deem ourselves to be.

In any case, prevailing jurisprudence allows for the conclusion that the item-veto power of the President cannot be impaired.

The Court in *Gonzales*[60] described the three modes of veto available to the President. The first is the veto of an entire bill under Article VI, Section 27(1). The second is the item-veto in an appropriation, revenue, or tariff bill. The third is an iteration of the second, which is the veto of provisions as previously defined by the 1935 Constitution. With respect to the second mode of veto, *Gonzales* extends the application of the item veto power to "inappropriate provisions," as we stated:

> Consequently, Section 55 (FY '89) and Section 16 (FY '90) although labelled as "provisions," are actually inappropriate provisions that **should be treated as items for the purpose of the President's veto power**.[61] (Emphasis supplied, citations omitted)

Thus, even if we were to assume that a lump-sum appropriation is not an "item" as defined by *Gonzales*, as previously expounded, for purposes of the Presidential veto, it is still an item, and the item-veto power appears to remain unimpaired by virtue of jurisprudential precedent.

To summarize, whether the appropriation is a line-item, as claimed by petitioners, or a lump-sum appropriation item, as proposed in an Opinion, or even a general provision of law that is unrelated to the appropriation law, the power of the President to exercise item-veto is intact. Whichever interpretation we accept as to the nature of lump-sum appropriations – though as I have shown, they are properly appropriation "items" – is irrelevant.

As will be discussed *infra,* an analysis of the nature of a lump-sum appropriation can clear the apparent misunderstanding on lump-sums.

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[60] *Supra* note 52.

[61] *Supra* note 52 at 467.

History of Appropriations and the Federal Legacy

Historically, the constitutional provisions on appropriations were adopted from the United States' Jones Law of 1916,[62] which governed the Philippines until its transition into a Commonwealth and, later on, a fully independent state. Section 3(m) of the law provides:

(m) *How public funds to be spent.*–That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

Section 19(b) expressed what is now coined the "item-veto" power of the President, in this manner:

(b) *The veto on appropriations.*–The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the Legislature without his approval.

In fact, the present mechanism that retains the previous year's appropriation law in case the Legislature fails to pass a new one was also based on the Jones Law, *viz*:

(d) *Revisal of former appropriations.*– If at the termination of any fiscal year the appropriations necessary for the support of Government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the Legislature shall act in such behalf the treasurer shall, when so directed by the Governor-General, make the payments necessary for the purposes aforesaid.

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[62] AN ACT TO DECLARE THE PURPOSE OF THE PEOPLE OF THE UNITED STATES AS TO THE FUTURE POLITICAL STATUS OF THE PEOPLE OF THE PHILIPPINE ISLANDS, AND TO PROVIDE A MORE AUTONOMOUS GOVERNMENT FOR THOSE ISLANDS, Public Act No. 240, 29 August 1916 [hereinafter Jones Law]

Even the NEP's procedure was conceptualized long before the 1987 Constitution was drafted:

> [The Governor-General] shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill.[63]

Clearly then, our current constitutional provisions on appropriations were derived from the United States' own concept of federal appropriations. In adopting their budgetary methodology, we have also adopted the basic principles that govern how these appropriations are to be treated.

Principles of Federal Appropriations

The Red Book[64] on federal appropriations distinguishes a "lump-sum" appropriation from an earmark, or "line-item" appropriation. It defines a lump-sum appropriation as "one that is made to cover a number of **specific programs, projects, or items**[,]"[65] which may be as few as only two programs. In the language of appropriation law, the essence of a lump-sum appropriation is that it is available for more than one object,[66] which refers to what the money allocated can be used for.

A line-item appropriation, on the other hand, is only for a single specific object described by the law.[67] This distinction is very precise. It is the singularity of the object for which the allocation is made that makes an appropriation "line-item," and its plurality is what makes it "lump-sum."

Taking the requirements of stated purpose and specificity of amount and applying them to this definition of lump-sum, we can easily conclude that a lump-sum falls within the parameters

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[63] Jones Law, Section 21(b).

[64] PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, Vol. I, II, & III. GAO-04-261SP (2004); GAO-06-382SP (2006); GAO-08-978SP (2008)

[65] GAO-06-382SP Appropriations Law - Vol. II, pp. 6-5.

[66] *Id*.

[67] *Id*.

of *Gonzales*. Its purpose, although referring to more than one object, is stated by the text of the appropriation law. The amount of the appropriation is a specific amount.

The key factor that makes lump-sum appropriations desirable for the United States Legislature is the flexibility[68] in the use of the appropriation. As Justice Souter stated in *Lincoln v. Vigil*, a lump-sum appropriation's purpose is to give the agency discretion, and allow it to remain flexible in meeting whatever contingencies arise:

> The allocation of funds from a lump-sum appropriation is another administrative decision traditionally regarded as committed to agency discretion. **After all, the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way.**[69] (Emphasis supplied)

The use of lump-sum appropriations inherently springs from the reality that the government cannot completely predict at the beginning of a fiscal year where funds will be needed in certain instances. Since Congress is the source of the appropriation law in accordance with the principle of separation of powers, it can craft the law in such a way as to give the Executive enough fiscal tools to meet the exigencies of the year. Lump-sum appropriations are one such tool. After all, the different agencies of government are in the best position to determine where the allocated money might best be spent for their needs:

> [A]n agency's allocation of funds from a lump-sum appropriation requires "a complicated balancing of a number of factors which are peculiarly within its expertise": whether its "resources are best spent" on one program or another; whether it "is likely to succeed" in fulfilling its statutory mandate; whether a particular program "best fits the agency's overall policies"; and, "indeed, whether the agency has enough resources" to fund a program "at all."[70]

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[68] *Conference of Maritime Manning Agencies v. POEA*, 313 Phil. 592 (1995).

[69] *Lincoln v. Vigil*, 508 U.S. 182 (1993).

[70] *Id*.

Thus, the importance of allowing lump-sum appropriations for budgetary flexibility and good governance has been validated in other jurisdictions. The evolution of the government's budgeting from a small amount in past decades, into what is now a massive undertaking that contains complexities, and involves an exponentially larger sum than before, suggests that a mixture of lump-sum and line-item budgeting within the same appropriation law could also be a feasible form of budgeting. At the very least, this Court owes it to Congress to ask it the question directly, on whether an exclusively line-item budgeting system is indeed feasible. Simply put, there appears, even in the United States, a necessity for the inclusion of lump-sum appropriations in the budget:

> Congress has been making appropriations since the beginning of the Republic. In earlier times when the federal government was much smaller and federal programs were (or at least seemed) much simpler, very specific line-item appropriations were more common. In recent decades, however, as the federal budget has grown in both size and complexity, **a lump-sum approach has become a virtual necessity**.[71] (Emphasis supplied)

The Legislative Branch foresaw that these types of appropriations had to be regulated by law, since "a fundamental principle of appropriations law is that where Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions."[72] Without statutory regulation, an untrammelled system of lump-sum appropriations would breed corruption, or at the very least, make the Executive less circumspect in preparing and proposing the budget to the Legislature. Hence, Congress promulgated the Administrative Code of 1987,[73] which regulates, in its provisions on budgeting, lump-sum funds:

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[71] GAO-06-382SP Appropriations Law - Vol. II, pp. 6-5.

[72] *Lincoln v. Vigil*, 508 U.S. 182 (1993), citing *LTV Aerospace Corp.*, 55 Comp.Gen. 307, 319 (1975).

[73] EXECUTIVE ORDER NO. 292, "Administrative Code of 1987," 25 July 1987.

Section 35. *Special Budgets for Lump Sum Appropriations.*— Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the President, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover the cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.

In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour.

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Section 47. *Administration of Lump Sum Funds.* — The Department of Budget shall administer the Lump-Sum Funds appropriated in the General Appropriations Act, except as otherwise specified therein, including the issuance of Treasury Warrants covering payments to implementing agencies or other creditors, as may be authorized by the President.[74]

Additionally, the Administrative Code provides that certain items may be lump-sum funds, such as the budget for coordinating bodies,[75]

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[74] *Id*., Book VI, Chapter 5.

[75] *Id*., Book VI, Sec. 18.

the budget for the pool of Foreign Service officers,[76] and merit increases.[77]

As a result, this Court should not read from the text of the Constitution and the law, a mandate to craft the national budget in a purely line-item format. To do so would be equivalent to judicial legislation, because the Court would read into the law an additional requirement that is not supported by its text or spirit of the law, in accordance with its own perceived notion of how a government budget should be formulated. If we rule out lump-sum budgeting, what happens then to the various provisions of the law, principally the Administrative Code, that govern lump-sum funds? Is there such a thing as a collateral constitutional attack? Too many questionable effects will result from a sledgehammer denunciation of lump-sum appropriations. This Court does not even know how many lump-sum appropriation laws will be affected by such a ruling. Thus, it is important to emphasize that the *fallo* only afflicts the 2013 GAA, Article XIV.

Practical consequences of the unwarranted conclusions on lump-sums in the Separate Opinion

The baseless conclusion that the lump-sum characteristic, taken alone, results in the unconstitutionality of the law that carries it, can create additional dangers as illustrated below.

Closer to today's events, the Executive would have immediately been prevented from using the lump-sum funds such as Calamity Funds – which under the Federal Appropriations Law is a 'lump-sum' – to alleviate the State of National Calamity[78] brought about by super typhoon Yolanda. With the intensity of a signal number four storm, the first one in 22 years[79] and considered

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[76] *Id*., Book IV. Sec. 56.

[77] *Id*., Book VI. Sec. 61.

[78] Proclamation No. 682, Declaring a State of National Calamity, 11 November 2013.

[79] http://www.rappler.com/newsbreak/iq/43058-storm-signal-number-ph-history (Last accessed 18 November 2013)

the biggest super typhoon in world history,[80] Yolanda is one such unforeseen event for which lump-sum funds are intended. In other words, lump-sum appropriations are currently the form of preparation Congress saw fit to address these disasters. This is the point recognized precisely in the law journal article cited by Justice Carpio: there is congressional recognition that lump-sum appropriation allows the President and administrative agencies the executive flexibility to make necessary adjustments for "unforeseen developments, changing requirements . . . and legislation enacted subsequent to appropriations."[81] If the problem is a lack of a definition, or a confusion pertaining to the same, then let the Court define it when the definition itself becomes the legal issue before us.

In addition, the Executive and its line agencies would be deprived of the ability to make use of *additional* sources of funds. Suppose that a source of revenue was anticipated by government, the exact amount of which could not be determined during the budget preparation stage. Suppose also that Congress agreed upon items which had to be implemented once the funding materializes, and that this funding could support more than one budget item, as is usually the case with major financing arrangements negotiated with the World Bank, the Asian Development Bank and other development partners. Can Congress be prevented from deciding to include in the appropriations law a provision for these items, to be funded by the said additional sources? Should the Court thereby deprive the Legislature of its discretion to bestow leeway upon the Executive branch, so that it may effectively utilize the funds realized only later on? Congress, in this case, cannot be reasonably expected to predetermine all sources of revenue, and neither can it pinpoint the items to be prioritized with a rigid specificity, since it is only within the budget execution stage that the financing materialized.

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[80] http://edition.cnn.com/2013/11/08/world/asia/philippines-typhoon-destruction/ (Last accessed 18 November 2013)

[81] *Supra* note 55 at 338-339.

It is also respectfully suggested that any discussion on "savings" and the power to augment under the Constitution is not an issue in this case and that said discussion might in fact demonstrate the unwarranted potential of over-extending this Court's reach into matters that are not *lis mota*. My misgivings on discussing "savings," which is the main issue of a pending matter before us involving the Disbursement Allocation Program (DAP),[82] impels me to caution the Court: a narrow approach to the PDAF better serves the interest of the rule of law. Any reformulation or redefinition of the powers under Article VI, Section 25(5) of the Constitution, *i.e*. transfer and augmentation of appropriations, is improper in this case, and better ventilated before us in the course of resolving DAP petitions.

In light of the above, I cast my vote to **CONCUR** in the *ponencia*, but with a strong emphasis that this Court has not thereby made an invalidation of any lump-sum appropriation except in the form that was described in the *fallo*.

CONCURRING OPINION

CARPIO, *J.*:

This is again another time in our nation's history when this Court is called upon to resolve a grave national crisis. The corruption in the pork barrel system, as starkly documented in the Commission on Audit Report on the 2007-2009 Priority Development Assistance Fund,[1] has shown that there is something terribly wrong in the appropriation and expenditure of public funds. Taxes from the hard-earned wages of working class Filipinos are brazenly looted in the implementation of the annual appropriation laws. The Filipino people are in despair, groping for a way to end the pork-barrel system. The present petitions

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[82] *Syjuco, et al. v. Secretary Abad, et al.*, G.R. Nos. 209135-36.

[1] Special Audits Office Report No. 2012-03, entitled Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP), http://coa.gov.ph/GWSPA/2012/SAO_Report2012-03_PDAF.pdf.

test the limits of our Constitution – whether this grave national crisis can be resolved within, or outside, the present Constitution.

For resolution in the present cases are the following threshold issues:

1. Whether Article XLIV of Republic Act No. 10352 or the 2013 General Appropriations Act (GAA), on the Priority Development Assistance Fund (PDAF), violates the principle of separation of powers;

2. Whether the lump-sum PDAF negates the President's constitutional line-item veto power;[2]

3. Whether the phrase "for such other purposes as may be hereafter directed by the President" in Section 8 of Presidential Decree No. 910, on the use of the Malampaya Fund, constitutes an undue delegation of legislative power; and

4. Whether the phrase "to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the x x x President," in Section 12, Title IV of Presidential Decree No. 1869, as amended, on the use of the government's share in the gross earnings of the Philippine Amusement and Gaming Corporation (PAGCOR), likewise constitutes an undue delegation of legislative power.

I.

Standing to Sue and Propriety of the Petitions

[2] The Court in its Resolution dated 10 October 2013, directed COA Chairperson Pulido Tan to submit her own memorandum "on matters with respect to which she was directed to expound in her memorandum, including but not limited to the parameters of line item budgeting." The Court further directed the parties "to discuss this same issue in their respective memoranda, **including the issue of whether there is a consitutional duty on the part of Congress to adopt line item budgeting**." The *En Banc* voted 12-2-1 to retain in the *ponencia* of Justice Estela M. Perlas-Bernabe the discussions on the President's line-item veto power, line-item appropriations, and lump sum appropriations. (Emphasis supplied)

Petitioners filed the present petitions for *certiorari* and prohibition[3] in their capacity as taxpayers and Filipino citizens, challenging the constitutionality of the PDAF provisions in the 2013 GAA and certain provisions in Presidential Decree Nos. 910 and 1869.

As taxpayers and ordinary citizens, petitioners possess *locus standi* to bring these suits which indisputably involve the disbursement of public funds. As we held in *Pascual v. Secretary of Public Works*,[4] taxpayers, such as petitioners in the present petitions, have "sufficient interest in preventing the illegal expenditures of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys." Likewise, in *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*,[5] we declared that "taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law."

The present petitions also raise constitutional issues of transcendental importance to the nation, justifying their immediate resolution by this Court.[6] Moreover, the special civil actions of *certiorari* and *prohibition* are proper remedial vehicles to test the constitutionality of statutes.[7]

II.
Special Provisions of the 2013 PDAF

[3] G.R. No. 208566 is a petition for *certiorari* and prohibition; G.R. No. 208493 is a petition for prohibition; and G.R. No. 209251 is a petition for prohibition (this petition prayed for the issuance of a cease-and-desist order).

[4] 110 Phil. 331, 343 (1960), citing 11 Am. Jur. 761.

[5] G.R. No. 164987, 24 April 2012, 670 SCRA 373, 384.

[6] *Biraogo v. Philippine Truth Commission of 2010*, G.R. Nos. 192935 and 193036, 7 December 2010, 637 SCRA 78, 151-152; *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002); *Guingona, Jr. v. Gonzales*, G.R. No. 106971, 20 October 1992, 214 SCRA 789.

[7] *Magallona v. Ermita*, G.R. No. 187167, 16 August 2011, 655 SCRA 476.

Violate the Separation of Powers.

Under our Constitution, government power is divided among the three co-equal branches: Executive, Legislature, and Judiciary. Well-entrenched in our jurisdiction is the principle of separation of powers, which ordains that each of the three great branches of government is supreme in the exercise of its functions within its own constitutionally allocated sphere.[8] Lawmaking belongs to Congress, implementing the laws to the Executive, and settling legal disputes to the Judiciary.[9] Any encroachment on the functions of a co-equal branch by the other branches violates the principle of separation of powers, and is thus unconstitutional. In *Bengzon v. Drilon*,[10] this Court declared:

> It cannot be overstressed that in a constitutional government such as ours, the rule of law must prevail. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons including the highest official of this land must defer. From this cardinal postulate, it follows that the three branches

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[8] *Bureau of Customs Employees Association (BOCEA) v. Teves*, G.R. No. 181704, 6 December 2011, 661 SCRA 589.

[9] The 1987 Constitution provides:

Section 1, Article VI:

> The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, x x x.

Section 1, Article VII:

> The executive power shall be vested in the President of the Philippines.

Section 1, Article VIII:

> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[10] G.R. No. 103524, 15 April 1992, 208 SCRA 133, 142.

of government must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws and the judiciary to their interpretation and application to cases and controversies.

In the present petitions, the Court is faced with issues of paramount importance as these issues involve the core powers of the Executive and the Legislature. Specifically, the petitions raise questions on the Executive's constitutional power to implement the laws and the Legislature's constitutional power to appropriate. The latter necessarily involves the President's constitutional power to veto line-items in appropriation laws.[11]

Under the Constitution, the President submits every year a proposed national expenditures program (NEP) to Congress. The NEP serves as basis for the annual general appropriations act (GAA) to be enacted by Congress. This is provided in the Constitution, as follows:

> The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.[12]

While the President proposes the expenditures program to Congress, it is Congress that exercises the power to appropriate and enact the GAA. The Constitution states that "all appropriation x x x shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments."[13] The Constitution likewise mandates, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[14]

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[11] Section 27(2), Article VI of the 1987 Constitution.

[12] Section 22, Article VII, 1987 Constitution.

[13] Section 24, Article VI, 1987 Constitution.

[14] Section 29(1), Article VI, 1987 Constitution.

The Administrative Code of 1987 defines "appropriation" as "an authorization made by law or other legislative enactment directing payment out of government funds under specified conditions or for specified purposes."[15] Thus, the power to appropriate is the exclusive legislative power to direct by law the payment of government funds under specified conditions or specified purposes. The appropriation must state the ***specific purpose*** of the payment of government funds. The appropriation must also necessarily state the ***specific amount*** since it is a directive to pay out government funds.

Once the appropriations bill is signed into law, its implementation becomes the exclusive function of the President. The Constitution states, "The executive power shall be vested in the President." The Constitution has vested the executive power **solely in the President** and to no one else in government.[16] The Constitution also mandates that the President "shall ensure that the laws be faithfully executed."[17] The President cannot refuse to execute the law not only because he is constitutionally mandated to ensure its execution, but also because he has taken a constitutionally prescribed solemn oath to "**faithfully and conscientiously**" execute the law.[18]

To exercise the executive power effectively, the President must necessarily control the entire Executive branch. Thus, the Constitution provides, "The President shall have control of all the executive departments, bureaus, and offices."[19] The Constitution does not exempt any executive office from the President's control.[20]

The GAA is a law. The implementation of the GAA belongs exclusively to the President, and cannot be exercised by Congress. The President cannot share with the Legislature, its committees

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[15] Section 2(1), Chapter 1, Book VI of the Administrative Code of 1987.

[16] *SANLAKAS v. Reyes*, 466 Phil. 482 (2004).

[17] Section 17, Article VII, 1987 Constitution.

[18] Section 5, Article VII, 1987 Constitution.

[19] Section 17, Article VII, 1987 Constitution.

[20] *Rufino v. Endriga*, 528 Phil. 473 (2006).

or members the power to implement the GAA. The Legislature, its committees or members cannot exercise functions vested in the President by the Constitution; otherwise, there will be a violation of the separation of powers.

The Legislature, its committees or members cannot also exercise any veto power over actions or decisions of executive departments, bureaus or offices because this will divest the President of control over the executive agencies. Control means the power to affirm, modify or reverse, and even to pre-empt, the actions or decisions of executive agencies or their officials.[21] Any provision of law requiring the concurrence of the Legislature, its committees or members before an executive agency can exercise its functions violates the President's control over executive agencies, and is thus unconstitutional.

In *LAMP*,[22] this Court declared:

> Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with the amendments. While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto. Thereafter, budget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel. x x x.

The 2013 PDAF, or Article XLIV of Republic Act No. 10352, provides in part as follows:

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[21] *Mondano v. Silvosa*, 97 Phil. 143, 148 (1955); *Echeche v. Court of Appeals*, G.R. No. 89865, 27 June 1991, 198 SCRA 577, 584.

[22] *Supra* note 5, at 389-390.

XLIV. **PRIORITY DEVELOPMENT ASSISTANCE FUND**

For fund requirements of priority development programs and projects, as indicated hereunder ..... ₱24,790,000,000

New Appropriations, by Purpose

	Current Operating Expenditures			
	Personal Services	Maintenance and other Operating Expenses	Capital Outlay	Total
A. PURPOSE(S)				
1. Support for Priority Programs and Projects	₱7,657,000,000	₱17,133,000,000		₱24,790,000,000
TOTAL NEW APPROPRIATIONS	₱7,657,000,000	₱17,133,000,000		₱24,790,000,000

Special Provision(s)

1. **Use of Fund**. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

Program/Project	Implementing Agency	List of Requirements
A. Programs/Projects Chargeable against Soft Allocation		
1. Education		
Scholarship	TESDA/CHED/NCIP/ DAP LGUs SUCs	x x x
Assistance to Students	DepEd	x x x
xxx	xxx xxx	
2. Health		
xxx	xxx xxx	
Medical Mission including provision of medicines and immunization	LGUs	x x x
xxx	xxx xxx	
3. Livelihood		
xxx	xxx xxx	

Specialty training/employment program (community based training program) including acquisition of training supplies and equipment	TESDA/LGUs	x x x
xxx	xxx	xxx
4. Social Services		
xxx	xxx	xxx
Assistance to indigent individuals/ families	LGUs	x x x
xxx	xxx	xxx
5. Peace and Order and Security		
xxx	xxx	xxx
Surveillance and Communication equipment	LGUs/PNP	x x x
xxx	xxx	xxx
6. Arts and Culture		
Preservation/Conservation, including publication of historical materials	NHCP (formerly NHI)/ LGUs	x x x
7. Public Infrastructure Projects		
Construction/Rehabilitation/ Repair/Improvement of the following:		
Local roads and bridges	LGUs	x x x
Public Markets/Multi-Purpose Buildings/Multi-Purpose Pavements, Pathways and Footbridges		
xxx	xxx	xxx
B. INFRASTRUCTURE PROJECTS CHARGEABLE AGAINST HARD ALLOCATION		
Construction/Rehabilitation/ Renovation of the following:		
Roads and bridges	DPWH	x x x
xxx	xxx	xxx

Flood Control		DPWH	x x x
xxx	xxx	xxx	

PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same.

2. **Project Identification**. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the MHTS-PR by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act.

All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside of his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.

3. **Legislator's Allocation**. The Total amount of projects to be identified by legislators shall be as follows:

a. For Congressional District or Party-List Representative: Thirty Million Pesos (₱30,000,000) for soft programs and projects listed under Item A and Forty Million Pesos (₱40,000,000) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1; and

b. For Senators: One Hundred Million Pesos (₱100,000,000) for soft programs and projects listed under Item A and One Hundred Million Pesos (₱100,000,000) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1.

Subject to the approved fiscal program for the year and applicable Special Provisions on the use and release of fund, only fifty percent (50%) of the foregoing amounts may be released in the first semester

and the remaining fifty percent (50%) may be released in the second semester.

4. **Realignment of Funds**. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry are also authorized to approve realignment from one project/ scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) request is with the concurrence of the legislator concerned. The DBM must be informed in writing of any realignment within five (5) calendar days from approval thereof: PROVIDED, That any realignment under this Fund shall be limited within the same classification of soft or hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr.

Any realignment, modification and revision of the project identification shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the DBM or the implementing agency, as the case may be.

5. **Release of Funds**. All request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be. Funds shall be released to the implementing agencies subject to the conditions under Special Provision No. 1 and the limits prescribed under Special Provision No. 3.

xxx xxx xxx

Special Provision Nos. 2, 3, 4, and 5, Article XLIV of the 2013 GAA violate the principle of separation of powers enshrined in the Constitution. These provisions allow congressional committees and legislators not only to exercise in part the Executive's exclusive power to implement the appropriations

law, they also grant congressional committees and legislators a veto power over the Executive's exclusive power to implement the appropriations law.

A. Special Provision Nos. 2 and 3 on identification of projects

While Special Provision No. 2 of the 2013 PDAF provides that projects shall be taken from a priority list provided by the Executive, ***legislators actually identify the projects to be financed under the PDAF.*** This is clear from Special Provision No. 3 which states that ***"the total amount of projects to be identified by the legislators shall be as follows***: x x x." This identification of projects by legislators is **mandatory** on the Executive. This is clear from the second paragraph of Special Provision No. 4 which requires the "**favorable endorsement**" of the House Committee on Appropriations or the Senate Committee on Finance (Congressional Committees) in case of "**any x x x revision and modification**" of the project identified by the legislator. This requirement of "**favorable endorsement**" constitutes a veto power by either of the Congressional Committees on the exclusive power of the Executive to implement the law. This requirement also encroaches on the President's control over executive agencies.

It is the individual House member or individual Senator who identifies the project to be funded and implemented under the PDAF. This identification is made after the enactment into law of the GAA. Unless the individual legislator identifies the project, the Executive cannot implement the project. Any revision or modification of the project by the Executive requires the "favorable endorsement" of either of the Congressional Committees. The Executive does not, and cannot, identify the project to be funded and implemented. Neither can the Executive, on its own, modify or revise the project identified by the legislator. This divests the President of control over the implementing agencies with respect to the PDAF. Clearly, the identification of projects by legislators under the 2013 PDAF, being mandatory on the Executive, is unconstitutional.

The Constitution states, "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate

and a House of Representatives."[23] The legislative power can be exercised only by Congress, not by an individual legislator, not by a congressional committee, and not even by either the House of Representatives or the Senate.[24] Once the GAA becomes law, only Congress itself, and not its committees or members, can add, subtract, complete or modify the law by passing an amendatory law. The Congressional Committees or individual legislators, on their own, cannot exercise legislative power.

Respondents argue that this Court already upheld the authority of individual legislators to identify projects to be funded by the Countrywide Development Fund (CDF), later known as PDAF. In particular, respondents cite the decisions of this Court in *Philippine Constitution Association* (*PHILCONSA*) *v. Enriquez*[25] and in *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*.[26]

PHILCONSA and *LAMP* do not apply to the present cases because the mandatory identification of projects by individual legislators in the 2013 GAA is not present in the 1994 and 2004 GAAs. A comparison of Article XLI of the 1994 GAA, Article XLVII of the 2004 GAA, and Article XLIV of the 2013 GAA shows that only the 2013 GAA provides for the mandatory identification of projects by legislators.

In *PHILCONSA*, Republic Act No. 7663, or the 1994 GAA, authorized members of Congress to identify projects in the CDF allotted to them. Article XLI of the 1994 GAA provides:

Special Provisions

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[23] Section 1, Article VI, 1987 Constitution. This provision further states "except to the extent reserved to the people by the provision on initiative and referendum."

[24] See *Abakada Guro Party List v. Purisima*, 584 Phil. 246, 281 (2008), citing *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252 (1991).

[25] G.R. No. 113105, 19 August 1994, 235 SCRA 506.

[26] *Supra* note 5.

1. Use and Release of Funds. The amount herein appropriated shall be used for infrastructure, purchase of ambulances and computers and other priority projects and activities, and credit facilities to qualified beneficiaries as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators, ₱18,000,000 each; Vice-President, ₱20,000,000; PROVIDED, That, the said credit facilities shall be constituted as a revolving fund to be administered by a government financial institution (GFI) as a trust fund for lending operations. Prior years releases to local government units and national government agencies for this purpose shall be turned over to the government financial institution which shall be the sole administrator of credit facilities released from this fund.

The fund shall be automatically released quarterly by way of Advice of Allotments and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned.

2. Submission of Quarterly Reports. The Department of Budget and Management shall submit within thirty (30) days after the end of each quarter a report to the Senate Committee on Finance and the House Committee on Appropriations on the releases made from this Fund. The report shall include the listing of the projects, locations, implementing agencies and the endorsing officials.

It is clear from the CDF provisions of the 1994 GAA that the authority vested in legislators was limited to the mere identification of projects. There was nothing in the 1994 GAA that made identification of projects by legislators mandatory on the President. **The President could change the projects identified by legislators without the favorable endorsement of any congressional committee, and even without the concurrence of the legislators who identified the projects.** The Court ruled in *PHILCONSA*:

The authority given to the members of Congress is only to propose and identify projects to be implemented by the President. Under Article XLI of the GAA of 1994, the President must perforce examine whether the proposals submitted by members of Congress fall within the specific items of expenditures for which the Fund was set up, and if qualified, he next determines whether they are in line with

other projects planned for the locality. Thereafter, if the proposed projects qualify for funding under the Fund, it is the President who shall implement them. **In short, the proposals and identifications made by members of Congress are merely recommendatory**.[27] (Emphasis supplied)

LAMP is likewise not applicable to the cases before us. Article XLVII of the 2004 GAA, which was the subject matter in *LAMP*, only states the following on the PDAF:

Special Provision

1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned: PROVIDED, FURTHER, That the allocations authorized herein may be realigned to any expense class, if deemed necessary: PROVIDED FURTHERMORE, That a maximum of ten percent (10%) of the authorized allocations by district may be used for procurement of rice and other basic commodities which shall be purchased from the National Food Authority.

The PDAF provision in the 2004 GAA does not even state that legislators may propose or identify projects to be funded by the PDAF. The 2004 PDAF provision is completely silent on the role of legislators or congressional committees in the implementation of the 2004 PDAF. Indeed, the petitioner in *LAMP* even argued that the Special Provision of the 2004 GAA "does not empower individual members of Congress to propose, select and identify programs and projects to be funded out of PDAF,"[28] and thus "the pork barrel has become legally defunct under the present state of GAA 2004."[29] The Court ruled in *LAMP* that there was no convincing proof that there were direct releases of funds to members of Congress. The Court also reiterated in *LAMP* that members of Congress may propose

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[27] *Supra* note 25 at 523.

[28] *Supra* note 5, at 379.

[29] *Supra* note 5, at 379.

projects, which is merely recommendatory, and thus constitutional under case law.

Thus, *PHILCONSA* and *LAMP* are not applicable to the present cases before us.

B. Special Provision No. 4 on realignment of funds

The first paragraph of Special Provision No. 4 clearly states that the Executive's **realignment of funds** under the PDAF is conditioned, among others, on the "**concurrence of the legislator concerned**." Such concurrence allows the legislator not only to share with the Executive the implementation of the GAA, but also to veto any realignment of funds initiated by the Executive. Thus, the President cannot exercise his constitutional power to realign savings[30] without the "**concurrence**" of legislators. This violates the separation of powers, and is thus unconstitutional.

The second paragraph of Special Provision No. 4 states that "any realignment" of funds shall have the "**favorable endorsement**" of either of the Congressional Committees. The word "**endorse**" means to "declare one's public approval or support."[31] The word "**favorable**" stresses that there must be an affirmative action. Thus, the phrase "favorable endorsement," as used in Special Provision No. 4 of the PDAF, means categorical approval, agreement, consent, or concurrence by the Congressional Committees. This means that the President cannot realign savings in the PDAF, which is an appropriation for the Executive branch, without the concurrence of either of the Congressional Committees, contrary to the constitutional provision that it is the President who can realign savings in the Executive branch. This violates the separation of powers, and is thus unconstitutional.

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[30] Section 25(5), Article VI, 1987 Constitution.

[31] http://www.oxforddictionaries.com/us/definition/american_english/endorse (accessed 7 November 2013).

The Office of the Solicitor General (OSG) argues that Special Provision No. 4 involves not a realignment of funds but a realignment of projects, despite the clear wording of the heading in Special Provision No. 4 stating "**Realignment of Funds**." The OSG contends that realignment "happens when the project is no longer feasible such as when projects initially proposed by the legislator have already been accomplished by the national government or the LGU, or when projects as originally proposed cannot be accomplished due to certain contingencies." None of the situations cited by the OSG is found in Special Provision No. 4. Even then, the situations cited by the OSG will actually result in the realignment of funds. If the project identified by the legislator has already been undertaken and completed with the use of other funds in the GAA, or if the identified project is no longer feasible due to contingencies, the funds allocated to the legislator under the PDAF will have to be logically realigned to another project to be identified by the same legislator.

Moreover, Special Provision No. 4 provides, as one of the conditions for the realignment, that the "***allotment released has not yet been obligated for the original project/scope of work***." Special Provision No. 4 also states that "**in case of realignments, modifications and revisions of projects to be implemented by LGUs*, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr*** (Bureau of Treasury)." Clearly, the realignment in Special Provision No. 4, as stated in its heading "Realignment of Funds", refers to realignment of funds because the realignment speaks of "allotment" and "cash." In any event, even if we assume that Special Provision No. 4 refers to realignment of projects and not realignment of funds, still the realignment of projects within the menu of projects authorized in the PDAF provision of the GAA is an Executive function. The "**concurrence of the legislator concerned**" and the "**favorable endorsement**" of either of the Congressional Committees to the realignment of projects will still violate the separation of powers.

Under Section 25(5), Article VI of the Constitution, the power to realign is lodged in the President for the Executive branch, the Speaker for the House of Representatives, the Senate President

for the Senate, the Chief Justice for the Judiciary, and the Heads of the Constitutional Commissions for their respective constitutional offices. This constitutional provision reads:

> (5) **No law shall be passed authorizing *any transfer of appropriations***; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized **to augment any item in the general appropriations law for their respective offices from *savings* in other items of their respective appropriations.** (Boldfacing and italicization supplied)

The Constitution expressly states that what can be realigned are "**savings**" from an item in the GAA, and such savings can only be used to augment another existing **"item"** in the "**respective appropriations**" of the Executive, Legislature, Judiciary, and the Constitutional Commissions **in the same GAA**. The term "funds" in Special Provision No. 4 is not the same as "savings." **The term "funds" means appropriated funds, whether savings or not. The term "savings" is much narrower, and must strictly qualify as such under Section 53 of the General Provisions of the 2013 GAA**, which is a verbatim reproduction of the definition of "savings" in previous GAAs. Section 53 of the 2013 GAA defines "savings" as follows:

> Sec. 53. **Meaning of Savings** and Augmentation. Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost. (Emphasis supplied)

Indisputably, only "**savings**" can be realigned. Unless there are savings, there can be no realignment.

Funds, or "appropriations" as used in the first clause of Section 25(5) of Article VI, cannot be transferred from one branch to another branch or to a Constitutional Commission, or even within the same branch or Constitutional Commission. Thus, funds or appropriations for the Office of the President cannot be transferred to the Commission on Elections. Likewise, funds or appropriations for one department of the Executive branch cannot be transferred to another department of the Executive branch. **The transfer of funds or appropriations is absolutely prohibited, *unless the funds qualify as "savings*,"** in which case the savings can be realigned to an existing item of appropriation but only within the same branch or Constitutional Commission.

Special Provision No. 4 allows realignment of **funds**, not **savings**. That only **savings**, and not **funds**, can be realigned has already been settled in *Demetria v. Alba*,[32] and again in *Sanchez v. Commission on Audit.*[33] In *Demetria,* we distinguished between *transfer of funds* and *transfer of savings* for the purpose of augmenting an existing item in the GAA, the former being unconstitutional and the latter constitutional. Thus, in *Demetria*, we struck down as unconstitutional paragraph 1, Section 44 of Presidential Decree No. 1177,[34] for authorizing the President to transfer funds as distinguished from savings. In *Demetria*, we ruled:

> Paragraph 1 of Section 44 of P.D. No. 1177 unduly overextends the privilege granted under said Section 16(5) [of Article VIII of the 1973 Constitution]. It empowers the President to indiscriminately transfer funds from one department, bureau, office or agency of the Executive Department to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment, **without regard as to whether or not the funds to be transferred are actually savings in the**

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[32] 232 Phil. 222 (1987).

[33] G.R. No. 127545, 23 April 2008, 552 SCRA 471.

[34] Entitled *Revising the Budget Process in order to Institutionalize the Budgetary Innovations of the New Society, or "Budget Reform Decree of 1977."*

item from which the same are to be taken, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made. It does not only completely disregard the standards set in the fundamental law, thereby amounting to an undue delegation of legislative powers, but likewise goes beyond the tenor thereof. **Indeed, such constitutional infirmities render the provision in question null and void**.[35] (Emphasis supplied)

In *Sanchez*, we emphasized that "**[a]ctual savings is a *sine qua non* to a valid transfer of funds**."[36] We stated the two essential requisites in order that a realignment of savings may be legally effected: "*First*, there must be savings in the programmed appropriation of the transferring agency. *Second*, there must be an existing item, project or activity with an appropriation in the receiving agency to which the savings will be transferred."[37] The essential requisites for realignment of savings were discarded in Special Provision No. 4, which allows realignment of "**funds**," and not "**savings**" as defined in Section 53 of the 2013 GAA. As in *Demetria* and *Sanchez*, the realignment of "funds" in Special Provision No. 4 is unconstitutional.

The President's constitutional power to realign savings cannot be delegated to the Department Secretaries but must be exercised by the President himself. Under Special Provision No. 4, the President's power to realign is delegated to Department Secretaries, which violates the Constitutional provision that it is the President who can realign savings. In *PHILCONSA*, we ruled that the power to realign cannot be delegated to the Chief of Staff of the Armed Forces of the Philippines because this power "can be exercised **only** by the President pursuant to a specific law."[38] In *Sanchez*, we rejected the transfer of funds because it was exercised by the Deputy Executive Secretary. We ruled in *Sanchez* that "**[e]ven if the DILG Secretary had**

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[35] *Supra* note 32, at 229-230.

[36] *Supra* note 33, at 497.

[37] *Supra* note 33, at 497.

[38] *Supra* note 25, at 544.

corroborated the initiative of the Deputy Executive Secretary, it does not even appear that the matter was authorized by the President."[39] Clearly, the power to realign savings must be exercised by the President himself.

National Budget Circular No. 547, entitled "Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for FY 2013" dated 18 January 2013, reiterates Special Provision Nos. 2, 3 and 4 of the 2013 PDAF. The DBM Circular states that "[t]he PDAF shall be used to fund priority programs and projects to be undertaken by implementing agencies **identified by the Legislators** from the Project Menu of Fund hereby attached as Annex A."

The DBM Circular requires that "requests for realignment x x x be supported with x x x [a] written request from the proponent legislator; **in case the requesting party is the implementing agency, the *concurrence* of the proponent legislator shall be obtained**."[40] The DBM Circular also requires that "[r]equests for realignment, modification and revision of projects x x x be **duly endorsed** by the following: 4.4.1 For the Senate, the Senate President and the Chairman of the Committee on Finance and 4.4.2 For the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations."[41] The DBM Circular's additional requirement that the endorsement of the **House Speaker and the Senate President** should also be submitted ***administratively enlarges*** further the Legislature's encroachment on Executive functions, including the President's control over implementing agencies, in violation of the separation of powers.

These DBM guidelines, issued to implement the PDAF provisions of the 2013 GAA, sufficiently establish that (1) individual legislators actually identify the projects to be funded; (2) the consent of individual legislators is required for the realignment of funds; and (3) the Congressional Committees,

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[39] *Supra* note 33, at 494.

[40] Guideline 4.3.

[41] Guideline 4.4.

the House Speaker and the Senate President control the realignment of funds, as well as the modification and revision of projects. In other words, National Budget Circular No. 547 establishes administratively the **necessary and indispensable participation** of the individual legislators and the Congressional Committees, as well as the House Speaker and the Senate President, in the implementation of the 2013 GAA in violation of the separation of powers.

C. Special Provision No. 5 on the release of funds

Under Special Provision No. 5, all requests for release of funds must be (1) supported by documents prescribed in Special Provision No. 1; and (2) "**favorably endorsed**" by either of the Congressional Committees. The use of the word "**shall**" in Special Provision No. 5 clearly makes it **mandatory** to comply with the two requisites for the release of funds. The absence of the favorable endorsement from either of the Congressional Committees will result in the non-release of funds. In effect, the Congressional Committees have a veto power over the Executive's implementation of the PDAF.

DBM National Budget Circular No. 547 reiterates Special Provision No. 5 of the 2013 PDAF on the release of funds. This DBM Circular requires "all requests for issuance of allotment x x x be supported with the x x x [**w**]**ritten endorsements** by the following: x x x In case of the Senate, the Senate President and the Chairman of the Committee on Finance; and x x x In case of the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations."[42] The DBM Circular again ***administratively enlarges*** further the Legislature's encroachment on Executive functions, including the President's control over implementing agencies, by requiring the "**written endorsement**" of the House Speaker or Senate President to the release of funds, in addition to the "favorable endorsement" of either of the Congressional Committees.

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[42] Guidelines 3.1, 3.1.2, 3.1.2.1 and 3.1.2.2.

In her Comment[43] as *amicus curiae*, Chairperson Maria Gracia M. Pulido Tan of the Commission on Audit (COA) correctly observes:

> As for the 2011-2013 GAAs, the requirement of a **favorable endorsement** by the House Committee on Appropriations and the Senate Committee on Finance for (a) release of Funds and (b) realignment, modification and revision of the project identification effectively amounts to a prohibited post-enactment measure, a legislative veto, under the terms of *Abakada*. It is not a matter of speculation but one of logic, that by a mere refusal to endorse, he can render the appropriation nugatory, impound the Funds, and prevent the Executive from carrying out its functions or otherwise tie its (the Executive's) hands to a project that may prove to be not advantageous to the government. The practical effect of this requirement, therefore, is to shift to the legislator the power to spend. (Emphasis in the original)

The power to release public funds authorized to be paid under the GAA is an Executive function. However, under Special Provision No. 5, prior approval of either of the Congressional Committees is required for the release of funds. Thus, the Congressional Committees effectively control the release of funds to implement projects identified by legislators. Unless the funds are released, the projects cannot be implemented. Without doubt, the Congressional Committees and legislators are exercising Executive functions in violation of the separation of powers. The Congressional Committees and the legislators are also divesting the President of control over the implementing agencies with respect to the PDAF.

A law that invests Executive functions on the Legislature, its committees or members is unconstitutional for violation of the separation of powers. In the 1928 case of *Springer v. Government of the Philippine Islands*,[44] the U.S. Supreme Court held:

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[43] Dated 17 October 2013.

[44] 277 U.S. 189, 202-203 (1928).

Legislative power, as distinguished from executive power, is the authority to make laws, *but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.* x x x.

Not having the power of appointment, unless expressly granted or incidental to its powers, the Legislature cannot ingraft executive duties upon a legislative office, since that would be to usurp the power of appointment by indirection, though the case might be different if the additional duties were devolved upon an appointee of the executive. Here the members of the Legislature who constitute a majority of the 'board' and 'committee,' respectively, are not charged with the performance of any legislative functions or with the doing of anything which is in aid of the performance of any such functions by the Legislature. Putting aside for the moment the question whether the duties devolved upon these members are vested by the Organic Act in the Governor General, it is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes logical ground for concluding that they do fall within that of the remaining one of the three among which the powers of government are divided. (Boldfacing and italicization supplied; citations omitted)

What happens to the law after its enactment becomes the domain of the Executive and the Judiciary.[45] The Legislature or its committees are limited to investigation in aid of legislation or oversight as to the implementation of the law. Certainly, the Legislature, its committees or members cannot implement the law, whether partly or fully. Neither can the Legislature, its committees or members interpret, expand, restrict, amend or repeal the law except through a new legislation. The Legislature or its committees cannot even reserve the power to approve the implementing rules of the law.[46] Any such post-enactment intervention by the Legislature, its committees or members other than through legislation is an encroachment on Executive power in violation of the separation of powers.

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[45] Carpio, *J., Separate Concurring Opinion in Abakada Guro Party List v. Purisima*, 584 Phil. 246, 293-314 (2008).

[46] *Id.*; *Macalintal v. Commission on Elections*, 453 Phil. 586 (2003).

III.
Lump Sum PDAF Negates the President's Exercise of the Line-Item Veto Power.

Section 27, Article VI of the Constitution provides for the presentment clause and the President's veto power:

> Section 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.
>
> **(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object**. (Emphasis supplied)

In *Gonzales v. Macaraig, Jr.*,[47] the Court explained the President's veto power, thus:

> Paragraph (1) refers to the general veto power of the President and if exercised would result in the veto of the entire bill, as a general rule. Paragraph (2) is what is referred to as the item-veto power or the line-veto power. It allows the exercise of the veto over a particular item or items in an appropriation, revenue or tariff bill. As specified, the President may not veto less than all of an item of an Appropriations Bill. In other words, the power given the executive to disapprove any item or items in an Appropriations Bill does not grant the authority to veto a part of an item and to approve the remaining portion of the same item.

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[47] G.R. No. 87636, 19 November 1990, 191 SCRA 452, 464.

In *Gonzales*, the Court defined the term "**item**" as used in appropriation laws as "**an indivisible sum of money dedicated to a stated purpose**."[48] The amount in an item is "**indivisible**" because the amount cannot be divided for any purpose other than the specific purpose stated in the item. The item must be for a specific purpose so that the President can determine whether the specific purpose is wasteful or not. This is the "**item**" that can be the subject of the President's line-item veto power. Any other kind of item will circumvent or frustrate the President's line-item veto power in violation of the Constitution.

In contrast, a lump-sum appropriation is a **single but *divisible* sum of money** which is the source to fund **several purpose**s in the same appropriation. For example, the 2013 PDAF provision appropriates a single amount – ₱24.79 billion – **to be divided to fund several purposes** of appropriation, like scholarships, roads, bridges, school buildings, medicines, livelihood training and equipment, police surveillance and communication equipment, flood control, school fences and stages, and a variety of other purposes.

In her Comment, COA Chairperson Tan stated:

> For the most part, appropriations are itemized in the GAA, following line-item budgeting, which provides the line by line allocation of inputs defined as the amount of resources used to produce outputs. The resources are usually expressed in money.
>
> **The PDAF, on the other hand, is appropriated as a lump-sum amount,** and is broken down by allotment class only. While the projects and programs to be funded and the corresponding agencies are specified, **there is no allocation of specific amounts for each project or program,** or per agency where there are multiple IAs (implementing agencies) for the same class of projects. (Emphasis supplied)

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[48] This definition was taken by the Court in *Gonzales v. Macaraig, Jr.* from American jurisprudence, in particular *Commonwealth v. Dodson*, 11 S.E., 2d 120, 176 Va. 281.

In place of lump-sum appropriations, COA Chairperson Tan recommends a "**line by line budget or amount per proposed program, activity, or project**, and per implementing agency."

For the President to exercise his constitutional power to veto a particular item of appropriation, the GAA must provide line-item, instead of lump-sum, appropriations. This means Congress has the constitutional duty to present to the President a GAA containing items, instead of lump-sums, stating in detail the **specific purpose for each amount of appropriation**, precisely to enable the President to exercise his line-item veto power. Otherwise, the President's line-item veto power is negated by Congress in violation of the Constitution.

The President's line-item veto in appropriation laws[49] is intended to eliminate "wasteful parochial spending,"[50] primarily the pork-barrel. Historically, the pork-barrel meant "appropriation yielding rich patronage benefits."[51] In the Philippines, the pork-barrel has degenerated further as shown in the COA Audit Report on the 2007-2009 PDAF. The pork-barrel is mischievously included in lump-sum appropriations that fund much needed projects. The President is faced with the difficult decision of either vetoing the lump-sum appropriation that includes beneficial programs or approving the same appropriation that includes the wasteful pork-barrel.[52] To banish the evil of the pork-barrel,

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[49] Under Section 27(2), Article VI of the 1987 Constitution, the President's line-item veto power extends to revenue and tariff bills.

[50] Bernard L. Mcnamee, *Executive Veto: The Power of the Pen in Virginia*, 9 Regent U.L. Rev. 9, Fall 1997.

[51] http://www.merriam-webster.com/dictionary/pork%20barrel (accessed 7 November 2013); See footnote no. 13 in Denise C. Twomey, The Constitutionality of a Line-Item Veto: A Comparison with Other Exercises of Executive Discretion Not to Spend, 19 Golden Gate U. L. Rev. (1989). http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1454&context=ggulrev (accessed 7 November 2013).

[52] See Catherine M. Lee, *The Constitutionality of the Line Item Veto Act of 1996: Three Potential Sources for Presidential Line Item Veto Power*, Hastings Constitutional Law Quarterly, V.25:119, p.123, Fall 1997, http://www.hastingsconlawquarterly.org/archives/V25/I1/Lee.pdf (accessed 7 November 2013).

the Constitution vests the President with the line-item veto power, **which for its necessary and proper exercise** requires the President to propose, and Congress to enact, only line-item appropriations.

The President should not frustrate his own constitutional line-item veto power by proposing to Congress lump-sum expenditures in the NEP. Congress should not also negate the President's constitutional line-item veto power by enacting lump-sum appropriations in the GAA. When the President submits lump-sum expenditures in the NEP, and Congress enacts lump-sum appropriations in the GAA, both in effect connive to violate the Constitution. This wreaks havoc on the check-and-balance system between the Executive and Legislature with respect to appropriations. While Congress has the power to appropriate, that power should always be subject to the President's line-item veto power. If the President exercises his line-item veto power unreasonably, Congress can override such veto by two-thirds vote of the House of Representatives and the Senate voting separately.[53] This constitutional check-and-balance should at all times be maintained to avoid wastage of taxpayers' money.

The President has taken a constitutionally prescribed oath to "preserve and defend" the Constitution. Thus, the President has a constitutional duty to preserve and defend his constitutional line-item veto power by submitting to Congress only a line-item NEP without lump-sum expenditures, and then by demanding that Congress approve only a line-item GAA without lump-sum appropriations. Congress violates the Constitution if it circumvents the President's line-item veto power by enacting lump-sum appropriations in the GAA. ***To repeat, the President has a constitutional duty to submit to Congress only a line-item NEP without lump-sum expenditures, while Congress has a constitutional duty to enact only a line-item GAA without lump-sum appropriations***.

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[53] Section 27(1), Article VI, 1987 Constitution.

In fact, the law governing the "**content**" of the GAA already mandates that there must be "**corresponding appropriations for each program and project**," or ***line-item budgeting***, in the GAA. Section 23, Chapter 4, Book VI of the Administrative Code of 1987 provides:

> Section 23. ***Content** of the General Appropriations Act*. — The General Appropriations Act **shall be presented** in the form of budgetary programs and projects for each agency of the government, **with the corresponding appropriations for each program and project**, including statutory provisions of specific agency or general applicability. The General Appropriations Act shall not contain any itemization of personal services, which shall be prepared by the Secretary after enactment of the General Appropriations Act, for consideration and approval of the President. (Emphasis supplied)

Under Section 23, "**each program and project**" in the GAA must have "**corresponding appropriations**." Indisputably, the Administrative Code mandates line-item appropriations in the GAA. **There can be no lump-sum appropriations in the GAA because the Administrative Code requires "corresponding appropriations for each program and project**." This means a corresponding appropriation for each program, and a corresponding appropriation for each project of the program. **To repeat, lump-sum appropriations are not allowed in the GAA.**

Appropriations for personal services need not be itemized further, as long as the ***specific purpose*, which is personal services, has a specific corresponding amount.** Section 35, Chapter 5, Book VI of the Administrative Code of 1987 explains how appropriations for personal services shall be itemized further, thus:

> **SECTION 35. Special Budgets** for Lump-Sum Appropriations.— Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a **special budget** to be approved by the President, which **shall include but shall not be limited to the *number of each kind of position, the designations,***

and the annual salary **proposed for which an appropriation is intended.** This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for **certain *specific* purposes, aids and donations for carrying out *certain* activities**, or deposits made to cover to cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.

In case of any lump-sum appropriation for *salaries and wages* of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour. (Boldfacing and italicization supplied)

Thus, appropriations for **personal services** need not be further itemized or broken down in the GAA as the purpose for such appropriation is sufficiently specific satisfying the constitutional requirement for a valid appropriation. The constitutional test for validity is not how itemized the appropriation is down to the project level but whether the purpose of the appropriation is specific enough to allow the President to exercise his line-item veto power. Section 23, Chapter 4, Book VI of the Administrative Code provides a **stricter requirement** by mandating that there must be a corresponding appropriation for each program and for each project. A project is a component of a program which may have several projects.[54] A program is

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[54] Section 2(12) and (13), Chapter 1, Book VI, Administrative Code of 1987.

SECTION 2. Definition of Terms.—When used in this Book:

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(12) "Program" refers to the functions and activities necessary for the performance of a major purpose for which a government agency is established.

(13) "Project" means a component of a program covering a homogenous group of activities that results in the accomplishment of an identifiable output.

equivalent to the specific purpose of an appropriation.[55] An item of appropriation for school-building is a program, while the specific schools to be built, being the **identifiable outputs** of the program, are the projects. The Constitution only requires a corresponding appropriation for a specific purpose or program, not for the sub-set of projects or activities.

All GAAs must conform to Section 23, Chapter 4, Book VI of the Administrative Code of 1987 because Section 23 implements the constitutional requirement that the "**form, *content,* and manner of preparation of the budget shall be prescribed by law**." Section 25(1), Article VI of the Constitution states:

> Section 25(1). The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. **The form, content, and manner of preparation of the budget shall be prescribed by law**. (Emphasis supplied)

Since the Constitution mandates that the budget, or the GAA, must adopt the "**content**" prescribed by law, and that law is Section 23, Chapter 4, Book VI of the Administrative Code of 1987, **then all GAAs must adopt only line-item appropriations, as expressly prescribed in Section 23. Any provision of the GAA that violates Section 23 also violates Section 25(1), Article VI of the Constitution, and is thus unconstitutional.**

Section 25(1) of Article VI is similar to Section 10, Article X of the same Constitution which provides that a local government unit can be created, divided, merged or abolished only "in accordance with the criteria established in the local government code." A law creating a new local government unit must therefore comply with the Local Government Code of 1991,[56] even if such law is later in time than the Local Government Code. In the same manner, all GAAs must comply with Section 23, Chapter 4, Book VI of the Administrative Code, even if the GAAs are later in time than the Administrative Code. GAAs that provide lump-sum appropriations, even though enacted after the effectivity

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[55] *Id*.

[56] *Cawaling, Jr. v. Comelec*, 420 Phil. 524 (2001).

of the Administrative Code of 1987, cannot prevail over Section 23, Chapter 4, Book VI of the Administrative Code.

The OSG maintains that "there is nothing in the Constitution that mandates Congress to pass only line-item appropriations." In fact, according to the OSG, the Constitution allows the creation of "discretionary funds" and "special funds," which are allegedly lump-sum appropriations.

This is plain error. The Constitution allows the creation of discretionary and special funds but **with certain specified conditions**. **The Constitution requires that *these funds must have specific purposes and can be used only for such specific purposes***. As stated in the Constitution:

> **(6) Discretionary funds** appropriated for particular officials **shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law**.[57]
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> xxx xxx xxx
>
> (3) All money collected on any tax levied for a **special purpose** shall be treated as **a special fund and paid out *for such purpose only***. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.[58] (Boldfacing and italicization supplied)

The "discretionary funds" and "special funds" mentioned in the Constitution are *sui generis* items of appropriation because they are regulated by special provisions of the Constitution.

"Discretionary funds" are appropriated for particular officials who must use the funds only for public purposes in relation to the functions of their public office. The particular public officials must support the use of discretionary funds with appropriate vouchers under guidelines prescribed by law. "Discretionary funds" already existed in GAAs under the 1935 and 1973

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[57] Section 25(6), Article VI, 1987 Constitution.

[58] Section 29(3), Article VI, 1987 Constitution.

Constitutions. They are items, and not lump-sums, with specified conditions and guidelines. A valid appropriation includes the payment of funds "**under specified conditions**."[59] The framers of the 1987 Constitution decided to regulate in the Constitution itself the disbursement of discretionary funds "to avoid abuse of discretion in the use of discretionary funds"[60] in the light of the experience during the Martial Law regime when discretionary funds "were spent for the personal aggrandizement of the First Family and some of their cronies."[61]

The "special funds" mentioned in the Constitution do not come from the General Funds as in the case of ordinary special funds, but from a corresponding "tax levied for a **special purpose**." Unlike ordinary special funds, the "special funds" mentioned in the Constitution cannot be commingled with other funds and must be "**paid out for such (special) purpose only**." The "special funds" mentioned in the Constitution are also **not subject to realignment** because once the special purpose of the fund is accomplished or abandoned, any balance "shall be transferred to the general funds of the Government."

It must be stressed that the "calamity fund," "contingent fund," and "intelligence fund" in the GAAs are not lump-sum appropriations because they have specific purposes and corresponding amounts. The "calamity fund" can be used only if there are calamities, a use of fund that is sufficiently specific. A "contingent fund" is ordinary and necessary in the operations of both the private and public sectors, and the use of such fund is limited to actual contingencies. The "intelligence fund" has a specific purpose – for use in intelligence operations. All these funds are the proper subject of line-item appropriations.

An appropriation must specify the purpose and the corresponding amount which will be expended for that specific purpose. **The purpose of the appropriation must be sufficiently**

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[59] Section 2, Chapter 1, Book VI, Administrative Code of 1987.

[60] Journal of the Constitutional Commission, Vol. 1, Journal No. 37, p. 391, 23 July 1986.

[61] *Id*.

specific to allow the President to exercise his line-item veto power. The appropriation may have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.* MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's line-item veto power. However, if the appropriation has several purposes which are normally **divisible** but there is only a single amount for all such purposes, and the President cannot veto the use of funds for one purpose without vetoing the entire appropriation, then the appropriation is a lump-sum appropriation.

In the 2013 GAA, the PDAF is a lump-sum appropriation, the purpose of which is the "support for priority programs and projects," with a menu of programs and projects listed in the PDAF provision that does not itemize the amount for each listed program or project. **Such *non-itemization* of the specific amount for each listed program or project fails to satisfy the requirement for a valid appropriation**. To repeat, the PDAF merely provides a lump sum without stating the specific amount allocated for each listed program or project. The PDAF ties the hands of the President since he has no choice except to accept the entire PDAF or to veto it entirely. Even if the PDAF undeniably contains pork-barrel projects, the President might hesitate to veto the entire PDAF for to veto it would result not only in rejecting the pork barrel projects, but also in denying financial support to legitimate projects. This dilemma is the evil in lump-sum appropriations. The President's line-item veto, which necessarily requires line-item appropriations from the Legislature, is intended precisely to exorcise this evil from appropriation laws.

Clearly, the PDAF negates the President's constitutional line-item veto power, and also violates the constitutional duty of Congress to enact a line-item GAA. Thus, Article XLIV, on the Priority Development Assistance Fund, of the 2013 GAA is unconstitutional. Whatever funds that are still remaining from this invalid appropriation shall revert to the unappropriated surplus or balances of the General Fund.

The balance of the 2013 PDAF, having reverted to the unappropriated surplus or balances of the General Fund, can be the subject of an emergency supplemental appropriation to aid the victims of Typhoon Yolanda as well as to fund the repair and reconstruction of facilities damaged by the typhoon. When the Gulf Coast of the United States was severely damaged by Hurricane Katrina on 29 August 2005, the U.S. President submitted to the U.S. Congress a request for an emergency supplemental budget on 1 September 2005.[62] The Senate passed the request on 1 September 2005 while the House approved the bill on 2 September 2005, and the U.S. President signed it into law on the same day.[63] It took only two days for the emergency supplemental appropriations to be approved and passed into law. There is nothing that prevents President Benigno S. Aquino III from submitting an emergency supplemental appropriation bill that could be approved on the same day by the Congress of the Philippines. The President can certify such bill for immediate enactment to meet the public calamity caused by Typhoon Yolanda.[64]

IV.
The phrase "for such other purposes as may be hereafter directed by the President" in PD No. 910 is an Undue Delegation of Legislative Power.

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[62] Jennifer E. Lake and Ralph M. Chite, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, CRS Report for Congress, 7 September 2005. http://www.fas.org/sgp/crs/misc/RS22239.pdf (accessed 14 November 2013).

[63] *Id*.

[64] Section 26(2), Article VI, 1987 Constitution —

No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, **except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency**. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal. (Emphasis supplied)

Presidential Decree No. 910, issued by former President Ferdinand E. Marcos, mandates that royalties and proceeds from the exploitation of energy resources shall form part of a special fund (Malampaya Fund) to finance energy development projects of the government. Section 8 of PD No. 910[65] reads:

> SECTION 8. Appropriations. — The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.
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> All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government **and for such other purposes as may be hereafter directed by the President.** (Emphasis supplied)

Petitioners assail the constitutionality of the phrase **"for such other purposes as may be hereafter directed by the President"** since it constitutes an undue delegation of legislative power. On the other hand, the OSG argues otherwise and invokes the statutory construction rule of *ejusdem generis*.

Such reliance on the *ejusdem generis* rule is misplaced.

For the rule of *ejusdem generis* to apply, the following must be present: (1) a statute contains an enumeration of particular and specific words, followed by a general word or phrase; (2) the particular and specific words constitute a class or are of the same kind; (3) the enumeration of the particular and specific

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[65] *Entitled Creating An Energy Development Board, Defining its Powers and Functions, Providing Funds Therefor, and For Other Purposes.*

words is not exhaustive or is not merely by examples; and (4) there is no indication of legislative intent to give the general words or phrases a broader meaning.[66]

There is no enumeration of particular and specific words, followed by a general word or phrase, in Section 8 of PD No. 910. The Malampaya Fund, created by PD No. 910, is to be used exclusively for a single object or purpose: to finance "*energy resource development and exploitation programs and projects of the government.*" The phrase "for such other purposes" does not follow an ***enumeration*** of particular and specific words, with each word constituting part of a class or referring to the same kind. **In other words, the phrase "for such other purposes" is not preceded by an enumeration of purposes but by a designation of only a single purpose**. The phrase "energy resource development and exploitation programs and projects of the government" constitutes only one of a class, and there is no other phrase or word to make an enumeration of the same class.

There is only a single subject to be financed by the Malampaya Fund – that is, the development and exploitation of energy resources. No other government program would be funded by PD No. 910, except the exploration, exploitation and development of indigenous energy resources as envisioned in the law's Whereas clauses, to wit:

WHEREAS, there is need to intensify, strengthen, and consolidate government efforts relating to the exploration, exploitation and development of indigenous energy resources vital to economic growth;

WHEREAS, it is imperative that government accelerate the pace of, and focus special attention on, energy exploration, exploitation and development in the light of encouraging results in recent oil

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[66] Agpalo, Ruben E., *STATUTORY CONSTRUCTION*, Fourth Edition, 1998, p. 217 citing *Commissioner of Customs v. Court of Tax Appeals*, 150 Phil. 222 (1972); *Asturias Sugar Central, Inc. v. Commissioner of Customs*, 140 Phil. 20 (1969); *People v. Kottinger*, 45 Phil. 352 (1923).

exploration and of world-wide developments affecting our continued industrial progress and well-being; x x x

The rule of *ejusdem generis* will apply if there is an enumeration of specific energy sources, such as gas, oil, geothermal, hydroelectric, and nuclear, and then followed by a general phrase "and such other energy sources," in which case tidal, solar and wind power will fall under the phrase "other energy sources." In PD No. 910, no such or similar enumeration can be found. Instead, what we find is the sole purpose for which the Malampaya Fund shall be used – that is, to finance "*energy resource development and exploitation programs and projects of the government*."

The phrase "**as may be *hereafter directed* by the President**" refers to other purposes still to be determined by the President in the future. Thus, the other purposes to be undertaken could not as yet be determined at the time PD No. 910 was issued. When PD No. 910 was issued, then President Ferdinand E. Marcos exercised both executive and legislative powers. The President then, in the exercise of his law-making powers, could determine in the future the other purposes for which the Malampaya Fund would be used. This is precisely the reason for the phrase "as may be *hereafter directed* by the President." Thus, in light of the executive and legislative powers exercised by the President at that time, the phrase "for such other purposes as may be hereafter directed by the President" has a **broader meaning** than the phrase "energy resource development and exploitation programs and projects of the government."

This does not mean, however, that the phrase "energy resource development and exploitation programs and projects" should be unreasonably interpreted narrowly. To finance "energy resource development and exploitation programs and projects" includes all expenditures necessary and proper to carry out such development and exploitation – including expenditures to secure and protect the gas and oil fields in Malampaya from encroachment by other countries or from threats by terrorists. Indeed, the security of the gas and oil fields is absolutely essential to the development and exploitation of such fields. Without

adequate security, the gas and oil fields cannot be developed or exploited, thus generating no income to the Philippine government.

Under the 1987 Constitution, determining the purpose of the expenditure of government funds is an exclusive legislative power. The Executive can only propose, but cannot determine the purpose of an appropriation. An appropriation cannot validly direct the payment of government funds "for such other purposes as may be hereafter directed by the President," absent the proper application of the *ejusdem generis* rule. Section 8 of PD No. 910 authorizes the use of the Malampaya Fund for other projects approved only by the President. To repeat, Congress has the exclusive power to appropriate public funds, and vesting the President with the power to determine the uses of the Malampaya Fund violates the exclusive constitutional power of Congress to appropriate public funds.

V.

The phrase "to finance the priority infrastructure development projects x x x, as may be directed and authorized by the x x x President" under Section 12, Title IV of PD No. 1869, relating to the Use of the Government's Share in PAGCOR's Gross Earnings, is Unconstitutional.

The assailed provision in PD No. 1869 refers to the President's use of the government's share in the gross earnings of PAGCOR. Section 12, Title IV of PD No. 1869, or the PAGCOR charter, as amended, provides:

> Section 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00, shall immediately be set aside and shall accrue to the General Fund **to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and**

authorized by the Office of the President of the Philippines.[67] (Emphasis supplied)

Similar to PD No. 910, PD No. 1869 was issued when then President Marcos exercised both executive and legislative powers. Under the 1987 Constitution, the President no longer wields legislative powers. The phrase that the government's share in the gross earnings of PAGCOR shall be used "**to finance the priority infrastructure development projects x x x as may be directed and authorized by the Office of the President of the Philippines,"** is an undue delegation of the legislative power to appropriate.

An infrastructure is any of the "basic physical and organizational structures and facilities (*e.g.* buildings, roads, power supplies) needed for the operation of a society."[68] An appropriation for any infrastructure, or for various infrastructures, to be determined by the President is certainly not a specific purpose since an infrastructure is **any basic facility needed by society**. This power granted to the President to determine what kind of infrastructure to prioritize and fund is a power to determine the purpose of the appropriation, an undue delegation of the legislative power to appropriate.

The appropriation in Section 12 has **two divisible purposes**: one to finance any infrastructure project, and the other to finance the restoration of damaged or destroyed facilities due to calamities. To be a valid appropriation, each divisible purpose must have a corresponding specific amount, whether an absolute amount, a percentage of an absolute amount, or a percentage or the whole of a revenue stream like periodic gross earnings or collections. Section 12 is a lump-sum appropriation in view of its two divisible purposes and its single lump-sum amount.

However, since the first appropriation purpose – to finance any infrastructure project as the President may determine – is

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[67] As amended by Presidential Decree No. 1993. The pleadings of petitioners and respondents still referred to the original text in Section 12 as it first appeared in Presidential Decree No. 1869.

[68] Oxford Dictionary of English, Oxford University Press (2010).

unconstitutional, Section 12 has in effect only one appropriation purpose. That purpose, to finance the restoration of facilities damaged or destroyed by calamities, is a specific purpose because the facilities to be restored are only those damaged by calamities. This purpose meets the specificity required for an item to be a valid appropriation. The entire amount constituting the government's share in PAGCOR's gross earnings then becomes the specific amount to finance a specific purpose – the restoration of facilities damaged or destroyed by calamities, which is a valid appropriation.

In sum, only the phrase "to finance the priority infrastructure development projects" in Section 12 of the PAGCOR Charter is unconstitutional for being an undue delegation of legislative power. The rest of Section 12 is constitutional.

A Final Word

The PDAF bluntly demonstrates how a breakdown in the finely crafted constitutional check-and-balance system could lead to gross abuse of power and to wanton wastage of public funds. When the Executive and the Legislature enter into a constitutionally forbidden arrangement – the former proposing lump-sum expenditures in negation of its own line-item veto power and the latter enacting lump-sum appropriations to implement with facility its own chosen projects – the result can be extremely detrimental to the Filipino people.

We have seen the outrage of the Filipino people to the revulsive pork-barrel system spawned by this forbidden Executive-Legislative arrangement. The Filipino people now realize that there are billions of pesos in the annual budget that could lift a large number of Filipinos out of abject poverty but that money is lost to corruption annually. The Filipino people are now desperately in search of a solution to end this blighted pork-barrel system.

The solution lies with this Court, which must rise to this historic challenge. **The supreme duty of this Court is to restore the constitutional check-and-balance that was precisely intended to banish lump-sum appropriations and the pork-**

barrel system. The peaceful and constitutional solution to banish all forms of the pork-barrel system from our national life is for this Court to declare all lump-sum appropriations, whether proposed by the Executive or enacted by the Legislature, as unconstitutional.

Henceforth, as originally intended in the Constitution, the President shall submit to Congress only a line-item NEP, and Congress shall enact only a line-item GAA. The Filipino people can then see in the GAA for what specific purposes and in what specific amounts their tax money will be spent. This will allow the Filipino people to monitor whether their tax money is actually being spent as stated in the GAA.

ACCORDINGLY, I vote to **GRANT** the petitions and **DECLARE** Article XLIV, on the Priority Development Assistance Fund, of Republic Act No. 10352 **UNCONSTITUTIONAL** for violating the separation of powers, negating the President's constitutional line-item veto power, violating the constitutional duty of Congress to enact a line-item General Appropriations Act, and violating the requirement of line-item appropriations in the General Appropriations Act as prescribed in the Administrative Code of 1987. Further, the last phrase of Section 8 of Presidential Decree No. 910, authorizing the use of the Malampaya Fund "for such other purposes as may hereafter be directed by the President," and the phrase in Section 12, Title IV, of Presidential Decree No. 1869, as amended, authorizing the President to use the government's share in PAGCOR's gross earnings "to finance the priority infrastructure development projects" as the President may determine, are likewise declared **UNCONSTITUTIONAL** for being undue delegations of legislative power. I also vote to make permanent the temporary restraining order issued by this Court on 10 September 2013. I vote to deny petitioners' prayer for the Executive Secretary, Department of Budget and Management and Commission on Audit to release reports and data on the funds subject of these cases, as it was not shown that they have properly requested these agencies for the pertinent data.

CONCURRING OPINION

LEONEN, *J.*:

We do not just move on from a calamity caused by greed and abuse of power. We become better. We set things right.

We recover the public's trust.

We are again called to exercise our constitutional duty to ensure that every morsel of power of any incumbent in public office should only be exercised in stewardship. Privileges are not permanent; they are not to be abused. Rank is bestowed to enable public servants to accomplish their duties; it is not to aggrandize. Public office is for the public good; it is not a title that is passed on like a family heirloom.

It is solemn respect for the public's trust that ensures that government is effective and efficient. Public service suffers when greed fuels the ambitions of those who wield power. Our coffers are drained needlessly. Those who should pay their taxes will not properly pay their taxes. Some of the incumbents expand their experience in graft and corruption rather than in the knowledge and skills demanded by their office. Poverty, calamities, and other strife inordinately become monsters that a weakened government is unable to slay.

Greed, thus, undermines the ability of elected representatives to be real agents of their constituents. It substitutes the people's interest for the narrow parochial interest of the few. It serves the foundation of public betrayal while it tries to do everything to mask its illegitimacy.

The abuse of public office to enrich the incumbent at the expense of the many is sheer moral callousness. It is evil that is not easy to discover. However, the evil that men do cannot be hidden forever.

In time, courage, skill or serendipity reveals.

The time has come for what is loosely referred to as the "pork barrel system." We will allow no more evasion.

I am honored to be able to join with the *ponencia* of Justice Perlas-Bernabe and in part the Concurring Opinions of Chief Justice Sereno, Senior Associate Justice Carpio and Justice Arturo Brion. To their studied words and the strident voices of the millions who still have hope in an effective government with integrity, I add mine.

Title XLIV known as the Priority Development Assistance Fund (PDAF) in the 2013 General Appropriations Act (Republic Act No. 10352) is unconstitutional. We, thus, overturn the holdings of various cases starting with *Philippine Constitution Association v. Enriquez*[1] and *Sarmiento v. The Treasurer of the Philippines*.[2] Presidential Decree No. 910 does not sanction the unmitigated and unaccountable use of income derived from energy resources. The purpose of the Presidential Social Fund in Title IV, Section 12 of Presidential Decree No. 1869, as amended, "to finance the priority infrastructure development projects" is also unconstitutional.

I

What is involved in this case is the fundamental right of our peoples to have a truly representative government that upholds its stewardship and the public trust. It is none but their right to have a government worthy of their sovereignty.

Specifically, glossing over some of the lapses in the Petitions before us and specify that what is at issue in these cases is the constitutionality of the following:

(a) Title XLIV of the 2013 General Appropriations Act (GAA) or Republic Act No. 10352;

(b) The item referred to as the Various Infrastructure including Local Projects, Nationwide (VILP) located in Title XVIII (DPWH) in the same 2013 General Appropriations Act;

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[1] G.R. Nos. 113105, 113174, 113766, 113888, August 19, 1994, 235 SCRA 506.

[2] G.R. Nos. 125680 and 126313, September 4, 2001, Unsigned Resolution.

(c) The proviso in Presidential Decree No. 910, Section 8, which allows the use of the Malampaya Special Fund "for such other purposes as may be hereafter directed by the President"; and

(d) The Presidential Social Fund as described in Title IV, Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993.

II

Several procedural points contained in some of the pleadings filed in this case need to be clarified so that we are not deemed to have acquiesced.

II. A

The Solicitor General argues that the President cannot be made a respondent in this case. The President cannot be sued while he is in office.

I agree with the Solicitor General.[3]

The doctrine of the non-suability of the President is well settled.[4] This includes any civil or criminal cases. It is part of the Constitution by implication. Any suit will degrade the dignity necessary for the operations of the Office of the President. It will additionally provide either a hindrance or distraction from the performance of his official duties and functions. Also, any contrary doctrine will allow harassment and petty suits which can impair judgment. This does not mean, however, that the President cannot be made accountable. He may be impeached and removed.[5] Likewise, he can be made criminally and civilly liable in the proper case after his tenure as President.[6]

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[3] Memorandum, respondents, *rollo*, p. 291.

[4] *David v. Arroyo*, 522 Phil. 705, 763-764 (2006).

[5] CONSTITUTION, Article XI, Section 2 *et seq.*

[6] *Estrada v. Desierto*, G.R. Nos. 146710-15, April 3, 2001, 356 SCRA 108, *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez*, G.R. No. 191805, November 15, 2011, 660 SCRA 84.

The Petition[7] that names the President as respondent should, thus, be either dismissed or deemed amended accordingly.

II. B

Also, we cannot declare a "system" as unconstitutional. The Judiciary is not the institution that can overrule ideas and concepts *qua* ideas and concepts. Petitioners should endeavor to specify the act complained of and the laws or provisions of laws that have been invoked. It is their burden to show to this Court how these acts or provisions of law violate any constitutional provision or principle embedded in its provisions.

An ambiguous petition culled only from sources in the mainstream or social media without any other particularity may be dismissed outright. Courts of law cannot be tempted to render advisory opinions.

Generally, we are limited to an examination of the legal consequences of law as applied. This presupposes that there is a specific act which violates a demonstrable duty on the part of the respondents. This demonstrable duty can only be discerned when its textual anchor in the law is clear. In cases of constitutional challenges, we should be able to compare the statutory provisions or the text of any executive issuance providing the putative basis of the questioned act *vis-a-vis* a clear constitutional provision. Petitioners carry the burden of filtering events and identifying the textual basis of the acts they wish to question before the court. This enables the respondents to tender a proper traverse on the alleged factual background and the legal issues that should be resolved.

Petitions filed with this Court are not political manifestos. They are pleadings that raise important legal and constitutional issues.

Anything short of this empowers this Court beyond the limitations defined in the Constitution. It invites us to use our

[7] This was docketed as G.R. No. 209251 [*formerly* UDK 14951] entitled *Nepomuceno v. President Benigno Simeon C. Aquino*.

judgment to choose which law or legal provision to tackle. We become one of the party's advisers defeating the necessary character of neutrality and objectivity that are some of the many characteristics of this Court's legitimacy.

One of the petitioners has asked in its Petition to suspend the rules.[8] Another has questioned the general political and historical concept known as the "pork barrel system."

As stated in their pleadings filed before this Court:

> x x x. Contrary to the position taken by the political branches, petitioners respectfully submit that the "Pork Barrel System" is repugnant to several constitutional provisions.[9]

> Petitioners emphasize that what is being assailed in the instant *Petition* dated 27 August 2013 is not just the individual constitutionality of Legislative Pork Barrel and Presidential Pork Barrel. The interplay and dynamics of these two components form the Pork Barrel System, which is likewise being questioned as unconstitutional insofar as it undermines the principle of separation of powers and the corollary doctrine of checks and balances.[10]

None of the original Petitions point to the provisions of law that they wish this Court to strike down. Petitioners used the Priority Development Assistance Fund in the General Appropriations Act of 2013 merely as a concrete example of the "legislative pork barrel" which is assailed by the petitioners as unconstitutional. Thus,

> This is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (the "instant Petition") filed under Rule 65 of the Rules of Court, seeking to annul and set aside the Pork Barrel System

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[8] Petitioner Social Justice Society President Samson S. Alcantara in G.R. No. 208493, Petition, *rollo*, p. 2.

[9] Urgent Petition for *Certiorari* and Prohibition, Belgica, *et al.*, *rollo*, p. 5.

[10] Memorandum, petitioners Belgica, *et al*. (by Atty. Alfredo B. Molo, III), *rollo*, pp. 339-340.

presently embodied in the provisions of the General Appropriations Act ("GAA") of 2013 providing for the Legislature's Priority Development Assistance Fund or any replacement thereto, and the Executive's various lump sum, discretionary funds colloquially referred to as the Special Purpose Funds.[11] (Underscoring supplied)

Petitioners consider the PDAF as it appears in the 2013 GAA as legislative pork barrel, considering that:

> a. It is a post-enactment measure and it allows individual legislators to wield a collective power;
>
> b. The PDAF gives lump-sum funds to Congressmen (PhP70 Million) and Senators (PhP200 Million);
>
> c. Despite the existence of a menu of projects, legislators have discretionary power to propose and identify the projects or beneficiaries that will be funded by their respective PDAF allocations;
>
> d. The legislative guidelines for the PDAF in the 2013 GAA are vague and overbroad insofar as the purpose for which the funds are to be used; and
>
> e. Legislators, specifically Congressmen, are generally directed to channel their PDAF to projects located in their respective districts, but are permitted to fund projects outside of his or her district, with permission of the local district representative concerned.[12]

For purposes of this litigation, we should focus on Title XVIV of the 2013 General Appropriations Act which now contains the Priority Development Assistance Fund (PDAF) item. The *ponencia* ably chronicles the history of this aspect of "pork barrel" and notes that the specific features of the present Priority Development Assistance Fund is different from its predecessors.

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[11] Urgent Petition for *Certiorari* and Prohibition, Belgica, *et al*., *rollo*, p. 7.

[12] Memorandum, petitioners Belgica, *et al*. (by Atty. Alfredo B. Molo, III), *rollo*, pp. 338-339.

To the extent that our pronouncements today affect the common features of all these forms of "pork barrel" is the extent to which we affect the "system."

II. C

Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.

The requirement of an "actual case," thus, means that the case before this Court "involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic based on extra-legal or other similar considerations not cognizable by a court of justice."[13]

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[13] *Joya v. Presidential Commission on Good Governance,* G.R. No. 96541, August 24, 1993, 225 SCRA 568, 579.

Furthermore, "the controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests."[14] Thus, the adverse position of the parties must be sufficient enough for the case to be pleaded and for this Court to be able to provide the parties the proper relief/s prayed for.

The requirement of an 'actual case' will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.[15]

To support the factual backdrop of their case, petitioners rely primarily on the Commission on Audit's Special Audits Office Report No. 2012-03, entitled *Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)* "x x x as definitive documentary proof that Congress has breached the limits of the power given it by the Constitution on budgetary matters, and together with the Executive, has been engaged in acts of grave abuse of discretion."[16]

However, the facts that the petitioners present may still be disputable. These may be true, but those named are still entitled to legal process.

The Commission on Audit (COA) Report used as the basis by petitioners to impute illegal acts by the members of Congress is a finding that may show, *prima facie*, the factual basis that gives rise to concerns of grave irregularities. It is based upon the Commission on Audit's procedures on audit investigation

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[14] *John Hay Peoples Alternative Coalition v. Lim*, 460 Phil. 530, 545 (2003).

[15] *Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, *Concurring Opinion of Justice Leonen.*

[16] Urgent Petition for *Certiorari* and Prohibition, Belgica, *et al*., *rollo*, p. 4.

as may be provided by law and their rules.[17] It may suggest the culpability of some public officers. Those named, however, still await notices of disallowance/charge, which are considered audit decisions, to be issued on the basis of the COA Report.[18]

This is provided in the procedures of the Commission on Audit, thus:

> ***Audit Disallowances/Charges/Suspensions.*** – In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, the audit shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions. Such ND/NC shall be adequately established by evidence and the conclusions, recommendations, or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles. The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation.[19]

Notices of Disallowance that will be issued will furthermore still be litigated.

However, prior to the filing of these Petitions, this Court promulgated *Delos Santos v. Commission on Audit.* In that case, we dealt with the patent irregularity of the disbursement of the Priority Development Assistance Fund of then Congressman Antonio V. Cuenco.[20]

We have basis, therefore, for making the exception to an actual case. Taking together *Delos Santos* and the *prima facie* findings of fact in the COA Report, which must be initially

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[17] Presidential Decree No. 1445 (1978).

[18] Commission on Audit Revised Rules of Procedure (2009), Rule VI, Sec. 4.

[19] *Id*.

[20] See *Delos Santos v. Commission on Audit*, G.R. No. 198457, August 13, 2013.

respected by this Court sans finding of grave abuse of discretion,[21] there appears to be some indication that there may be widespread and pervasive wastage of funds by the members of the Congress who are tasked to check the President's spending. It appears that these leakages are not only imminent but ongoing.

We note that our findings on the constitutionality of this item in the General Appropriations Act is without prejudice to finding culpability for violation of other laws. None of the due process rights of those named in the report will, thus, be imperiled.

III

The Solicitor General, on behalf of respondents, argue that "[r]eforms are already underway"[22] and that "[t]he political branches are already in the process of dismantling the PDAF system and reforming the budgetary process x x x."[23] Thus, the Solicitor General urges this Court "not to impose a judicial solution at this stage, when a progressive political solution is already taking shape."[24]

He further alleges that Congress is on the verge of deleting the provisions of the Priority Development Assistance Fund. In his Memorandum, he avers that:

15. The present petitions should be viewed in relation to the backward- and forward-looking progressive, remedial, and responsive actions currently being undertaken by the political branches of government. We invite the Honorable Court to take judicial notice of the backward-looking responses of the government: the initial complaints for plunder that were recently filed by the Department of Justice before the Ombudsman. We also invite the Honorable Court to take judicial notice of the forward-looking responses of the government: the

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[21] *Nazareth v. Villar*, G.R. No. 188635, January 29, 2013, 689 SCRA 385, 407.

[22] Memorandum, respondents, *rollo*, p. 294.

[23] *Id.*

[24] Memorandum, respondents, *rollo*, p. 296.

declared program of the political branches to eliminate the PDAF in the 2014 budget and the reforms of the budgetary process to respond to the problem of abuse of discretion in the use of so-called pork barrel funds. Given the wider space of the political departments in providing solutions to the current controversy, this Court should exercise its judicial review powers cautiously lest it interrupts an ongoing reform-oriented political environment.

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17. Reforms are underway. The President has officially declared his intent to abolish the PDAF and has specified his plan to replace the PDAF. Before the TRO was issued by this Honorable Court on 10 September 2013, the President had already withheld the release of the remaining PDAF under the 2013 GAA and outlined reforms to the budget.

18. The leadership of the Senate and of the House of Representatives have also officially declared their support for the intent to abolish the PDAF and replace it with a more transparent, accountable, and responsive system. The House of Representatives has already passed a PDAF-free budget on second reading and moved amounts from the current PDAF into the budget for line-item projects.

19. Congress is in the process of adopting more stringent qualifications for line-item projects in the 2014 budget. This means that projects will have to be approved within the budget process, and included as line-items in the appropriations of implementing agencies. x x x.[25]

III. A

The political question doctrine emerged as a corollary to the nature of judicial review. In the landmark case of *Angara v. Electoral Commission*,[26] the essence of the duty of judicial review was explained, thus:

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several

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[25] Memorandum, respondents, *rollo*, pp. 292-294.

[26] 63 Phil. 139 (1936).

departments, however, sometimes makes it hard to say just where one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. **In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.**

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The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And **when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.** This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[27] (Emphasis provided)

This Court in *Angara,* however, expressed caution and a policy of hesitance in the exercise of judicial review. This Court was quick to point out that this power cannot be used to cause interference in the political processes by limiting the power of review in its refusal to pass upon "questions of wisdom, justice or expediency of legislation,"[28] thus:

x x x **Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional**

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[27] *Id*. at 157-158.

[28] *Id*. at 158.

question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, **the judiciary does not pass upon questions of wisdom, justice or expediency of legislation.** More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[29]

What were questions of wisdom and questions of legality that would be within the purview of the courts were earlier explained in *Tañada v. Cuenco*:[30]

As already adverted to, the objection to our jurisdiction hinges on the question whether the issue before us is political or not. In this connection, Willoughby lucidly states:

> Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon *the policy* of legislative or executive action. Where, therefore, *discretionary* powers are granted by the Constitution or by statute, the *manner* in which those powers are exercised is not subject to judicial review. The courts, therefore, concern themselves only with the question as to the *existence and extent of these discretionary powers*.
>
> As distinguished from the judicial, the legislative and executive departments are spoken of as the *political* departments of government because in very many cases their action is necessarily dictated by considerations of public or political policy. *These considerations of public or political policy of course will not permit the legislature to violate constitutional provisions, or the executive to exercise authority not granted him by the Constitution or by statute,* but, *within these limits,*

[29] *Id.* at 158-159.

[30] 103 Phil. 1051 (1957).

> they do permit the departments, separately or together, to *recognize that a certain set of facts exists or that a given status exists*, and these determinations, together with the consequences that flow therefrom, may not be traversed in the courts." (Willoughby on the Constitution of the United States, Vol. 3, p. 1326; Emphasis supplied)
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> xxx xxx xxx
>
> It is not easy, however, to define the phrase 'political question,' nor to determine what matters fall within its scope. It is frequently used to designate all questions that lie outside the scope of the judicial questions, which under the Constitution, are to be *decided by the people in their sovereign capacity*, or in regard to which *full discretionary authority* has been delegated to the *legislative or* executive branch of the government. (16 C.J.S., 413; *See also Geauga Lake Improvement Ass'n. vs. Lozier*, 182 N. E. 491, 125 Ohio St. 565; *Sevilla vs. Elizalde*, 112 F. 2d 29, 72 App. D. C., 108; Emphasis supplied)
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> xxx xxx xxx
>
> x x x What is generally meant, when it is said that a question is political, and not judicial, is that *it is a matter which is to be exercised by the people in their primary political capacity*, or that it has been specifically delegated to some other department or particular officer of the government, *with discretionary power to act. See* State vs. Cunningham, 81 Wis. 497, 51 L. R. A. 561; *In Re* Gunn, 50 Kan. 155; 32 Pac. 470, 948, 19 L. R. A. 519; Green vs. Mills, 69 Fed. 852, 16, C. C. A. 516, 30 L. R. A. 90; Fletcher vs. Tuttle, 151 Ill. 41, 37 N. E. 683, 25 L. R. A. 143, 42 Am. St. Rep. 220. x x x.

In short, the phrase "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of *Corpus Juris Secundum* (*supra*), it refers to "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government." It is concerned

with issues dependent upon the *wisdom*, not legality, of a particular measure.[31]

In *Casibang v. Judge Aquino*,[32] the definition of a political question was discussed, citing *Baker v. Carr*:

> x x x The term "political question" connotes what it means in ordinary parlance, namely, a question of policy. It refers to those questions which under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure" (Tañada vs. Cuenco, L-1052, Feb. 28, 1957). A broader definition was advanced by U.S. Supreme Court Justice Brennan in *Baker vs. Carr* (369 U.S. 186 [1962]): "**Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of the government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question**" (p. 217). And Chief Justice Enrique M. Fernando, then an Associate Justice of this Court, fixed the limits of the term, thus: "The term has been made applicable to controversies clearly non-judicial and therefore beyond its jurisdiction or to an issue involved in a case appropriately subject to its cognizance, as to which there has been a prior legislative or executive determination to which deference must be paid (Cf. *Vera vs. Avelino*, 77 Phil. 192 [1946]; *Lopez vs. Roxas*, L-25716, July 28, 1966, 17 SCRA 756; *Gonzales vs. Commission on Elections*, L-28196, Nov. 9, 1967, 21 SCRA 774).

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[31] *Id.* at 1065-1067.

[32] 181 Phil. 181 (1979).

It has likewise been employed loosely to characterize a suit where the party proceeded against is the President or Congress, or any branch thereof (Cf. *Planas vs. Gil*, 67 Phil. 62 [1937]; *Vera vs. Avelino*, 77 Phil. 192 [1946]). If to be delimited with accuracy; 'political questions' should refer to such as would under the Constitution be decided by the people in their sovereign capacity or in regard to which full discretionary authority is vested either in the President or Congress. It is thus beyond the competence of the judiciary to pass upon. x x x." (*Lansang vs. Garcia*, 42 SCRA 448, 504-505 [1971]).[33] (Emphasis provided)

III. B

With this background and from our experience during Martial Law, the members of the Constitutional Commission clarified the power of judicial review through the second paragraph of Section 1 of Article VIII of the Constitution. This provides:

> Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable ***and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government***. (Emphasis provided)

This addendum was borne out of the fear that the political question doctrine would continue to be used by courts to avoid resolving controversies involving acts of the Executive and Legislative branches of government.[34] Hence, judicial power was expanded to include the review of any act of grave abuse of discretion on ***any*** branch or instrumentality of the government.

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[33] *Casibang v. Aquino*, 181 Phil. 181, 192-193 (1979).

[34] RECORDS OF THE CONSTITUTIONAL COMMISSION, Vol. I, July 10, 1986, No. 27

"x x x [T]he role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the Solicitor General set up the defense of political questions and got away with it."

The Constitutional Commissioners were working with their then recent experiences in a regime of Martial Law. The examples that they had during the deliberations on the floor of the Constitutional Commission were naturally based on those experiences. It appears that they did not want a Court that had veto on any and all actions of the other departments of government. Certainly, the Constitutional Commissioners did not intend that this Court's discretion substitutes for the political wisdom exercised within constitutional parameters. However, they wanted the power of judicial review to find its equilibrium further than unthinking deference to political acts. Judicial review extends to review political discretion that clearly breaches fundamental values and principles congealed in provisions of the Constitution.

III. C

Grave abuse of discretion, in the context of the second paragraph of Section 1 of Article VIII of the Constitution, has been described in various cases.

In *Tañada v. Angara*,[35] the issue before this Court was whether the Senate committed grave abuse of discretion when it ratified the Agreement establishing the World Trade Organization. Although the ratification of treaties was undoubtedly a political act on the part of Congress, this Court treated it as a justiciable issue. This Court held that "[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute."[36] In defining grave abuse of discretion as "x x x such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction" and "must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law,"[37] this Court found that the Senate, in

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[35] 338 Phil. 546 (1997).

[36] *Id.* at 574.

[37] *Id.* at 604.

the absence of proof to the contrary, did not commit grave abuse of discretion in the exercise of its power of concurrence granted to it by the Constitution.

In *Villarosa v. House of Representatives Electoral Tribunal*,[38] this Court's jurisdiction was invoked where petitioners assailed the acts of the House of Representatives Electoral Tribunal. Petitioners alleged that the House of Representatives Electoral Tribunal committed grave abuse of discretion when it treated the "JTV" votes as stray or invalid.

This Court, through Chief Justice Davide, defined grave abuse of discretion as "x x x such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; or, in other words, where the power is exercised in an arbitrary manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duly enjoined or to act at all in contemplation of law."[39] After a review of the facts established in the case and application of the relevant provisions of law, it then held that the House of Representatives did not commit grave abuse of discretion.[40]

In *Sen. Defensor Santiago v. Sen. Guingona, Jr.*,[41] this Court was tasked to review the act of the Senate President. The assailed act was the Senate President's recognition of respondent as the minority leader despite the minority failing to arrive at a clear consensus during the caucus. This Court, while conceding that the Constitution does not provide for rules governing the election of majority and minority leaders in Congress, nevertheless ruled that the acts of its members are still subject to judicial review when done in grave abuse of discretion:

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[38] 394 Phil. 730 (2000).

[39] *Id.* at 752.

[40] *Id.* at 757-758.

[41] 359 Phil. 276 (1998).

While no provision of the Constitution or the laws or the rules and even the practice of the Senate was violated, and while the judiciary is without power to decide matters over which full discretionary authority has been lodged in the legislative department, this Court may still inquire whether an act of Congress or its officials has been made with grave abuse of discretion. This is the plain implication of Section 1, Article VIII of the Constitution, which expressly confers upon the judiciary the power and the duty not only "to settle actual controversies involving rights which are legally demandable and enforceable," but likewise "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[42] (Emphasis provided)

III. D

Post-EDSA, this Court has even on occasion found exceptional circumstances when the political question doctrine would not apply.

Thus, in *SANLAKAS v. Executive Secretary Reyes*,[43] this Court ruled that while the case has become moot, "[n]evertheless, courts will decide a question, otherwise moot, if it is "capable of repetition yet evading review."[44]

In *SANLAKAS*, Petitions were filed to assail the issuance of Proclamation No. 427 declaring a state of rebellion during the so-called Oakwood occupation in 2003. While this Court conceded that the case was mooted by the issuance of Proclamation No. 435, which declared that the state of rebellion ceased to exist, it still decided the case. This Court pointed out that the issue has yet to be decided definitively, as evidenced by the dismissal of this Court of previous cases involving the same issue due to mootness:

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[42] *Id*. at 301.

[43] 466 Phil. 482 (2004).

[44] *Id*. at 506.

Once before, the President on May 1, 2001 declared a state of rebellion and called upon the AFP and the PNP to suppress the rebellion through Proclamation No. 38 and General Order No. 1. On that occasion, "'an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons' assaulted and attempted to break into Malacañang." Petitions were filed before this Court assailing the validity of the President's declaration. Five days after such declaration, however, the President lifted the same. The mootness of the petitions in *Lacson v. Perez* and accompanying cases precluded this Court from addressing the constitutionality of the declaration.

To prevent similar questions from reemerging, we seize this opportunity to finally lay to rest the validity of the declaration of a state of rebellion in the exercise of the President's calling out power, the mootness of the petitions notwithstanding.[45] (Emphasis provided, citations omitted)

In *Funa v. Villar*,[46] a Petition was filed contesting the appointment of Reynaldo A. Villar as Chairman of the Commission on Audit. During the pendency of the case, Villar sent a letter to the President signifying his intention to step down from office upon the appointment of his replacement. Upon the appointment of the current Chairman, Ma. Gracia Pulido-Tan, the case became moot and academic. This Court, guided by the principles stated in *David v. Arroyo,* still gave due course to the Petition:

Although deemed moot due to the intervening appointment of Chairman Tan and the resignation of Villar, We consider the instant case as falling within the requirements for review of a moot and academic case, since it asserts at least four exceptions to the mootness rule discussed in *David*, namely: there is a grave violation of the Constitution; the case involves a situation of exceptional character and is of paramount public interest; the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; and the case is capable of repetition yet

[45] *Id.* at 505-506.

[46] G.R. No. 192791, April 24, 2012, 670 SCRA 579.

evading review. The situation presently obtaining is definitely of such exceptional nature as to necessarily call for the promulgation of principles that will henceforth "guide the bench, the bar and the public" should like circumstance arise. Confusion in similar future situations would be smoothed out if the contentious issues advanced in the instant case are resolved straightaway and settled definitely. There are times when although the dispute has disappeared, as in this case, it nevertheless cries out to be addressed. To borrow from *Javier v. Pacificador*, "Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint in the future."[47] (Citations omitted)

III. E

Thus, the addendum in the characterization of the power of judicial review should not be seen as a full and blanket reversal of the policy of caution and courtesy embedded in the concept of political questions. It assumes that the act or acts complained of would appear initially to have been done within the powers delegated to the respondents. However, upon perusal or evaluation of its consequences, it may be shown that there are violations of law or provisions of the Constitution.

The use of the Priority Development Assistance Fund or the "pork barrel" itself is questioned. It is not the act of a few but the practice of members of Congress and the President. The current Priority Development Assistance Fund amounts to twenty four (24) billion pesos; the alternative uses of this amount have great impact. Its wastage also will have lasting effects. To get a sense of its magnitude, we can compare it with the proposed budgetary allocation for the entire Judiciary. All courts get a collective budget that is about eighteen (18) billion pesos. The whole system of adjudication is dwarfed by a system that allocates funds for unclear political motives.

The concepts of accountability and separation of powers are fundamental values in our constitutional democracy. The effect

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[47] *Id.* at 592-593.

of the use of the Priority Development Assistance Fund can have repercussions on these principles. Yet, it is difficult to discover anomalies if any. It took the Commission on Audit some time to make its special report for a period ending in 2009. It is difficult to expect such detail from ordinary citizens who wish to avail their rights as taxpayers. Clearly, had it not been for reports in both mainstream and social media, the public would not have been made aware of the magnitude.

What the present Petitions present is an opportune occasion to exercise the expanded power of judicial review. Due course should be given because these Petitions suggest a case where (a) there may be indications that there are pervasive breaches of the Constitution; (b) there is no doubt that there is a large and lasting impact on our societies; (c) what are at stake are fundamental values of our constitutional order; (d) there are obstacles to timely discovering facts which would serve as basis for regular constitutional challenges; and (e) the conditions are such that any delay in our resolution of the case to await action by the political branches will not entirely address the violations. With respect to the latter, our Decision will prevent the repetition of the same acts which have been historically shown to be "capable of repetition" and yet "evading review." Our Decision today will also provide guidance for bench and bar.

IV

Respondents also argued that we should continue to respect our precedents. They invoke the doctrine of *stare decisis*.

Stare decisis is a functional doctrine necessary for courts committed to the rule of law. It is not, however, an encrusted and inflexible canon.[48] Slavishly adhering to precedent potentially undermines the value of a Judiciary.

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[48] *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694, 707 citing the Dissenting Opinion of *J.* Puno in *Lambino v. COMELEC*, 536 Phil. 1, 281 (2006).

IV. A

Stare decisis is based on the logical concept of analogy.[49] It usually applies for two concepts. The first is the meaning that is authoritatively given to a text of a provision of law with an established set of facts.[50] The second may be the choices or methods of interpretation to arrive at a meaning of a certain kind of rule.

This case concerns itself with the first kind of *stare decisis*; that is, whether recommendations made by members of Congress with respect to the projects to be funded by the President continue to be constitutional.

Ruling by precedent assists the members of the public in ordering their lives in accordance with law and the authoritative meanings promulgated by our courts.[51] It provides reasonable expectations.[52] Ruling by precedent provides the necessary

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[49] See *Tung Chin Hui v. Rodriguez,* 395 Phil. 169, 177 (2000). This Court held that "[t]he principle cited by petitioner is an abbreviated form of the maxim "*Stare decisis, et non quieta movere*." That is, "When the court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same." This principle assures certainty and stability in our legal system."

[50] An example to this is the application of the doctrine of *stare decisis* in the case of *Philippine National Bank v. Palma,* 503 Phil. 917 (2005).

[51] *See* Separate Opinion of Justice Imperial with whom concur Chief Justice Avanceña and Justice Villa-Real in *In the matter of the Involuntary Insolvency of Rafael Fernandez, Philippine Trust Company and Smith, Bell & Company Ltd v. L.P. Mitchell et al.*, 59 Phil. 30, 41 (1933). It was held that "[m]erchants, manufacturers, bankers and the public in general have relied upon the uniform decisions and rulings of this court and they have undoubtedly been guided in their transactions in accordance with what we then said to be the correct construction of the law. Now, without any new and powerful reason we try to substantially modify our previous rulings by declaring that the preferences and priorities above referred to are not recognized by the Insolvency Law."

[52] *See Lazatin v. Desierto,* G.R. No. 147097, June 5, 2009, 588 SCRA 285, 294-295, where this Court held that "the doctrine [of *stare decisis*] has assumed such value in our judicial system that the Court has ruled

comfort to the public that courts will be objective. At the very least, courts will have to provide clear and lucid reasons should it not apply a given precedent in a specific case.[53]

IV. B

However, the use of precedents is never mechanical.[54]

Some assumptions normally creep into the facts established for past cases. These assumptions may later on prove to be inaccurate or to be accurate only for a given historical period. Sometimes, the effects assumed by justices who decide past cases do not necessarily happen.[55] Assumed effects are given primacy whenever the spirit or intent of the law is considered in the interpretation of a legal provision. Some aspect of the facts or the context of these facts would not have been fully considered. It is also possible that doctrines in other aspects of the law related to a precedent may have also evolved.[56]

In such cases, the use of precedents will unduly burden the parties or produce absurd or unworkable outcomes. Precedents

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that "[a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished."

[53] *Ting v. Velez-Ting*, *supra* at 707 citing Dissenting Opinion of *J.* Puno in *Lambino v. COMELEC*, 536 Phil. 1, 281 (2006) on its discussion on the factors that should be considered before overturning prior rulings.

[54] *See In the matter of the Involuntary Insolvency of Rafael Fernandez*, 59 Phil. 30, 36-37 (1933), this Court held that "but idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court. x x x Freeing ourselves from the incubus of precedent, we have to look to legislative intention."

[55] *Ting v. Velez-Ting*, *supra* at 705 citing the Dissenting Opinion of *J.* Puno in *Lambino v. COMELEC*, 536 Phil.1, 281.

[56] *Id*. at 707.

will not be useful to achieve the purposes for which the law would have been passed.[57]

Precedents also need to be abandoned when this Court discerns, after full deliberation, that a continuing error in the interpretation of the spirit and intent of a constitutional provision exists, especially when it concerns one of the fundamental values or premises of our constitutional democracy.[58] The failure of this Court to do so would be to renege on its duty to give full effect to the Constitution.[59]

IV. C

PHILCONSA v. Enriquez held that the appropriation for the Countrywide Development Fund in the General Appropriations Act of 1994 is constitutional. This Court ruled that "the authority given to the members of Congress is only to propose and identify projects to be implemented by the President. x x x. The proposals made by the members of Congress are merely recommendatory."[60]

Subsequent challenges to various forms of the "pork barrel system" were mounted after *PHILCONSA*.

In *Sarmiento v. The Treasurer of the Philippines*,[61] the constitutionality of the appropriation of the Countrywide

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[57] *Id*.

[58] *See Urbano v. Chavez*, 262 Phil. 374, 385 (1990) where this Court held that "[the] principle of *stare decisis* notwithstanding, it is well settled that a doctrine which should be abandoned or modified should be abandoned or modified accordingly. After all, more important than anything else is that this Court should be right."

[59] *See Tan Chong v. Secretary of Labor*, 79 Phil. 249, 257 (1947), where this Court held that "The principle of *stare decisis* does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this Court is to forsake and abandon any doctrine or rule found to be in violation of the law in force."

[60] G.R. No. L-113105, August 19, 1994, 235 SCRA 506, 523.

[61] G.R. Nos. 125680 and 126313, September 4, 2001, Unsigned Resolution.

Development Fund in the General Appropriations Act of 1996 was assailed. This Court applied the principle of *stare decisis* and found "no compelling justification to review, much less reverse, this Court's ruling on the constitutionality of the CDF."

The latest case was *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*.[62] Petitioners in *LAMP* argue that in implementing the provisions of the Priority Development Assistance Fund in the General Appropriations Act of 2004, direct releases of the fund were made to members of Congress.[63] However, this Court found that petitioners failed to present convincing proof to support their allegations.[64] The presumption of constitutionality of the acts of Congress was not rebutted.[65] Further, this Court applied the ruling in *PHILCONSA* on the authority of members of Congress to propose and identify projects.[66] Thus, we upheld the constitutionality of the appropriation of the Priority Development Assistance Fund in the General Appropriations Act of 2004.

There are some indications that this Court's holding in *PHILCONSA* suffered from a lack of factual context.

The *ponencia* describes a history of increasing restrictions on the prerogative of members of the House of Representatives and the Senate to recommend projects. There was no reliance simply on the dicta in *PHILCONSA*. This shows that successive administrations saw the need to prevent abuses.

There are indicators of the failure of both Congress and the Executive to stem these abuses.

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[62] G.R. No. 164987, April 24, 2012, 670 SCRA 373.

[63] *Id*. at 379.

[64] *Id*. at 387.

[65] *Id*. at 390-391.

[66] *Id*. at 390.

Just last September, this Court's *En Banc* unanimously found in *Delos Santos v. Commission on Audit*[67] that there was irregular disbursement of the Priority Development Assistance Fund of then Congressman Antonio V. Cuenco.

In *Delos Santos*, Congressman Cuenco entered into a Memorandum of Agreement with Vicente Sotto Memorial Medical Center. The Memorandum of Agreement was for the purpose of providing medical assistance to indigent patients. The amount of ₱1,500,000.00 was appropriated from the Priority Development Assistance Fund of Congressman Cuenco. It may be noted that in the Memorandum of Agreement, Congressman Cuenco "shall identify and recommend the indigent patients who may avail of the benefits of the Tony N' Tommy (TNT) Health Program x x x."[68]

The Special Audits Team of the Commission on Audit assigned to investigate the TNT Health Program had the following findings, which were upheld by us:

1. The TNT Program was not implemented by the appropriate implementing agency but by the office set up by Congressman Cuenco.

2. The medicines purchased did not go through the required public bidding in violation of applicable procurement laws and rules.

3. Specific provisions of the MOA itself setting standards for the implementation of the same program were not observed.[69]

In the disposition of the case, this Court "referred the case to the Office of the Ombudsman for proper investigation and

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[67] G.R. No. 198457, August 13, 2013

< http://sc.judiciary.gov.ph/jurisprudence/2013/august2013/198457.pdf> (visited November 20, 2013).

[68] *Id*.

[69] *Id*.

criminal prosecution of those involved in the irregular disbursement of then Congressman Antonio V. Cuenco's Priority Development Assistance Fund."[70]

While the special report of the Commission on Audit may not definitively be used to establish the facts that it alleges, it may be one of the indicators that we should consider in concluding that the context of the Decision in *PHILCONSA* may have changed.

In addition, but no less important, is that *PHILCONSA* perpetuates an error in the interpretation of some of the fundamental premises of our Constitution.

To give life and fully live the values contained in the words of the Constitution, this Court must be open to timely re-evaluation of doctrine when the opportunity presents itself. We should be ready to set things right so that what becomes final is truly relevant to the lives of our people and consistent with our laws.

Mechanical application of *stare decisis*, at times, is not consistency with principle. At these times, consistency with principle requires that we reject what appears as *stare decisis*.

V

Nowhere is public trust so important than in the management and use of the finances of government.

V. A

One of the central constitutional provisions is Article VI, Section 29(1) which provides:

> No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

The President first submits to Congress a "budget of expenditures and sources of financing" in compliance with Article VII, Section 22 which provides thus:

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[70] *Id*.

> The President shall submit to the Congress, within thirty days from the opening of every regular session as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

This budget of expenditures and sources of financing (also called the National Expenditure Plan) is first filed with the House of Representatives and can only originate from there. Thus, in Article VI, Section 24:

> All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

Thereafter, the General Appropriations Bill is considered by Congress in three readings like other pieces of legislation.[71] Should it become necessary, a bicameral committee is convened to harmonize the differences in the Third Reading copies of each Legislative chamber. This is later on submitted to both the House and the Senate for ratification.[72]

The bill as approved by Congress shall then be presented to the President for approval. The President, in addition to a full approval or veto, is granted the power of an item veto. Article VI, Section 27 (2) provides:

> The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

We have had, in several cases, interpreted the power of item veto of the President.[73]

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[71] CONSTITUTION, Art. VI, Sec. 26.

[72] The procedures and the effect of bicameral committee deliberations were discussed in the cases of *Abakada Guro Party List v. Executive Secretary*, 506 Phil. 1, 86-90 (2005), *Montesclaros v. Comelec*, 433 Phil. 620, 634 (2002).

[73] *Gonzales v. Macaraig*, G.R. No. 87636, November 19, 1990, 191 SCRA 452, 464-468; *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992,

In *Bengzon v. Drilon*,[74] we said that a provision is different from an item. Thus,

We distinguish an item from a provision in the following manner:

The terms *item* and *provision* in budgetary legislations are concededly different. An *item* in a bill refers to the particulars, the details, the distinct and severable parts x x x of the bill. It is an indivisible sum of money dedicated to a stated purpose. The United States Supreme Court, in the case of *Bengzon v. Secretary of Justice*, declared 'that an 'item' of an appropriation bill obviously means an *item* which in itself is a specific appropriation of money, not some *general provision of law*, which happens to be put into an appropriation bill.[75]

A *provision* does not "directly appropriate funds x x x [but specifies] certain conditions and restrictions in the manner by which the funds to which they relate have to be spent."[76]

In *PHILCONSA v. Enriquez*,[77] we clarified that an unconstitutional provision is one that is inappropriate, and therefore, has no effect:

As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates," it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered "an inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended

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208 SCRA 133, 143-144; *PHILCONSA v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 532-544.

[74] G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[75] *Id.* at 143-144.

[76] *Attiw v. Zamora,* 508 Phil. 322, 335 (2005).

[77] G.R. No. 113105, August 19, 1994, 235 SCRA 506.

to amend other laws, because clearly these kinds of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments. Former Justice Irene Cortes, as *Amicus Curiae,* commented that Congress cannot by law establish conditions for and regulate the exercise of powers of the President given by the Constitution for that would be an unconstitutional intrusion into executive prerogative.[78]

V. B

What is readily apparent from the provisions of the Constitution is a clear distinction between the role of the Legislature and that of the Executive when it comes to the budget process.[79]

The Executive is given the task of preparing the budget and the prerogative to spend from an authorized budget.[80]

The Legislature, on the other hand, is given the power to authorize a budget for the coming fiscal year.[81] This power to authorize is given to the Legislature collectively.

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[78] *Id.* at 534.

[79] *See Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012, 670 SCRA 373, 388-389 for an outline on the budget process.

[80] Budget preparation, the first stage of the national budget process, is an executive function, in accordance with CONSTITUTION, Article VII, Section 22.

See also Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389, *citing Guingona v. Carague,* 273 Phil. 443, 460, (1991) which outlined the budget process. It provides that the third stage of the process, budget execution, is also tasked on the Executive.

[81] Legislative authorization, the second stage of the national budget process, is a legislative function. CONSTITUTION, Article VI, Sections 24 and 29(1) provide as follows:

Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

Nowhere in the Constitution does it allow specific members of the House of Representatives or the Senate to implement projects and programs. Their role is clear. Rather, it is the local government units that are given the prerogative to execute projects and programs.[82]

Implicit in the power to authorize a budget for government is the necessary function of evaluating the past year's spending performance as well as the determination of future goals for the economy.[83]

A budget provides the backbone of any plan of action. Every plan of action should have goals but should also be enriched by past failures. The deliberations to craft a budget that happen in Congress is informed by the inquiries made on the performance of every agency of government. The collective inquiries made by representatives of various districts should contribute to a

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Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

In *LAMP*, this Court said:

"Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with amendments. While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto." (Underscoring supplied.)

[82] *See* CONSTITUTION, Article X, Section 3 in relation to Section 14.

[83] *See Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389 *citing Guingona v. Carague*, 273 Phil. 443, 460, (1991). This provides that the fourth and last stage of the national budget process is budget accountability which refers to "the evaluation of actual performance and initially approved work targets, obligations incurred, personnel hired and work accomplished are compared with the targets set at the time the agency budgets were approved."

clearer view of the mistakes or inefficiencies that have happened in the past. It should assist elected representatives to discern the plans, programs, and projects that work and do not work.

Evaluating the spending of every agency in government requires that the Legislature is able to exact accountability. Not only must it determine whether the expenditures were efficient. The Legislature must also examine whether there have been unauthorized leakages — or graft and corruption — that have occurred.

The members of the Legislature do not do the formal audit of expenditures. This is the principal prerogative of the Commission on Audit.[84] Rather, they benefit from such formal audits. These formal audits assist the members of the House of Representatives and the Senators to do their constitutional roles. The formal audits also make public and transparent the purposes, methods used, and achievements and failures of each and every expenditure made on behalf of the government so that their constituencies can judge them as they go on to authorize another budget for another fiscal year.

Any system where members of Congress participate in the execution of projects ***in any way*** compromises them. It encroaches on their ability to do their constitutional duties. The violation is apparent in two ways: their ability to efficiently make judgments to authorize a budget and the interference in the constitutional mandate of the President to be the Executive.

Besides, interference in any government project other than that of congressional activities is a direct violation of Article VI, Section 14 of the 1987 Constitution in so far as Title XLIV of the 2013 General Appropriations Act allows participation by Congress. Article VI, Section 14 provides:

No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before

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[84] CONSTITUTION, Art. IX, Sec. 2(1).

the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including government owned or controlled corporation, or its subsidiary, during his term of office. ***He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.***[85] (Emphasis provided)

V. C

Title XLIV of the General Appropriations Act of 2013 is the appropriation for the Priority Development Assistance Fund of a lump sum amount of ₱24,790,000,000.00.

The Special Provisions of the Priority Development Assistance Fund are:

1. Use of Fund. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

[A project menu follows]

PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same.

2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the MHTS-PR by the DSWD. For this purpose, the implementing agency shall submit to Congress said

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[85] CONSTITUTION, Art. VI, Sec. 14.

priority list, standard or design within ninety (90) days from effectivity of this Act.

All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.

3. Legislator's Allocation. The Total amount of projects to be identified by legislators shall be as follows:

> a. For Congressional District or Party-List Representative: Thirty Million Pesos (₱30,000,000.00) for soft programs and projects listed under Item A and Forty Million Pesos (₱40,000,000.00) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1; and
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> b. For Senators: One Hundred Million Pesos (₱100,000,000.00) for soft programs and projects listed under Item A and One Hundred Million Pesos (₱100,000,000.00) for infrastructure projects listed under Item B, the purposes of which are in the project menu of Special Provision No. 1.

Subject to the approved fiscal program for the year and applicable Special Provisions on the use and release of fund, only fifty percent (50%) of the foregoing amounts may be released in the first semester and the remaining fifty percent (50%) may be released in the second semester.

4. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and the same project category as the original concurrence of the legislator concerned. The DBM must be informed in writing of any realignment within five (5) calendar

days from approval thereof: PROVIDED, That any realignment under this Fund shall be limited within the same classification of soft or hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr.

Any realignment, modification and revision of the project identification shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the DBM or the implementing agency, as the case may be.

5. Release of Funds. All request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be. Funds shall be released to the implementing agencies subject to the conditions under Special Provision No. 1 and the limits prescribed under Special Provision No. 3.

6. Posting Requirements. The DBM and respective heads of implementing agencies and their web administrator or equivalent shall be responsible for ensuring that the following information, as may be applicable, are posted on their respective official websites: (i) all releases and realignments under this Fund; (ii) priority list, standard and design submitted to Congress; (iii) projects identified and names of proponent legislator; (iv) names of project beneficiaries and/or recipients; (v) any authorized realignment; (vi) status of project implementation and (vii) program/project evaluation and/or assessment reports. Moreover, for any procurement to be undertaken using this Fund, implementing agencies shall likewise post on the Philippine Government Electronic Procurement System all invitations to bid, names of participating bidders with their corresponding bids, and awards of contract.

Once the General Appropriations Act is signed into law as explained above, the budget execution stage takes place.

x x x [B]udget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel.[86]

Generally, the first step to budget execution is the issuance by the Department of Budget and Management of Guidelines on the Release of Funds. For the year 2013, the Department of Budget and Management issued National Budget Circular No. 545 entitled "Guidelines for the Release of Funds for FY 2013."

Under National Budget Circular No. 545, the appropriations shall be made available to the agency of the government upon the issuance by the Department of Budget and Management of either an Agency Budget Matrix or a Special Allotment Release Order.[87] The Agency Budget Matrix will act as a comprehensive release of allotment covering agency-specific budgets that do not need prior clearance.[88] The Special Allotment Release Order is required for those allotments needing clearance, among others.[89]

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[86] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 389-390.

[87] Item No. 3.5 of DBM NBC No. 545. The appropriations for the agency specific budgets under the FY 2013 GAA, including automatic appropriations, shall be made available to the agency through the issuance of Agency Budget Matrix (ABM) and/or Special Allotment Release Order (SARO).

[88] Item No. 3.7.1 of DBM NBC No. 545. ABM for the comprehensive release of allotment covering agency specific budgets that do not need prior clearance shall be issued by DBM based on the FY 2013 Financial Plan submitted by the OUs/agencies.

[89] Item No. 4.2.1 of DBM NBC No. 545. Issuance of SAROs shall be necessary for the following items:

4.2.1.1 Appropriation items categorized under the "NC" portion of the ABM;

4.2.1.2 Charges against multi-user SPFs; and,

4.2.1.3 Adjustment between the NNC and NC portions of the approved ABM.

For the issuance of the Special Allotment Release Order, a request for allotment of funds (Special Budget Request)[90] shall be made by the head of the department or agency requesting for the allotment to the Department of Budget and Management.[91]

Once the Special Allotment Release Order is issued, disbursement authorities such as a Notice of Cash Allowance will be issued.

Applying the provisions of the Priority Development Assistance Fund in the General Appropriations Act of 2013 in accordance with the **budget execution stage** outlined above, we will readily see the difference.

The allotment for the appropriation of the Priority Development and Assistance Fund of 2013 needs clearance and, therefore, a Special Allotment Release Order must be issued by the Department of Budget and Management.[92]

Unlike other appropriations, the written endorsement of the Chairman of the Senate Committee on Finance or the Chairman of the Committee on Appropriations of the House of Representatives, as the case may be, is required.

A Special Budget Request is required for the issuance of the Special Allotment Release Order.[93] The Department of Budget

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[90] *See* Department of Budget and Management, National Budget Circular No. 545 (2013) Item No. 4.2.2.

[91] Executive Order No. 292 (1987), Book VI, Chapter 5, Section 33 (1-5).

[92] Department of Budget and Management, National Budget Circular No. 547 (2013) Item 3.1. Within the limits prescribed under item 2.7 hereof, the DBM shall issue the Special Allotment Release Order (SARO) to cover the release of funds chargeable against the PDAF which shall be valid for obligation until the end of FY 2013, pursuant to Section 63, General Provisions of the FY 2013 GAA (R.A. No. 10352).

[93] Department of Budget and Management, National Budget Circular No. 545 (2013) Item 4.2.2 Appropriation items categorized under the "NC" portion of the ABM shall be released upon submission of Special Budget Requests (SBRs) duly supported with separate detailed financial plan including MCP, physical plan and other documentary requirements.

and Management issued a National Budget Circular No. 547 for the Guidelines for the Release of the Priority Development Assistance Fund in the General Appropriations Act of 2013, which provides:

> All requests for issuance of allotment shall be supported with the following: 3.1.1 List of priority programs/projects including the supporting documents in accordance with the PDAF Project Menu; 3.1.2 Written endorsements by the following: 3.1.2.1 In case of the Senate, the Senate President and the Chairman of the Committee on Finance; and 3.1.2.2 In case of the House of Representatives, the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations.[94]

The Department of Budget and Management National Budget Circular No. 547 has been amended by Department of Budget and Management National Budget Circular No. 547-A. The written endorsements of the Senate President and the Speaker of the House of Representatives are not required anymore. The amendment reconciled the special provisions of the Priority Development Assistance Fund under the General Appropriations Act of 2013 and the Guidelines for the Release of the Priority Development Assistance Fund 2013.

Even a textual reading of the Special Provisions of the Priority Development Assistance Fund under the General Appropriations Act of 2013 shows that the identification of projects and endorsements by the Chairman of the Senate Committee on Finance and the Chairman of the Committee on Appropriations of the House of Representatives are mandatory. The Special Provisions use the word, "shall."

Respondents argue that the participation of members of Congress in the allocation and release of the Priority Development Assistance Fund is merely recommendatory upon the Executive. However, respondents failed to substantiate in any manner their

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[94] Department of Budget and Management, National Budget Circular No. 547 (2013) Item No. 3.1.2.

arguments. During the oral arguments for this case, the Solicitor General was asked if he knew of any instance when the Priority Development Assistance Fund was released without the identification made by Congress. The Solicitor General did not know of any case.[95]

Besides, it is the recommendation itself which constitutes the evil. It is that interference which amounts to a constitutional violation.

This Court has implied that the participation of Congress is limited to the exercise of its power of oversight.

> Any post-enactment congressional measure such as this should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:
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> 1. scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation and
>
> 2. investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.[96]
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> x x x As such, it is only upon its effectivity that a law may be executed and the executive branch acquires the duties and powers to execute the said law. Before that point, the role of the executive branch, particularly of the President, is limited to approving or vetoing the law.

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[95] TSN, October 10, 2013, p. 18.

Justice Bernabe: Now, would you know of specific instances when a project was implemented without the identification by the individual legislator?

Solicitor General Jardeleza: I do not know, Your Honor; I do not think so but I have no specific examples. I would doubt very much, Your Honor, because to implement, there is a need to be a SARO and the NCA. And the SARO and the NCA are triggered by an identification from the legislator.

[96] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 287.

From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.[97]

Further, "x x x [t]o forestall the danger of congressional encroachment "beyond the legislative sphere," the Constitution imposes two basic and related constraints on Congress. It may not vest itself, any of its committees or its members with either Executive or Judicial power. When Congress exercises its legislative power, it must follow the "single, finely wrought and exhaustively considered, procedures" specified under the Constitution, including the procedure for enactment of laws and presentment."[98]

The participation of members of Congress — even if only to recommend — amounts to an unconstitutional post-enactment interference in the role of the Executive. It also defeats the purpose of the powers granted by the Constitution to Congress to authorize a budget.

V. D

Also, the Priority Development Assistance Fund has no discernable purpose.

The lack of purpose can readily be seen. This exchange during the oral arguments is instructive:

Justice Leonen: x x x First, can I ask you whether each legislative district will be getting the same amount under that title? Each legislator gets 70 Million, is that not correct?

Solicitor General Jardeleza: There will be no appropriation like that, Your Honor.

Justice Leonen: No, I mean in terms of Title XLIV right now, at present.

Solicitor General Jardeleza: Oh, I'm sorry.

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[97] *Id.* at 293-296.

[98] *Id.* at 286-287.

Justice Leonen: Of the 24 Billion each Member of the House of Representatives and a party list gets 70 Million, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Second, that each senator gets 200 Million, is that not correct?

Solicitor General: Yes, Your Honor.

Justice Leonen: Let's go to congressional districts, are they of the same size?

Solicitor General Jardeleza: No, Your Honor.

Justice Leonen: So there can be smaller congressional districts and very big congressional districts, is that not correct?

Solicitor General: Yes.

Justice Leonen: And there are congressional districts that have smaller populations and congressional districts that have a very large population?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Batanes, for instance, has about [4,000] to 5,000 votes, is that not correct?

Solicitor General Jardeleza: I believed so.

Justice Leonen: Whereas, my district is District 4 of Quezon City has definitely more than that, is that not correct?

Solicitor General Jardeleza: I believed so, Your Honor.

Justice Leonen: And therefore there are differences in sizes?

Solicitor General Jardeleza: Yes.

Justice Leonen: Metro Manila congressional districts, each of them earn in the Million, is that not correct?

Solicitor General Jardeleza: I believed so, Your Honor.

Justice Leonen: Whereas there are poorer congressional districts that do not earn in the Millions or even Billions, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: So the pork barrel or the PDAF for that matter is allocated not on the basis of size, not on the basis of population, not on the basis of the amounts now available to the local government units, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: It is allocated on the basis of congressmen and senators, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: So, it's an appropriation for a congressman and a senator, is that not correct?

Solicitor General Jardeleza: Yes, Your Honor.

Justice Leonen: Not as Members of the House or Members of the Senate because this is not their function but it is allocated to them simply because they are members of the House and members of the Senate?

Solicitor General Jardeleza: Well, it is allocated to them as Members, Your Honor, yes, as Members of the House and as Members of the Senate.

Justice Leonen: Can you tell us, Counsel, whether the allocation for the Office of the Solicitor General is for you or is it for the Office?

Solicitor General Jardeleza: For the Office, Your Honor.

Justice Leonen: The allocation for the Supreme Court, is it for anyone of the fifteen of us or is it for the entire Supreme Court?

Solicitor General: For the Office, Your Honor.

Justice Leonen: So you have here an item in the budget which is allocated for a legislator not for a congressional district, is that not correct?

Solicitor General Jardeleza: Well, for both, Your Honor.

Justice Leonen: Is this a valid appropriation?[99]

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[99] TSN, October 10, 2013, pp. 146-149.

Had it been to address the developmental needs of the Legislative districts, then the amounts would have varied based on the needs of such districts. Hence, the poorest district would receive the largest share as compared to its well-off counterparts.

If it were to address the needs of the constituents, then the amounts allocated would have varied in relation to population. Thus, the more populous areas would have the larger allocation in comparison with areas which have a sparse population.

There is no attempt to do any of these. The equal allocation among members of the House of Representatives and more so among Senators shows the true color of the Priority Development Assistance Fund. It is to give a lump sum for each member of the House of Representatives and the Senate for them to spend on projects of their own choosing. This is usually for any purpose whether among their constituents and whether for the present or future.

In short, the Priority Development Assistance Fund is an appropriation for each Member of the House of Representative and each Senator.

This is why this item in the General Appropriations Act of 2013 is an invalid appropriation. It is allocated for use which is not inherent in the role of a member of Congress. The power to spend is an Executive constitutional discretion — not a Legislative one.

V. E

A valid item is an authorized amount that may be spent for a discernible purpose.

An item becomes invalid when it is just an amount allocated to an official absent a purpose. In such a case, the item facilitates an unconstitutional delegation of the power to authorize a budget. Instead of Congress acting collectively with its elected representatives deciding on the magnitude of the amounts for spending, it will be the officer who either recommends or spends who decides what the budget will be.

This is not what is meant when the Constitution provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." When no discernible purpose is defined in the law, money is paid out for a public official and not in pursuance of an appropriation.

This is exactly the nature of the Priority Development Assistance Fund.

Seventy million pesos of taxpayers' money is appropriated for each member of the House of Representatives while two hundred million pesos is authorized for each Senator. The purpose is not discernible. The menu of options does not relate to each other in order to reveal a discernible purpose. Each legislator chooses the amounts that will be spent as well as the projects. The projects may not relate to each other. They will not be the subject of a purposive spending program envisioned to create a result. It is a kitty — a mini-budget — allowed to each legislator.

That each legislator has his or her own mini-budget makes the situation worse. Again, those who should check on the expenditures of all offices of government are compromised. They will not have the high moral ground to exact efficiency when there is none that can be evaluated from their allocation under the Priority Development Assistance Fund.

Purposes can be achieved through various programmed spending or through a series of related projects. In some instances, like in the provision of farm to market roads, the purpose must be specific enough to mention where the road will be built. Funding for the Climate Change Commission can be in lump sums as it could be expected that its expenditures would be dependent on the proper activities that should be done in the next fiscal year and within the powers and purposes that the Commission has in its enabling charter. In other instances, like for calamity funds, the amounts will be huge and the purpose cannot be more general than for expenses that may have to be done in cases of calamities.

Parenthetically, the provision of Various Infrastructure and Local Projects in the Department of Public Works and Highways title of the 2013 General Appropriations Act is also a clear example of an invalid appropriation.

In some instances, the purpose of the funding may be general because it is a requirement of either constitutional or statutory autonomy. Thus, the ideal would be that this Court would have just one item with a bulk amount with the expenditures to be determined by this Court's *En Banc*. State universities and colleges may have just one lump sum for their institutions because the purposes for which they have been established are already provided in their charter.

While I agree generally with the view of the *ponencia* that "an item of appropriation must be an item characterized by a singular correspondence — meaning an allocation of a specified singular amount for a specified singular purpose," our opinions on the generality of the stated purpose should be limited only to the Priority Development Assistance Fund as it is now in the 2013 General Appropriations Act. The agreement seems to be that the item has no discernible purpose. [100]

There may be no need, for now, to go as detailed as to discuss the fine line between "line" and "lump sum" budgeting. A reading of the *ponencia* and the Concurring Opinions raises valid considerations about line and lump sum items. However, it is a discussion which should be clarified further in a more appropriate case.[101]

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[100] Section 23 in Chapter 5 of Book VI of the Revised Administrative Code mentions "with the corresponding appropriations for each program and project." However, lump sum is also mentioned in various contexts in Sections 35 and 47 of the same chapter. The Constitution in Article VI, Section 27(2) mentions item veto. It does not qualify whether the item is a "line" or "lump sum" item.

[101] During the *En Banc* deliberations, I voted for the *ponencia* as is so as to reflect the views of its writer. In view of the context of that discussion, I read it as necessary dicta which may not yet be doctrinal.

Our doctrine on unlawful delegation of legislative power does not fully square in cases of appropriations. Budgets are integral parts of plans of action. There are various ways by which a plan can be generated and fully understood by those who are to implement it. There are also many requirements for those who implement such plans to adjust to given realities which are not available through foresight.

The Constitution should not be read as a shackle that bounds creativity too restrictively. Rather, it should be seen as a framework within which a lot of leeway is given to those who have to deal with the fundamental vagaries of budget implementation. What it requires is an appropriation for a discernable purpose. The Priority Development Assistance Fund fails this requirement.

VI

The Constitution in Article VI, Section 29 (3) provides for another type of appropriations act, thus:

> All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the government.

This provision provides the basis for special laws that create special funds and to this extent qualifies my concurrence with the *ponencia*'s result in so far as Section 8 of Presidential Decree No. 910 is concerned. This provision states:

> x x x All fees, revenues, and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and

projects of the government ***and for such other purposes as may be hereafter directed by the President***. (Emphasis provided)

It is true that it may be the current administration's view that the underscored provision should be read in relation to the specific purposes enumerated before it. However, there is no proscription to textually view it in any other way. Besides, there should have been no reason to provide this phrase had the intent of the law been as how the current administration reads and applies it.

As has been the practice in the past administration, monies coming from this special provision have been used for various purposes which do not in any way relate to "the energy resource development and exploitation programs and projects of the government." Some of these expenditures are embodied in Administrative Order No. 244 dated October 23, 2008;[102] and Executive Orders 254, 254-A, and 405 dated December 8, 2003, March 3, 2004, and February 1, 2005, respectively.[103]

The phrase "for such other purposes as may hereafter directed by the President" has, thus, been read as all the infinite possibilities of any project or program. ***Since it prescribes all, it prescribes none***.

Thus, I concur with the *ponencia* in treating this portion of Section 8, Presidential Decree No. 910, which allows the expenditures of that special fund "for other purposes as may be hereafter directed by the President," as null and void.

The same vice infects a portion of the law providing for a Presidential Social Fund.[104] Section 12 of Presidential Decree

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[102] Authorizing the Department of Agriculture the Use of ₱4.0 Billion from fees, Revenues, and Receipts from Service Contract No. 3 for the Rice Self-Sufficiency Programs of the Government.

[103] Authorizing the Use of Fees, Revenues, and Receipts from Service Contract No. 38 for the Implementation of Development Projects for the People of Palawan.

[104] Presidential Decree No. 1869 as amended by Presidential Decree No. 1993. I agree that although Presidential Decree No. 1993 was neither pleaded nor argued by the parties, we should take judicial notice of the amendment as a matter of law.

No. 1869 as amended by Presidential Decree No. 1993 provides that the fund may be used "to finance the priority infrastructure projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines."

Two uses are contemplated by the provision: one, to finance "priority infrastructure projects," and two, to provide the Executive with flexibility in times of calamities.

I agree that "priority infrastructure projects" may be too broad so as to actually encompass everything else. The questions that readily come to mind are which kinds of infrastructure projects are not covered and what kinds of parameters will be used to determine the priorities. These are not textually discoverable, and therefore, allow an incumbent to have broad leeway. This amounts to an unconstitutional delegation of the determination of the purpose for which the special levies resulting in the creation of the special fund. This certainly was not contemplated by Article VI, Section 29(3) of the Constitution.

I regret, however, that I cannot join Justice Brion in his view that even the phrase "to be used to finance energy resource development and exploitation programs and projects of the government" in Section 8 of Presidential Decree No. 910 is too broad. This is even granting that this phrase is likewise qualified with "as may be hereafter determined by the President."

The kinds of projects relating to energy resource development and exploitation are determinable. There are obvious activities that do not square with this intent, for instance, expenditures solely for agriculture. The extent of latitude that the President is given is also commensurate with the importance of the energy sector itself. Energy is fundamental for the functioning of government as well as the private sector. It is essential to power all projects whether commercial or for the public interest. The formulation, thus, reasonably communicates discretion but puts it within reasonable bounds. In my view, and with due respect to the opinion of Justice Brion, the challenge of this phrase's unconstitutionality lacks the clarity that should compel us to strike it down.

VII

A member of the House of Representatives or a Senator is not an automated teller machine or ATM from which the public could withdraw funds for sundry private purposes. They should be honorable elected officials tasked with having a longer and broader view. Their role is to use their experience and their understanding of their constituents to craft policy articulated in laws. Congress is entrusted to work with political foresight.

Congress, as a whole, checks the spending of the President as it goes through the annual exercise of deciding what to authorize in the budget. A level of independence and maturity is required in relation to the passage of laws requested by the Executive. Poverty and inefficiencies in government are the result of lack of accountability. Accountability should no longer be compromised.

Pork barrel funds historically encourage dole-outs. It inculcates a perverse understanding of representative democracy. It encourages a culture that misunderstands the important function of public representation in Congress. It does not truly empower those who are impoverished or found in the margins of our society.

There are better, more lasting and systematic ways to help our people survive. A better kind of democracy should not be the ideal. It should be the norm.

We listen to our people as we read the Constitution. We watch as others do their part and are willing to do more. We note the public's message:

Politics should not be as it was. Eradicate greed. Exact accountability. Build a government that has a collective passion for real social justice.

ACCORDINGLY, I vote to **GRANT** the Petitions and **DECLARE** Title XLIV of the General Appropriations Act of 2013 **UNCONSTITUTIONAL**. The proviso in Section 8 of Presidential Decree No. 910, which states "for such other purposes as may hereafter be directed by the President" and the phrasein Section 12, Title IV of Presidential Decree No. 1869, as

amended by Presidential Decree No. 1993, which states "to finance the priority infrastructure development projects," are likewise deemed **UNCONSTITUTIONAL**. I also vote to make permanent the Temporary Restraining Order issued by this Court on September 10, 2013.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

MY POSITIONS

I **concur** with the **conclusions** *J.* Estela Perlas-Bernabe reached in her *ponencia* on the **unconstitutionality of the PDAF**, but adopt the views and reasoning of *J.* Antonio T. Carpio in his Separate Concurring Opinion on the various aspects of PDAF, particularly on the need for the line-item approach in budget legislation.

I likewise agree with Justice Carpio's views on the unconstitutionality of the phrase *"for such other purposes as may be directed by the President"* in Section 8 of P.D. No. 910, but hold that the first part of this section relating to funds used for *"energy resource development and exploitation programs and projects"* is constitutionally infirm for being a discretionary lump sum appropriation whose purpose lacks specificity for the projects or undertakings contemplated, and that denies Congress of its constitutional prerogative to participate in laying down national policy on energy matters.

I submit my own reasons for the unconstitutionality of the portion relating to *"priority infrastructure projects"* under Section 12, P.D. No. 1869, which runs parallel to the positions of Justices Carpio and Perlas-Bernabe on the matter, and join in the result on the constitutionality of the financing of the *"restoration of damaged or destroyed facilities due to calamities"* but do so for a different reason.

Lastly I believe that this Court should DIRECT Secretary Florencio Abad of the Department of Budget and Management (*DBM*) to show cause why he should not be held in contempt of this Court and penalized for defying the TRO we issued on September 10, 2013.

THE CASE

The petitioners come to this Court to question practices that the two other branches of government – the executive and the legislative departments – have put in place in almost a decade and a half of budgeting process. They raise constitutional questions that touch on our basic principles of governance; they raise issues, too, involving practices that might have led to monumental corruption at the highest levels of our government. These issues, even singly, raise deeply felt and disturbing questions that we must address quickly and completely, leaving no nagging residues behind.

I contribute this Opinion to the Court with the thought and the hope that, through our collective efforts, we can resolve the present dispute and restore to its proper track our constitutional budgetary process in the manner expected from this Court by the framers of our Constitution and by our quiet but internally seething citizenry.

DISCUSSION OF THE ISSUES

I. The Doctrine of Separation of Powers

The powers of government are generally divided into the executive, the legislative and the judicial, and are distributed among these three great branches under carefully defined terms, to ensure that no branch becomes so powerful that it can dominate the others, all for the good of the people that the government serves.[1]

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[1] *Angara v. The Electoral Commission*, 63 Phil. 139 (1936).

This power structure – which serves as the basic foundation for the governance of the State under our republican system of government – is essentially made operational by two basic doctrines: the **doctrine of separation of powers**[2] and the **doctrine of checks and balances**.[3] Governmental powers are distributed and made *distinctly separate from one another* so that these different branches may check and balance each other, again to ensure proper, balanced and accountable governance.[4]

A necessary corollary to this arrangement is that **no branch of government may delegate its constitutionally-assigned powers** and thereby disrupt the Constitution's carefully laid out plan of governance. Neither may one branch or any combination of branches **deny the other or others their constitutionally mandated prerogatives** – either through the exercise of sheer political dominance or through collusive practices – without committing a breach that must be addressed through our constitutional processes. To be sure, political dominance, whether the brazen or the benign kind, should be abhorred by our people for we should have learned our lessons by now.

Thus, Congress – the government's policy making body – may not delegate its constitutionally-assigned power to make laws and to alter and repeal them, in the same manner that the

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[2] "The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. " *Angara v. The Electoral Commission*, 63 Phil. 139, 156 (1936).

[3] "But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government." *Angara v. The Electoral Commission*, 63 Phil. 139, 156 (1936).

[4] See *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 273-274 (1927).

President – who enforces and implements the laws passed by Congress – cannot pass on to the Congress or to the Judiciary, its enforcement or implementation powers.

Nor can we in the Judiciary intrude into the domains of the other two branches except as called for by our assigned duties of interpreting the laws and dispensing justice. But when the call to duty is sounded, we cannot and should not shirk as no other entity in our system of governance except this Court is given the task of peacefully delineating governmental powers through constitutional interpretation.

In terms of congressional powers, the test to determine if an undue or prohibited delegation has been made is the **completeness test** which asks the question: **is the law complete in all its terms and conditions when it leaves the legislature such that the delegate is confined to its implementation and has no need to determine for and by himself or herself what the terms or the conditions of the law should be**?[5]

An aspect of implementation notably left for the delegate's determination is the question of *how* the law may be enforced. To cover the gray area that seemingly arises as a law transits from formulation to implementation, jurisprudence has established the rule that for as long as the law has provided sufficient implementation standards to guide the delegate, the latter may fill in the details that the law needs for its prompt, efficient and orderly implementation. This is generally referred to as the **sufficient standard test**.[6]

The question in every case is whether there is or are adequate standards, guidelines or limitations in the law to map out the

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[5] *Edu v. Ericta,* 146 Phil. 469, 485-488 (1970).

[6] *Eastern Shipping Lines, Inc. v. Philippines Overseas Employment Administration (POEA),* 248 Phil. 762, 772 (1988).

Administrative fact-finding is another activity that the Executive may undertake (See *Lovina v. Moreno,* G.R. No. L-17821, November 29, 1963) but has purposely not been mentioned for lack of materiality to the issues raised.

boundaries of the delegate's authority and thus prevent the delegation from spilling into the area that is essentially law or policy formulation. This statutory standard, which may be express or implied, defines legislative policy, marks its limits, maps out the boundaries of the law, and specifies the public agency to apply it; the standard indicates the circumstances or criterion under which the legislative purpose and command may be carried out.

II. Legislative Power of Appropriation

Under our system of government, part of the legislative powers of Congress is the **power of the purse** which, broadly described, is the power to determine the areas of national life where government shall devote its funds; to define the amount of these funds and authorize their expenditure; and to provide measures to raise revenues to defray the amounts to be spent.[7] This power is regarded as the "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people."[8]

By granting Congress this power, the Constitution allows the Filipino people, through their representatives, to effectively shape the nation's future through the control of the funds that render the implementation of national plans possible. Consistent with the separation of powers and the check and balance doctrines, the power of the purse also allows Congress to ***control executive spending*** as the Executive actually disburses the money that Congress sets aside and determines to be available for spending.

Congress carries out the power of the purse through the appropriation of funds under a general appropriations law (titled as the *General Appropriations Act* or the GAA) that can easily be characterized as one of the most important pieces of legislation

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[7] *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 507, 522.

[8] Federalist No. 58, James Madison.

that Congress enacts each year. For this reason, the 1987 Constitution (and previous Constitutions) has laid down the general framework by which Congress and the Executive make important decisions on how public funds are raised and spent — from the policy-making phase to the actual spending phase, including the raising of revenues as source of government funds.

The Constitution expressly provides that "*[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.*"[9] The Administrative Code of 1987, on the other hand, defines **"appropriation"** as the authorization made by law or other legislative enactment, directing payment out of government funds under ***specified conditions or for specified purposes***.[10] It is the legislative act of setting apart or assigning public funds to a ***particular use.***[11] This power carries with it the power to specify the project or activity to be funded under the appropriation law and, necessarily, the amount that would be allocated for the purpose.

Significantly, the people themselves in their sovereign capacity, have cast in negative tenor the limitation on the executive's power over the budget when it provided in the Constitution that ***no money shall be paid out*** of the treasury, until their representatives, by law, have assigned and set aside the public revenues of the State for specific purposes.

The requirements – that Congress itself both identify a determined or determinable amount to be appropriated and the specific purpose or project to which the appropriation will be devoted – characterize an appropriations law to be purely legislative in nature. Consequently, to pass and allow an appropriation that fails to satisfy these requirements amounts to an illegal abdication of legislative power by Congress. For

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[9] Section 29 (1), Article VI, 1987 Constitution.

[10] Section 2, Chapter 1, Book VI, Executive Order No. 292.

[11] *Gonzales v. Raquiza*, 259 Phil. 736, 743 (1989).

instance, when a law allows the President to dictate his will on an appropriation matter and thereby displaces the power of Congress in this regard, the arrangement cannot but be constitutionally infirm. Presidential Decree No. 1177 (the Budget Reform Decree of 1977) concretely expresses these requirements when it provides that *"[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the* ***specific purposes*** *for which these are appropriated."*[12]

III. Check and Balance Doctrine as Applied in the Budgeting Process

A. Budget Preparation & Proposal

The budgeting process demonstrates, not only how the Constitution canalizes governmental powers to achieve its purpose of effective governance, but also how this separation checks and balances the exercise of powers by the different branches of government.

In this process, the Executive initially participates through its role in **budget preparation and proposal** which starts the whole process. It is the Executive who lays out the budget proposal that serves as basis for Congress to act upon. This function is expressed under the Constitution in the following terms:[13]

> Article VII, Section 22. The President shall submit to the Congress, within thirty days from the opening of every regular session as the basis for the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

A notable feature of this provision that impacts on the present case is the requirement that revenue sources be reported to Congress. Notably, too, the President's recommended

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[12] See Section 37 of P.D. No. 1177 or the Budget Reform Decree of 1977.

[13] Article VII. Section 22 of the 1987 Constitution.

appropriations may not be increased by Congress pursuant to Section 25, Article VI of the Constitution[14] — a feature that immeasurably heightens the power and participation of the President in the budget process.

Arguably, Section 22 above refers only to the *general appropriations bill*[15] so that there may be no need to report all sources of government revenue, particularly those emanating from funds like the Malampaya Fund.[16] The power of Congress, however, will be less than plenary if this omission will happen as Congress would then be denied a complete picture of government revenues and would consequently be denied its rightful place in setting national policies on matters of national importance, among them energy matters. The Constitution would similarly be violated if Congress cannot also demand that the revenues of special funds (like the Malampaya Fund) be reported together with a listing of their items of expenditures. Since the denial would be by the Office of the President, the incapacity of Congress would be because of intrusive action by the Executive into what is otherwise a congressional preserve.

Already, it is reported that these funds (also called **off-budget accounts)** are sizeable and are not all subject to the annual appropriation exercise; have no need for annual appropriation by Congress; and whose receipts and expenditures are kept in separate book of accounts (357 accounts as of 2007) that are not commonly found in public records. While efforts have been made to consolidate them in a general account under the "one fund" concept, these efforts have not been successful. Attempts have been made as early as 1977 during the Marcos administration, and again during the Aquino and Estrada administrations without significant success up to the present

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[14] See footnote below.

[15] As contrasted to special purpose bills whose appropriations are not included in the general appropriations act.

[16] Section 8, P.D. No. 910.

time. Controls have reportedly not been very strict although the funds are already sizeable.[17]

Constitutionally, a disturbing aspect of these funds is that they are under the control of the President (as **presidential pork barrel**), as from this perspective, they are in defiance of what the Constitution prescribes under Section 25 and 27, Article VI, with respect to the handling of public funds, the authority of Congress to decide on the budget, and the congressional scrutiny and monitoring that should take place.[18] As of October 2013,

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[17] Source: Off-Budget Accounts, July 2009, Management Systems International Corporate Services (the publication was made for the review of USAID). Accessed November 17, 2013 from http://incitegov.org/wp-content/uploads/2011/05/INCITEGov-Off-Budget-Accounts.pdf

[18] In an unpublished study on the Public Expenditure and Financial Accountability (PEFA) on the Philippine public financial management system, the World Bank determined that OBAs represent less than 5% of the national budget. Among the major OBAs are the following:

1. Municipal Development Fund. This is a loan revolving fund set up to provide credit to local government units. Every year, the national government appropriates additional money to the equity of the Fund, and this added equity is properly reflected as expenditure of the national government and income of the Fund. Loan repayments, however, are retained as Fund Balance and used as credit assistance to LGUs without being included in the national budget. The average amount disbursed out of loan repayments in 2006-2007 was ₱380 million.

2. President's Social Fund. This is funded by fixed percentage contributions from the income of two (2) government corporations, namely, the Philippine Amusements and Gaming Corporation and the Philippine Charity Sweepstakes.

The Fund is used as a discretionary purse for various social advocacies of the President, including direct assistance to the poor. The amount disbursed annually depends on actual receipts. In 2007, more than ₱600 million was disbursed from the Fund.

3. Manila Economic and Cultural Office (MECO). MECO is a government entity with a private character. It was created during the Aquino Administration to perform consular functions in Taiwan in behalf of the government. MECO reports directly to the Office of the President and its funds are supposed to be used for various economic and cultural purposes. There is no publicly available record of MECO financial accounts. It is reported, however, that Taiwan has one of the busiest consular operations in Asia, earning at least ₱100 million per year for the national government.

the Malampaya Fund alone already amounts to Php137.288 billion.[19] **The COA, despite assurances during the oral arguments, have so far failed to provide a summary of the extent and utilization of the Malampaya Fund in the last three (3) years.**

B. Budget Legislation

Actual appropriation or **budget legislation** is undertaken by Congress under the strict terms of Section 25, Article VI of the Constitution.[20] A theme that runs through the various subdivisions

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4. NABCOR Trust Funds. The National Agribusiness Corporation was created during the Marcos Administration as the business arm of the Department of Agriculture (DA). Subsequently, it was used as a conduit for various appropriations of the DA to implement various projects. The circuitous way by which DA funds are utilized through NABCOR have been the subject of curiosity among DA watchers. Specifically, determining the actual use of NABCOR-administered funds poses an interesting challenge to accountants and analysts in the absence of publicly available data.

Source: Off-Budget Accounts, July 2009, Management Systems International Corporate Services (the publication was made for the review of USAID). Accessed November 17, 2013 from http://incitegov.org/wp-content/uploads/2011/05/INCITEGov-Off-Budget-Accounts.pdf

[19] "Treasury: ₱137.3-B Malampaya Fund intact," October 9, 2013, accessed November 18, 2013 from http://www.gov.ph/2013/10/09/btr-p137-3-b-malampaya-fund-intact/

[20] Article VI, Section 25 of the 1987 Constitution provides:

Section 25.

(1) The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law.

(2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

(3) The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.

(4) A special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified

of this provision is the Constitution's strict treatment of the budget process, apparently in its desire to plug all holes that have appeared through our years of constitutional history and to ensure that funds are used according to congressional intent.

Of special interest in the present case are Sections 25(2) which speaks of the need for particularity in an appropriation; Section 25(4) on special appropriation bill and its purpose; and Section 25(6) on discretionary funds and the special purpose they require.

C. Line-Item Veto

Check and balance measures are evident in passing the budget as the President is constitutionally given the opportunity to exercise his line item veto, *i.e.*, the authority to reject specific items in the budget bill while approving the whole bill.[21]

The check and balance measure, of course, runs both ways. In the same manner that Congress cannot deny the President his authority to exercise his line veto power except through an override of the veto,[22] the President cannot also deny Congress

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by the National Treasurer, or to be raised by a corresponding revenue proposal therein.

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

(6) Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.

(7) If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed re-enacted and shall remain in force and effect until the general appropriations bill is passed by the Congress.

[21] Article VI, Section 27, paragraph 2 of the 1987 Constitution.

[22] Article VI, Section 27, paragraph 1 of the 1987 Constitution.

its share in national policymaking by including lump sum appropriations in its recommended expenditure program. Lump sum appropriations, in the words of *J*. Perlas-Bernabe, is wrong as it leaves the President with *"no item"* to act on and denies him the exercise of his line item veto power.[23] The option when this happens and if he rejects an appropriation, is therefore not the veto of a specific item but the veto of the whole lump sum appropriation.

A lump sum appropriation like the PDAF cannot and should not pass Congress unless the Executive and the Legislative branches collude, in which case, the turn of this Court to be an active constitutional player in the budget process comes into play. The PDAF, as explained in the Opinions of Justice Carpio and Bernabe, is a prime example of a lump sum appropriation that, over the years, for reasons beneficial to both branches of government, have successfully negotiated the congressional legislative process, to the detriment of the general public.

D. Budget Execution/Implementation

Budget action again shifts to the Executive during the **budget execution phase**; the Executive implements the budget (**budget execution)** by handling the allocated funds and managing their releases. This is likewise a closely regulated phase, subject not only to the terms of the Constitution, but to the Administrative Code as well, and to the implementing regulations issued by the Executive as implementing agency.

Constitutionally, **Section 25(5)** on the transfer of appropriation (a practice that would technically subvert the will of Congress

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[23] As the *ponencia* points out in page 50:

Moreover, even without its post-enactment legislative identification feature, the 2013 PDAF Article would remain constitutionally flawed since it would then operate as a prohibited form of lump-sum appropriation as above-characterized. xxx. This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, not readily indicate a discernible item which may be subject to the President's power of item veto. *Ponencia*, p. 50.

through the use of funds on a project or activity other than that intended, unless a constitutional exception is made under this provision), and **Section 25(6)** on discretionary funds and its disbursement, assume critical materiality.

E. Budget Accountability, Scrutiny and Investigation

The last phase of the budgetary process is the **budget accountability** phase that Congress is empowered to enforce in order to check on compliance with its basic intents in allocating measured funds under the appropriation act.

At the budget hearings during the legislation phase, Congress already checks on the need for the recommended appropriations (as Congress may delete a recommended appropriation that it perceives to be unneeded), and on the propriety, efficiency and effectiveness of budget implementation, both past and impending. Technically, this portion of the budgetary exercise involves **legislative scrutiny** that is part of the overall **oversight powers** of Congress over the budget.

Another part of the oversight authority is **legislative investigation**. Former Chief Justice Puno expounded on this aspect of the budgetary process in his Separate Opinion in *Macalintal v. Commission on Elections*[24]and he best sums up the breadth and scope of this power, as follows:

> Broadly defined, the power of oversight embraces all activities undertaken by Congress **to enhance its understanding of and influence over the implementation of legislation** it has enacted. Clearly, oversight concerns post-enactment measures undertaken by Congress: (a) to monitor bureaucratic compliance with program objectives, (b) to determine whether agencies are properly administered, (c**) to eliminate executive waste and dishonesty, (d) to prevent executive usurpation of legislative authority**, and (d) to assess executive conformity with the congressional perception of public interest.

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[24] 453 Phil 586, 743-744, July 10, 2003.

The power of oversight has been held to be intrinsic in the grant of legislative power itself and integral to the checks and balances inherent in a democratic system of government. Xxx

Over the years, Congress has invoked its oversight power with increased frequency to check the perceived "exponential accumulation of power" by the executive branch. By the beginning of the 20th century, Congress has delegated an enormous amount of legislative authority to the executive branch and the administrative agencies. Congress, thus, uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them.

Compared with one another, the two modalities can be appreciated for their individual merits but operationally, the power of investigation[25] – which is a power mostly used after appropriations have been spent – cannot compare with legislative scrutiny made during budget hearings as all participating government officials in these hearings can attest. Legislative scrutiny is a timely intervention made *at the point of budget deliberations and approval*, and is consequently an effective intervention by Congress in the formulation of national policy. Legislative investigation, if at all and as the recent *Napoles* hearing at the Senate has shown, can at best examine compliance with legislative purposes and intent, with aid to future legislation as its goal, and may only possibly succeed if the legislators are truly minded to exercise their power of investigation purposefully, with firmness and political will.

If indeed specific monitoring is needed, two constitutional bodies readily fit the bill – the **Commission on Audit** which looks at specific expenditures from the perspective of legality,

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[25] An example of this post-enactment authority is creation of a Joint Congressional Oversight Committee in the GAA of 2012 to "primarily monitor that government funds are spent in accordance with the law." The Senate created its version of this Committee under Senate Resolution No. 18 dated September 1, 2010, to establish Oversight Committee on Public Expenditures.

effectiveness and efficiency,[26] and the **Ombudsman**, from the point of view of administrative and criminal liability.[27]

IV. Assessment and Prognosis

On the whole, I believe the Constitution has provided the nation a reasonably effective and workable system of setting national policy through the budget process.

The President, true to constitutional intent, remains a powerful official who can respond to the needs of the nation through his significant participation on both national planning and

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[26] Article IX-D, Section 2 of the 1987 Constitution provides:

Section 2. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis:

a. constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

b. autonomous state colleges and universities;

c. other government-owned or controlled corporations and their subsidiaries; and

d. such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[27] Article XI, Section 13, paragraph 1 of the 1987 Constitution provides:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

implementation of policies; the budget process leaves him with the needed muscle to enforce the laws and implement policies without lacking funds, except only if revenue collection and the economy both falter.

Additionally, current practices that Congress has given him his own pork barrel – generally, lump sum funds that he can utilize at his discretion without passing through the congressional mill and without meaningful congressional scrutiny. As I have stated, **this is a constitutionally anomalous practice that requires Court intervention as the budgetary partners will allow matters to remain as they are unless externally restrained by legally binding actions.**

Congress, for its part, is given significant authority to decide on the projects and activities that will take place, and to allocate funds for these national undertakings. It has not at all complained about the loss of its budgeting prerogatives to the President; **it appeared to have surrendered these without resistance as it has been given its share in budget implementation as the current PDAF findings show. Thus, what confronts the Court is a situation where two partners happily scratch each other's back in the pork barrel system, although the Constitution prohibits, or at the very least, limits the practice.**

If, as current newspaper headlines and accounts now vividly banner and narrate, irregularities have transpired as a consequence of the budgetary process, these anomalies are more attributable to the officials acting in the process than to the system the Constitution designed; the men and women who are charged with their constitutional duties have simply not paid close attention to what their duties require.

Thus, as things are now, the budgetary process the Constitution provided the nation can only be effective if the basic constitutionally-designed safeguards, particularly the doctrines of separation of powers and checks and balances, are observed. Or, more plainly stated, **the aims of the budgetary process**

cannot be achieved*, to the eventual detriment of the people the government serves*, if intrusion into powers and the relaxation of built-in checks are allowed.

With these ground rules plainly stated as premises, I now proceed to discuss the concrete issues. In doing so, I shall not belabor the points that my colleagues – Justices Carpio and Perlas-Bernabe – have covered on the constitutional status of PDAF, except only to state my observations or disagreements. But as I also stated at the start, I agree largely with the conclusion reached that the **PDAF is unconstitutional** as it subverts and can fatally strike at our constitutional processes unless immediately stopped; it is, in my view, a villain that "must be slain at sight."[28]

A. Constitutionality of Section 12 of P.D. No. 1869, as amended

P.D. No. 1869 – whether under the 1973 or the 1987 Constitutions – is an appropriation law as it sets aside a determinable amount of money to be disbursed and spent for a stated public purpose. This presidential decree, prior to its amendment, made allocations to fund the following: "infrastructure and socio-civic projects within the Metropolitan Manila Area: (a) Flood Control (b) Sewerage and Sewage (c) Nutritional Control (d) Population Control (e) Tulungang Bayan Centers (f) Beautification (g) Kilusang Kabuhayan at Kaunlaran (KKK) projects." Additionally, it provided that the amount allocated "*may also be appropriated and allocated to fund and finance infrastructure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines.*"

As the decree then stood *i.e.*, prior to its amendment, the above italicized portion already rendered the authority given to the Office of the President of the Philippines of doubtful validity as it gave the President authority to designate and specify the projects to be funded without any clear guiding standards and

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[28] *Banco Español-Filipino v. Palanca*, 37 Phil. 921, 949, March 26, 1918.

fixed parameters. Only two things, to my mind, would have saved this provision from unconstitutionality.

The ***first reason*** is the specification of the projects in Metro Manila to which the allocated funds could be devoted. This specification arguably identified the type of projects to which the President could apply the funds, limiting it to the types of infrastructure and socio-civic projects specified for Metro Manila. Thus, unconstitutionality would have occurred only if the funds had been applied to the projects that did not fall within the general class of the listed projects.

The ***second reason***, now part of Philippine and legal history, is the nature of the exercise of power of the Philippine President *at that time*. The decree was promulgated by then President Ferdinand E. Marcos in the exercise of his combined legislative and executive powers, which remained valid and binding even after the passage of the then 1973 Constitution. In strictly legal terms, there then existed a legal cover to justify its validity despite an arrangement where the *delegating authority* was himself the *delegate*.

Section 12 of P.D. No. 1869, however, **has since been amended by P.D. No 1973** and now reads:

> Sec. 12.Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00, shall immediately be set aside and shall accrue to the General Fund **to finance the priority infrastructure development projects** and to finance the restoration of damaged or destroyed facilities due to calamities, **as may be directed and authorized by the Office of the President of the Philippines**.

Unlike its earlier wording, P.D. No. 1869, as amended, no longer identifies and specifies the "infrastructure and socio-civic projects that can serve as a model for the structures to which the fund shall be devoted. Instead, the decree now generally refers to "priority infrastructure development projects,"

unsupported by any listing that gave the previous unamended version a taint of specificity.

Thus, what these "priority infrastructure development projects" are, P.D. No. 1869 does not identify and state with particularity. This deficiency is rendered worse by the absence of defined legislative parameters, assuming that legislative purpose can be supplied through parameters. In fact, neither does P.D. No. 1869's *Whereas* clauses sufficiently disclose the decree's legislative purpose to save the objectionable portion of this law.

Even granting *arguendo* that these "infrastructure and development projects" may be validly determined by the President himself as part of his law-execution authority, the question of which "infrastructure and development projects" should receive "priority" treatment is a matter that the legislature itself has not determined. "Priority" is defined as a matter or concern that is more important than others, and that needs to be done or dealt with first. Which infrastructure development project must be prioritized is a question that the President alone cannot decide. Strictly, it is a matter appropriate for national policy consideration since national funds are involved, and must have the imprimatur of Congress which has the power of the purse and is the repository of plenary legislative power.

From another perspective, while Congress' authority to identify the project or activity to be funded is indisputable. Contrary to the Court's ruling in *Philippine Constitution Association v. Enriquez*[29] (*Philconsa*), this authority cannot be "as broad as Congress wants it to be." If the President can exercise the **power to prioritize** at all, such power is limited to his choice of which *of the already identified projects* must be given preferential attention **in a situation *when there are not enough funds to allocate for each project because of budgetary shortfall***.[30]

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[29] G.R. No. 113105, August 19, 1994, 235 SCRA 507.

[30] *Ibid.* at 522.

Additionally, unlike President Marcos during his time, the present President, indisputably exercises only executive powers under the 1987 Constitution and now labors under the constitutional limits in the exercise of his executive powers, as discussed above. He cannot enjoy, therefore, the practically unlimited scope of governmental power that the former President enjoyed.

As matters now stand, the President would enjoy, under the amended P.D. No. 1869, the non-delegable aspect of the legislative power of appropriation that is denied him by the Constitution. Consequently, we have to strike down this aspect of the law.

Unlike the first portion of the law, the second portion referring to *"the restoration of damaged or restored facilities due to calamities"* does not need to be stricken down because it refers to particular objects that must be funded only when the required specific instances occur. These instances are the "***calamities***" that now enjoy, not only a dictionary meaning, but a distinct instinctive meaning in the minds of Filipinos. The President can only spend the PAGCOR FUNDS when these calamities come; he is even limited to the items he can use the public funds for – to the restoration of damaged or destroyed facilities.

From this perspective, the presidential exercise of discretion approaches the level of insignificance; the President only has to undertake a fact-finding to operationalize the expenditure of the funds at his disposal. Nor can the appropriation be objected to for being a lump sum amount. In the sense everybody can understand, rather than a whole lump sum, the President is effectively given an advance or standby fund to be spent when calamities occur. This can in no way be understood as an objectionable discretionary lump sum.

B. Constitutionality of Section 8 of P.D. No. 910

The Section 8, P.D. No. 910 funds or the Malampaya Fund consist of two components: the funds *"to be used to finance energy resource development and exploitation programs and projects,"* and the funds *"for such other purposes as may be… directed by the President."*

I join Justice Carpio in the view that the second "*for such other purposes*" component is a complete nullity as it is an undue delegation of legislative power. I submit that this is additionally objectionable for being a part of a constitutionally objectionable lump sum payment that violates the separation of powers doctrine. I will discuss this view under the first component of Section 8.

I vote to strike down the "*energy*" component of Section 8, P.D. No. 910 as it is a discretionary lump sum fund that is not saved at all by its *energy development and exploitation* purpose. It is a pure and simple pork barrel granted to the President under a martial law regime decree that could have escaped invalidity then under the 1973 Constitution and the prevailing unusual times, but should be struck down now for being out of step with the requirements of the 1987 Constitution.

As a fund, it is a prohibited lump sum because it consists of a fund of indefinite size that has now grown to gigantic proportions, whose accounts and accounting are far from the usual in government, and which is made available to the President for his disposition, from year to year, with very vague controls, and free from the legal constraints of the budget process now in place under the 1987 Constitution. Admittedly, it is a fund raised and intended for special purposes but the characterization "special purpose" is not reason enough and is not a magical abracadabra phrase that could whisk a fund out of the constitutional budget process, defying even common reason in the process.

While a provision exists in the Constitution providing for a special purpose fund, its main reason for being and its "special" appellation are traceable to its source and the intent to use its proceeds to replenish and replicate energy sources all over the country. This description at first blush can pass muster but must fail on deeper inspection and consideration.

As already mentioned, the legitimacy of the fund and its purpose were beyond question at the time the fund was created, but this status was mainly and largely due to the prevailing situation then. No reason exists to assume that its validity continued or would continue after the Marcos Constitution had been overtaken by the 1987 Constitution. Thus, now, it should be tested based on the new constitutional norms.

That it is a lump sum that **escapes the year to year congressional budget review** is indisputable. The fund is one indivisible amount that keeps accumulating from its source and from interests earned from year to year.

That it is intended and has been **used for different projects**, now existing and yet to exist if the fund is maintained, cannot also be disputed. It is **not intended for one energy project alone but for many**, including those to occur in the future and are as yet unknown. In short, it is one big fund supporting or intended to support multiple projects.

Who determines the projects or activities to which the funds will be devoted is plain from the law itself. It is subject to the **sole discretion of the President, completely devoid of any participation from Congress**. In other words, we have here with us now a **major component of Philippine development** – for it cannot be doubted that energy is a major component of national life and economic development – that is **left to the will of one man** in terms of its growth, economic trajectory and future development. That the discretion is given to the President of the Philippines is not at all a valid argument, and the existence of a law allowing the grant of discretion is likewise not valid, simply because that legal situation should no longer be allowed under the 1987 Philippine Constitution that requires a valid appropriation by Congress for every use of the public fund. In fact, even the argument that there has been no abuse in the exercise of discretion cannot be acceptable as the grant should have justified its existence when the 1987 Constitution took effect.

Of course, the magical word "energy" is there to justify the lump sum grant, but as I said, that "energy" purpose cannot, by and of itself, be a valid justification. The other circumstances surrounding the fund must also be known, read and taken into account, particularly the non-participation of Congress in the formulation of major national policy on energy.

How the purpose is served and under what conditions this purpose is served should also be considered. For example, ***is the President's choice in the exercise of his discretion made under such neutral conditions that would approximate the choice and policy-making by Congress with policy inputs and recommendations from the President, or is it an exercise of discretion that can be made strictly along political lines with no effective control from anyone within the governmental hierarchy***? To be sure, this situation of dominance and unlimited exercise of power, particularly over a very sizeable sum of money (reportedly in the hundreds of billions), is one that the framers of the 1987 Constitution have frowned upon and which our people continue to reject. We will be less than faithful to our duties as a Court if we do not raise these questions.

Why a very sizeable sum has to be kept under the control of one man also has to be explained. Considering the nature of energy development and exploitation projects, they are best discussed at many levels that take into account political, technical, and economic considerations, at the very least. Unlike calamities, these projects are subject to long gestation periods and do not at all require quick and ready responses in the way that a calamity does. There thus appears no reason why the Malampaya Fund are held as captive funds. The **constitutional alternative** of course is to subject this fund to regular budgetary process as this can be done without removing the "special" nature of the fund and while keeping it exclusive for particular uses, to be determined after due consideration by the constitutionally-assigned bodies. That we continue to accept the "energy" excuse, when

the constitutional alternative is available and when the *status quo* has lapsed into illegality, remains a continuing enigma.

In sum, I question the legitimacy of the present status of the fund, particularly its purpose and lack of specificity; its lump sum nature and its disbursement solely at the discretion of one man, unchecked by any other; how and why a multi-project and multi-activity fund covering many projects and activities, now and in the future, should be held at the discretion of one man; and the legal situation where the power of Congress and its participation in national policymaking through the budget process is disregarded. All these can be encapsulated as violations of the doctrines of separation of powers and checks and balances which can be addressed and remedied if only the fund can be subjected to the usual budget processes, with adjustments that circumstances of the fund and its use would require.

Lest this conclusion be misunderstood, I do not *per se* take the position that all lump sum appropriations should be disallowed as this would be an extreme position that disregards the realities of national life. But the use of lump sums, to be allowed, should be within reason acceptable under the processes of the Constitution, respectful of the constitutional safeguards that are now in place, and understandable to the people based on their secular understanding of what is happening in government.

To cite two obvious examples, a sizeable amount, set aside under the budget as contingent advance to be **devoted to calamities**, cannot be objectionable despite its size if it is set aside under the regular budget process; if it is in the nature of an advance, reportable at the end of the year if no calamities occur, and subject to replenishment if, from year to year, it goes below a certain predetermined level. Of course, this is without prejudice to identifiable expenditures for calamity preparedness that can already be identified and for restoration and reconstruction activities for which specific budgetary items can be appropriated.

Another example is intelligence funds that by practice, usages and nature are confidential in character and cannot but be entrusted to specific individuals in government who keep information to themselves, with limited checks on the specific uses and other circumstances of the fund. Subject to reasonable safeguards (for again, no grant can be unlimited), the grant of a lump sum appropriation for intelligence purposes can be understandable and reasonable unless the size and circumstances of use become scandalously unreasonable.

To recapitulate, the GAA is one of the most important pieces of legislation enacted by Congress each year. The constitutional grant to Congress of the power of appropriation; to scrutinize the budget submitted by the President; to prescribe the form, content, and manner of preparation of the budget; and to provide guidelines for the use of discretionary funds, all speak loudly of the Constitution's intent of preserving the corollary principle of checks and balances among the different branches of government to achieve a workable government for the ultimate benefit of the nation. All these considerations call for the striking down of Section 8 of P.D. No. 910.

V. Violation of the TRO

In a Resolution dated September 10, 2013, the Court issued a temporary restraining order (TRO) *"enjoining the [DBM], the National Treasurer, the Executive Secretary, or any persons acting under their authority from releasing: (1) the remaining Priority Development Assistance Fund allocated to members of Congress under GAA of 2013..."*

Despite the Court's TRO, the DBM issued Circular Letter dated September 27, 2013, authorizing implementing agencies to continue with the implementation of PDAF projects and the disbursement of PDAF funds where the DBM has already issued a Special Allotment Order (*SARO*) and where the implementing agencies have already obligated the funds.

According to the *ponencia*, the Circular Letter is inconsistent with the DBM's own definition of what a SARO. In its website the DBM stated that *"the actual release of funds is brought about by the issuance of the [Notice of Cash Allocation or NCA]," not by the mere issuance of a SARO. Thus, unless an NCA has been issued, public funds [are not considered as] 'released.'"*

While I agree with the *ponencia* that an NCA is necessary before funds could be treated as 'released,' I disagree with its conclusion that the release of funds covered by obligated SAROs should be forbidden only at the time of this Decision's promulgation.[31]

The fact that public funds are not considered released until they have been issued an NCA, coupled with the language of the Court's TRO prohibiting the release of the 2013 PDAF funds, should point to four logical consequences:

First, the disbursement of 2013 PDAF funds covered only by a SARO has been provisionally prohibited by the TRO that the Court had issued on September 10, 2013;

Second, since the Court now finds that this provisional order should be made permanent, then the disbursement of 2013 PDAF funds without any NCA, and regardless of whether it had already been issued a SARO, should be permanently prohibited from the time the TRO was issued and not at the time of this Decision's promulgation;

Third, the 2013 PDAF funds released in violation of the TRO should be returned to the government's coffers; and

Fourth, the DBM secretary, in issuing the DBM Letter Circular in contravention of the TRO, should be directed to explain why he should not be held in contempt for issuing the DBM Letter Circular and penalized for disregarding the Court's TRO.

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[31] *Ponencia*, p. 68.

In issuing the TRO, the Court is obviously aware that should it decide to rule against the constitutionality of the pork barrel system, the doctrine of operative fact will play a significant role in determining the consequences of its ruling. This doctrine, however, is never meant to weaken the force and effectivity of a provisional order the Court has issued. The purpose of the TRO is to preserve and protect rights and interests during the pendency of an action.

In the present case, these "rights and interests" range from the public's right to prevent the misapplication and waste of public funds, to the right to demand accountability from its public officials as an express constitutional tenet and as a necessary consequence of holding public office.

While the DBM Circular Letter's resulting violation of the Court's TRO may seem innocuous on paper, the Court must not forget that its finding of the unconstitutionality of the system that created these funds is anchored on its violation of the fundamental doctrines on which our Constitution and our nation, rest.

That the funds that may have been released by virtue of the DBM Circular Letter may involve measly sums of money is beside the point: **public funds are merely held in trust by the government for the public good** and must be handled in accordance with law. Additionally, that the apparent violation may have been made by a high-ranking official of the government cannot serve as an excuse, for no one is above the law and the Constitution.

To gloss over this violation *despite a finding of the intrinsic unconstitutionality of the system from where funds (subject of the restraining order) came* may not speak well of the Court's regard for the constitutional magnitude of this case and the staggering amounts that appear to have vanished.

The Court should be keenly aware that aside from its power, it also has the duty to enforce its authority, preserve its integrity,

maintain its dignity, and ensure the effectiveness of the administration of justice. Specifically, courts have to penalize contempt, not simply because it has the power to do this, but because it carries this as a duty essential to its right to self-preservation.

Under the Rules of Court, contempt is classified into direct and indirect or constructive contempt. Direct contempt is misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same.[32] Where the act of contumacy is not committed in *facie curiae*, or "in the presence of or so near a court or judge, *i.e.*, perpetrated outside the sitting of the court, it is considered indirect or constructive contempt, and may include "disobedience of or resistance to a lawful writ, process, order judgment, or command of a court, or injunction granted by a court or judge," or "(a)ny abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt," or "any improper conduct tending, directly, or indirectly to impede, obstruct or degrade the administration of justice."[33]

Based on this definition and classification, the issuance of the DBM Circular Letter is *prima facie* an indirect contempt for which the DBM Secretary himself should be liable unless he can show why he should not be punished.

As an element of due process, he must now be directed by resolution to explain why he should not be penalized for issuing and enforcing Circular Letter No. 2013-8 dated September 27, 2013 despite the Court's TRO.

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[32] Rule 71, Section 1, Rules of Court.

[33] Rule 71, Section 3, Rules of Court.

SECOND DIVISION

[A.C. No. 10043. November 20, 2013]

AURORA H. CABAUATAN, *complainant, vs.* **ATTY. FREDDIE A. VENIDA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NEGLIGENCE IN HANDLING THE CLIENT'S CASE, COMMITTED.— It is beyond dispute that complainant engaged the services of respondent to handle her case which was then on appeal before the Court of Appeals. However, respondent merely showed to complainant the draft of the pleading "Appearance as Counsel/ Dismissal of the Previous Counsel and a Motion for Extension of time to File a Memorandum" but failed to file the same before the appellate court. Plainly, respondent had been remiss and negligent in handling the case of his client; he neglected the legal matter entrusted to him by the complainant and he is liable therefor. x x x Complainant also established that she made several follow-ups with the respondent but the latter merely ignored her or made her believe that he was diligently handling her case. Thus, complainant was surprised when she received a notice from the Court of Appeals informing her that her appeal had been abandoned and her case dismissed. The dismissal had become final and executory. This is a clear violation of Rule 18.04, Canon 18 of the Code of Professional Responsibility which enjoins lawyers to keep their clients informed of the status of their case and shall respond within a reasonable time to the clients' request for information.

2. ID.; ID.; REFUSAL TO OBEY LAWFUL ORDERS OF THE IBP CONSTITUTES UTTER DISRESPECT FOR THE JUDICIARY AND FELLOW LAWYERS.— [W]e concur with the findings of the IBP that respondent is guilty of disregarding its notices and orders. Respondent did not heed the IBP's Order to file his Answer. He also disregarded the IBP's directives for him to attend the mandatory conference. Moreover, he did not submit his Position Paper despite receipt of notice. Respondent's refusal to obey the orders of the IBP "is not only

irresponsible, but also constitutes utter disrespect for the judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court."

R E S O L U T I O N

DEL CASTILLO, *J.*:

The Integrated Bar of the Philippines (IBP) thru its Commission on Bar Discipline (CBD) received a Complaint[1] filed by Aurora H. Cabauatan (complainant) against respondent Atty. Freddie A. Venida for serious misconduct and gross neglect of duty. In an Order[2] dated June 14, 2007, the IBP-CBD directed respondent to file his Answer within 15 days from receipt. Respondent failed to file his Answer. On May 29, 2008, the Investigating Commissioner[3] notified the parties of the mandatory conference scheduled on July 10, 2008.[4] The parties were likewise directed to submit their Mandatory Conference Brief at least three days before the scheduled conference. Only the complainant submitted her brief.[5] During the mandatory conference set on July 10, 2008, complainant who was already 78 years old appeared. Respondent failed to appear.[6] Consequently, the Investigating Commissioner reset the mandatory conference to September 18, 2008.[7]

On September 18, 2008, respondent again failed to appear despite notice thus he was deemed to have waived his right to

[1] *Rollo*, pp. 2-5.

[2] *Id.* at 21.

[3] Investigating Commissioner Ma. Editha A. Go-Biñas.

[4] *Rollo*, p. 51.

[5] *Id.* at 54-56.

[6] *Id.* at 57.

[7] *Id.*

be present and to submit evidence in his behalf. Only the complainant was present and complied with the directive to submit her Position Paper together with the documents that would support her case.[8]

The facts of the case as incorporated in the Report and Recommendation[9] of the Investigating Commissioner are as follows:

> This is a Disbarment case filed by Complainant against Respondent for gross, reckless and inexcusable negligence. Complainant alleged that she was the appellant in CA-G.R. [No.] 85024 entitled Aurora Cabauatan, Plaintiff-Appellant vs. Philippine National Bank, Defendant-Appellee. The case was originally handled by a different lawyer but she decided to change her counsel and engaged the services of the Respondent x x x. Complainant was then furnished by the Respondent of the pleadings he prepared, such as "Appearance as Counsel/Dismissal of the Previous Counsel and a Motion for Extension of time to File a Memorandum."
>
> Complainant made several follow-ups on her case until she lost contact with the Respondent.
>
> Complainant alleged the gross, reckless and inexcusable negligence of the Respondent [which she] was able to prove with the Entry of Judgment (attached as Annex "C" of her Position Paper, and as Annex "D" of her Complaint) issued by the Honorable Court of Appeals quoted hereunder.
>
> "x x x
>
> This is to certify that on March 31, 2006 a resolution rendered in the above-entitled case was filed in this Office, the dispositive portion of which reads as follows:
>
> WHEREFORE, the appeal in this case is deemed ABANDONED and DISMISSED on authority of Sec. 1(e), Rule 50 of the 1996 Rules of Civil Procedure.
>
> SO ORDERED.

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[8] *Id*. at 59.

[9] *Id*. at 91-94.

> and that the same has on April 23, 2006 become final and executor[y] and is hereby recorded in the Book of Entries of Judgments. x x x"
>
> From the order itself, it is obvious that Respondent did not submit any pleading with the Court of Appeals. It is likewise very noticeable that the Respondent was not among those furnished with a copy of the Entry of Judgment hence it is crystal clear that he never submitted his Entry of Appearance with the Court of Appeals [insofar] as the case of [t]he Complainant is concerned.
>
> When the Complainant was following up on the status of the case with him, Respondent assured the Complainant that he was doing his best in dealing with the case, nevertheless, later on Complainant lost contact with him.
>
> The fact that the Entry of Judgment issued by the Court of Appeals that stated "x x x deemed ABANDONED and DISMISSED x x x," including the fact that he was not one of the parties furnished with a copy of the Entry of Judgment proved the inaction and negligence of the Respondent.
>
> Respondent did [furnish] Complainant x x x a copy of "Appearance as Counsel/Dismissal of the Previous Counsel and a Motion for Extension of time to File a Memorandum," however, no further actions were [made] by the Respondent to protect [the] rights and interest of his client.[10]

Based on the foregoing narration of facts, the Investigating Commissioner found that respondent has not been diligent and competent in handling the case of the complainant when he failed to file the necessary pleading before the court resulting in its outright dismissal. The respondent also disregarded the orders of the IBP when he failed to file his Answer, to attend the mandatory conference, and to file his Position Paper despite receipt of the corresponding notices.[11] The Investigating Commissioner thus recommended that respondent be suspended from the practice of law for one year.[12]

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

[11] *Id*. at 93.

[12] *Id*. at 94.

In Resolution No. XX-2012-510[13] dated December 14, 2012, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation.

Our Ruling

We adopt the findings and recommendation of the IBP.

The Code of Professional Responsibility pertinently provides:

Canon 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed on him.

Canon 18 – A lawyer shall serve his client with competence and diligence.

xxx xxx xxx

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

It is beyond dispute that complainant engaged the services of respondent to handle her case which was then on appeal before the Court of Appeals. However, respondent merely showed to complainant the draft of the pleading "Appearance as Counsel/ Dismissal of the Previous Counsel and a Motion for Extension of time to File a Memorandum" but failed to file the same before the appellate court. Plainly, respondent had been remiss and negligent in handling the case of his client; he neglected the legal matter entrusted to him by the complainant and he is liable therefor.

Indeed, when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed

[13] *Id.* at 90.

on him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society. x x x[14]

Complainant also established that she made several follow-ups with the respondent but the latter merely ignored her or made her believe that he was diligently handling her case. Thus, complainant was surprised when she received a notice from the Court of Appeals informing her that her appeal had been abandoned and her case dismissed. The dismissal had become final and executory. This is a clear violation of Rule 18.04, Canon 18 of the Code of Professional Responsibility which enjoins lawyers to keep their clients informed of the status of their case and shall respond within a reasonable time to the clients' request for information.

In addition, we concur with the findings of the IBP that respondent is guilty of disregarding its notices and orders. Respondent did not heed the IBP's Order to file his Answer. He also disregarded the IBP's directives for him to attend the mandatory conference. Moreover, he did not submit his Position Paper despite receipt of notice. Respondent's refusal to obey the orders of the IBP "is not only irresponsible, but also constitutes utter disrespect for the judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court."[15] Respondent should be reminded that —

> As an officer of the court, [he] is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely. This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers.

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[14] *Del Mundo v. Capistrano*, A.C. No. 6903, April 16, 2012, 669 SCRA 462, 468. See also *Vda. de Enriquez v. Atty. San Jose*, 545 Phil. 379, 383 (2007).

[15] *Sibulo v. Ilagan,* 486 Phil. 197, 233-204.

Respondent should strive harder to live up to his duties of observing and maintaining the respect due to the courts, respect for law and for legal processes, and of upholding the integrity and dignity of the legal profession in order to perfom his responsibilities as a lawyer effectively.[16]

WHEREFORE, respondent Atty. Freddie A. Venida is **SUSPENDED** from the practice of law for one year[17] effective immediately, with **WARNING** that a similar violation will be dealt with more severely. He is **DIRECTED** to report to this Court the date of his receipt of this Resolution to enable this Court to determine when his suspension shall take effect.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[16] *Id*. at 204.

[17] *Del Mundo v. Capistrano*, supra note 14; *Fernandez v. Cabrera II*, 463 Phil. 352, 358 (2003).

SECOND DIVISION

[G.R. No. 165585. November 20, 2013]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **PRUDENTIAL GUARANTEE AND ASSURANCE, INC., DEVELOPMENT BANK OF THE PHILIPPINES, and LAND BANK OF THE PHILIPPINES,** *respondents.*

[G.R. No. 176982. November 20, 2013]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **PRUDENTIAL GUARANTEE AND ASSURANCE, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; REQUISITES BEFORE EXECUTION PENDING APPEAL MAY BE GRANTED; REQUIREMENT OF "GOOD REASONS," EXPLAINED.— The execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed. In order to grant the same pursuant to Section 2, Rule 39 of the Rules, the following requisites must concur: (*a*) there must be a motion by the prevailing party with notice to the adverse party; (*b*) there must be a good reason for execution pending appeal; and (*c*) the good reason must be stated in a special order. Good reasons call for the attendance of compelling circumstances warranting immediate execution for fear that favorable judgment may yield to an empty victory. In this regard, the Rules do not categorically and strictly define what constitutes "good reason," and hence, its presence or absence must be determined in view of the peculiar circumstances of each case. As a guide, jurisprudence dictates that the "good reason" yardstick imports a superior circumstance that will outweigh injury or damage to the adverse party. Corollarily, the requirement of "good reason" does not necessarily entail unassailable and flawless basis but at the

very least, an invocation thereof must be premised on solid footing.

2. ID.; ID.; ID.; THE EXISTENCE OF "GOOD REASONS" MUST BE SUBSTANTIATED; RESPONDENT FAILED TO DEMONSTRATE THE PRESENCE OF "GOOD REASONS" IN CASE AT BAR.— In the case at bar, the RTC, as affirmed by the CA, granted PGAI's motion for execution pending appeal on the ground that the impending sanctions against it by foreign underwriters/reinsurers constitute good reasons therefor. It must, however, be observed that PGAI has not proffered any evidence to substantiate its claim, as it merely presented bare allegations thereon. It is hornbook doctrine that mere allegations do not constitute proof. As held in *Real v. Belo,* "[i]t is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence." Hence, without any sufficient basis to support the existence of its alleged "good reasons," it cannot be said that the second requisite to allow an execution pending appeal exists. To reiterate, the requirement of "good reasons" must be premised on solid footing so as to ensure that the "superior circumstance" which would impel immediate execution is not merely contrived or based on speculation. This, however, PGAI failed to demonstrate in the present case. In fine, the Court therefore holds that the CA's affirmance of the RTC's February 14, 2002 Order authorizing execution pending appeal, as well as the February 19, 2002 issuances related thereto, was improper.

3. POLITICAL LAW; ADMINISTRATIVE LAW; THE GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1997 (R.A. 8291); EXEMPTION OF GSIS' FUNDS AND PROPERTIES FROM EXECUTION DOES NOT OPERATE TO DENY PRIVATE ENTITIES FROM ENFORCING THEIR CONTRACTUAL CLAIMS AGAINST GSIS.— [I]t must be noted that the funds and assets of GSIS may – after the resolution of the appeal and barring any provisional injunction thereto – be subject to execution, attachment, garnishment or levy since the exemption under Section 39 of RA 8291 does not operate to deny private entities from properly enforcing their contractual claims against GSIS. This has been established in the case of *Rubia* wherein the

Court held as follows: x x x **Needless to say, where proper, under Section 36, the GSIS may be held liable for the contracts it has entered into in the course of its business investments**. For GSIS cannot claim a special immunity from liability in regard to its business ventures under said Section. **Nor can it deny contracting parties, in our view, the right of redress and the enforcement of a claim, particularly as it arises from a purely contractual relationship of a private character between an individual and the GSIS**.

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT ON THE PLEADINGS; WHEN APPROPRIATE.— Judgment on the pleadings is appropriate when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. x x x [J]urisprudence dictates that an answer fails to tender an issue if it does not comply with the requirements of a specific denial as set out in Sections 8 and 10, Rule 8 of the Rules, resulting in the admission of the material allegations of the adverse party's pleadings. As such, it is a form of judgment that is exclusively based on the submitted pleadings without the introduction of evidence as the factual issues remain uncontroverted.

5. ID.; ID.; ID.; PROPRIETY OF A JUDGMENT ON THE PLEADINGS, UPHELD.— In this case, records disclose that in its Answer, GSIS admitted the material allegations of PGAI's complaint warranting the grant of the relief prayed for. In particular, GSIS admitted that: (*a*) it made a request for reinsurance cover which PGAI accepted in a reinsurance binder effective for one year; (*b*) it remitted only the first three reinsurance premium payments to PGAI; (*c*) it failed to pay PGAI the fourth and final reinsurance premium installment; and (*d*) it received demand letters from PGAI. It also did not refute the allegation of PGAI that it settled reinsurance claims during the reinsured period. On the basis of these admissions, the Court finds that the CA did not err in affirming the propriety of a judgment on the pleadings. GSIS' affirmative defense that the non-payment of the last reinsurance premium merely rendered the contract ineffective pursuant to Section 77 of PD 612 no longer involves any factual issue, but stands solely as a mere question of law in the light of the foregoing admissions hence allowing for a judgment on the pleadings.

APPEARANCES OF COUNSEL

GSIS Chief Legal Counsel for GSIS.

Carlos R. Cruz for DBP.

Felipe Antonio B. Remollo for Prudential Guarantee and Assurance, Inc.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in these consolidated petitions for review on *certiorari*[1] are separate issuances of the Court of Appeals (CA) in relation to the complaint for sum of money filed by Prudential Guarantee and Assurance, Inc. (PGAI) against the Government Service Insurance System (GSIS) before the Regional Trial Court of Makati City, Branch 149 (RTC), docketed as Civil Case No. 01-1634.

In particular, the petition in G.R. No. 165585 assails the Decision[2] dated May 26, 2004 and Resolution[3] dated October 6, 2004 of the CA in CA-G.R. SP No. 69289 which affirmed the Order[4] dated February 14, 2002, as well as the Order,[5] Notices of Garnishment,[6] and Writ of Execution,[7] all dated February 19, 2002, issued by the RTC authorizing execution pending appeal.

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[1] *Rollo* (G.R. No. 165585), pp. 3-35; *rollo* (G.R. No. 176982) pp. 9-29.

[2] *Rollo* (G.R. No. 165585), pp. 39-50. Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Elvi John S. Asuncion and Rosmari D. Carandang, concurring.

[3] *Id*. at 51-54. Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Rosmari D. Carandang and Rosalinda Asuncion Vicente, concurring.

[4] CA *rollo* (CA-G.R. SP No. 69289), pp. 166-168. Penned by Judge Zeus C. Abrogar.

[5] *Rollo* (G.R. No. 165585), p. 60.

[6] CA *rollo* (CA-G.R. SP No. 69289), pp. 161-164.

[7] *Rollo* (G.R. No. 165585), pp. 61-62.

On the other hand, the petition in G.R. No. 176982 assails the Decision[8] dated October 30, 2006 and Resolution[9] dated March 12, 2007 of the CA in CA-G.R. CV No. 73965 which dismissed the appeal filed by GSIS, affirming with modification the Order[10] dated January 11, 2002 of the RTC rendering judgment on the pleadings.

The Facts

Sometime in March 1999, the National Electrification Administration (NEA) entered into a Memorandum of Agreement[11] (MOA) with GSIS insuring all real and personal properties mortgaged to it by electrical cooperatives under an Industrial All Risks Policy (IAR policy).[12] The total sum insured under the IAR policy was ₱16,731,141,166.80, out of which, 95% or ₱15,894,584,108.40 was reinsured by GSIS with PGAI for a period of one year or from March 5, 1999 to March 5, 2000.[13] As reflected in Reinsurance Request Note No. 99-150[14] (reinsurance cover) and the Reinsurance Binder[15] dated April 21, 1999 (reinsurance binder), GSIS agreed to pay PGAI reinsurance premiums in the amount of ₱32,885,894.52 per quarter or a total of ₱131,543,578.08.[16] While GSIS remitted to PGAI the reinsurance premiums for the first three quarters, it, however, failed to pay the fourth and last reinsurance premium due on December 5, 1999 despite demands. This prompted PGAI

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[8] *Rollo* (G.R. No. 176982), pp. 143-161. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Bienvenido L. Reyes (now Associate Justice of the Supreme Court) and Myrna Dimaranan-Vidal, concurring.

[9] *Id*. at 174.

[10] *Id*. at 103-107.

[11] *Id*. at 42-45.

[12] *Rollo* (G.R. No. 165585), p. 40.

[13] *Id*.

[14] *Rollo* (G.R. No. 176982), p. 46.

[15] *Rollo* (G.R. No. 165585), p. 40.

[16] *Id*.

to file, on November 15, 2001, a Complaint[17] for sum of money (complaint) against GSIS before the RTC, docketed as Civil Case No. 01-1634.

In its complaint, PGAI alleged, among others, that: (*a*) after it had issued the IAR policy, it further reinsured the risks covered under the said reinsurance with reputable reinsurers worldwide such as Lloyds of London, Copenhagen Re, Cigna Singapore, CCR, Generali, and Arig;[18] (*b*) the first three reinsurance premiums were paid to PGAI by GSIS and, in the same vein, NEA paid the first three reinsurance premiums due to GSIS;[19] (*c*) GSIS failed to pay PGAI the fourth and last reinsurance premium due on December 5, 1999;[20] (*d*) the IAR policy remained in full force and effect for the entire insurable period and, in fact, the losses/damages on various risks reinsured by PGAI were paid and accordingly settled by it;[21] (*e*) PGAI is under continuous pressure from its reinsurers in the international market to settle the matter;[22] and (*f*) GSIS acknowledged its obligation to pay the last reinsurance premium as it, in turn, demanded from NEA the fourth and last reinsurance premium.[23]

In its Answer,[24] GSIS admitted, among others, that: (*a*) its request for reinsurance cover was accepted by PGAI in a reinsurance binder;[25] (*b*) it remitted to PGAI the first three reinsurance premiums which were paid by NEA;[26] and (*c*) it failed to remit the fourth and last reinsurance premium to PGAI.[27]

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[17] *Rollo* (G.R. No. 176982), pp. 31-41. Dated November 12, 2001.

[18] *Id*. at 33.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 34.

[22] *Id*. at 35.

[23] *Id*. at 36.

[24] *Id*. at 81-88. Dated December 12, 2001.

[25] *Id*. at 82.

[26] *Id*.

[27] *Id*.

It, however, denied, *inter alia*, that: (*a*) it had acknowledged its obligation to pay the last quarter's reinsurance premium to PGAI;[28] and (*b*) the IAR policy remained in full force and effect for the entire insurable period of March 5, 1999 to March 5, 2000.[29] GSIS also proffered the following affirmative defenses: (*a*) the complaint states no cause of action against GSIS because the non-payment of the last reinsurance premium only renders the reinsurance contract ineffective, and does not give PGAI a right of action to collect;[30] (*b*) pursuant to the regulations issued by the Commission on Audit, GSIS is prohibited from advancing payments to PGAI occasioned by the failure of the principal insured, NEA, to pay the insurance premium;[31] and (*c*) PGAI's cause of action lies against NEA since GSIS merely acted as a conduit.[32] By way of counterclaim, GSIS prayed that PGAI be ordered to pay exemplary damages, including litigation expenses, and costs of suit.[33]

On December 18, 2001, PGAI filed a Motion for Judgment on the Pleadings[34] averring that GSIS essentially admitted the material allegations of the complaint, such as: (*a*) the existence of the MOA between NEA and GSIS; (*b*) the existence of the reinsurance binder between GSIS and PGAI; (*c*) the remittance by GSIS to PGAI of the first three quarterly reinsurance premiums; and (*d*) the failure/refusal of GSIS to remit the fourth and last reinsurance premium.[35] Hence, PGAI prayed that the RTC render a judgment on the pleadings pursuant to Section 1, Rule 34 of the Rules of Court (Rules). GSIS opposed[36] the

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[28] *Id*. at 83.

[29] *Id*. at 82.

[30] *Id*. at 84.

[31] *Id*. at 86.

[32] *Id*. at 86-87.

[33] *Id.* at 87.

[34] *Id*. at 90-93. Dated December 17, 2001.

[35] *Id*. at 90.

[36] *Id*. at 95-101. Opposition to Motion for Judgment on the Pleadings and Motion to Set Affirmative Defenses for Preliminary Hearing dated January 2, 2002.

foregoing motion by reiterating the allegations and defenses in its Answer.

On January 11, 2002, the RTC issued an Order[37] (January 11, 2002 Order) granting PGAI's Motion for Judgment on the Pleadings. It observed that the admissions of GSIS that it paid the first three quarterly reinsurance premiums to PGAI affirmed the validity of the contract of reinsurance between them. As such, GSIS cannot now renege on its obligation to remit the last and remaining quarterly reinsurance premium.[38] It further pointed out that while it is true that the payment of the premium is a requisite for the validity of an insurance contract as provided under Section 77 of Presidential Decree No. (PD) 612,[39] otherwise known as "The Insurance Code," it was held in *Makati Tuscany Condominium Corp. v. CA*[40] (*Makati Tuscany*) that insurance policies are valid even if the premiums were paid in installments, as in this case.[41] Thus, in view of the foregoing, the RTC ordered GSIS to pay PGAI the last quarter reinsurance premium in the sum of ₱32,885,894.52, including interests amounting to ₱6,519,515.91 as of July 31, 2000 until full payment, attorney's fees, and costs of suit.[42] Dissatisfied, GSIS filed a notice of appeal.[43]

Meanwhile, PGAI filed a Motion for Execution Pending Appeal[44] based on the following reasons: (*a*) GSIS' appeal was patently dilatory since it already acknowledged the validity of PGAI's claim;[45] (*b*) GSIS posted no valid defense as its Answer

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[37] *Id.* at 103-107.

[38] *Id*. at 107.

[39] Entitled "ORDAINING AND INSTITUTING AN INSURANCE CODE OF THE PHILIPPINES."

[40] G.R. No. 95546, November 6, 1992, 215 SCRA 462.

[41] *Rollo* (G.R. No. 176982), p. 107.

[42] *Id*.

[43] CA *rollo* (CA-G.R. SP No. 69289), p. 112. Dated January 15, 2002.

[44] *Id*. at 113-120. Dated January 17, 2002.

[45] *Id.* at 114-115.

raised no genuine issues;[46] and (*c*) PGAI would suffer serious and irreparable injury as it may be blacklisted as a consequence of the non-payment of premiums due.[47] PGAI also manifested its willingness to post a sufficient surety bond to answer for any resulting damage to GSIS.[48] The latter opposed[49] the motion asserting that there lies no sufficient ground or urgency to justify execution pending appeal. It also claimed that all its funds and properties are exempted from execution citing Section 39 of Republic Act No. (RA) 8291,[50] otherwise known as "The Government Service Insurance System Act of 1997."[51]

On February 14, 2002, the RTC issued an Order[52] (February 14, 2002 Order) granting PGAI's Motion for Execution Pending Appeal, conditioned on the posting of a bond. It further held that only the GSIS Social Insurance Fund is exempt from execution. Accordingly, PGAI duly posted a surety bond which the RTC approved through an Order[53] dated February 19, 2002, resulting to the issuance of a writ of execution[54] and notices of garnishment[55] (February 19, 2002 issuances), all of even date, against GSIS.

The CA Proceedings Antecedent to G.R. No. 165585

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[46] *Id.* at 117-118.

[47] *Id.* at 119.

[48] *Id.*

[49] *Id.* at 123-133. Opposition to Motion for Execution Pending Appeal dated January 29, 2002.

[50] "AN ACT AMENDING PRESIDENTIAL DECREE NO. 1146, AS AMENDED, EXPANDING AND INCREASING THE COVERAGE AND BENEFITS OF THE GOVERNMENT SERVICE INSURANCE SYSTEM, INSTITUTING REFORMS THEREIN AND FOR OTHER PURPOSES."

[51] CA *rollo* (CA-G.R. SP No. 69289), p. 124.

[52] *Id.* at 166-168.

[53] *Rollo* (G.R. No. 165585), p. 60.

[54] *Id.* at 61-62.

[55] CA *rollo* (CA-G.R. SP No. 69289), pp. 161-164.

Aggrieved by the RTC's February 14, 2002 Order, as well as the February 19, 2002 issuances, GSIS – without first filing a motion for reconsideration (from the said order of execution) or a sufficient *supersedeas* bond[56] – filed on February 26, 2002 a petition for *certiorari*[57] before the CA, docketed as **CA-G.R. SP No. 69289**, against the RTC and PGAI. It also impleaded in the said petition the Land Bank of the Philippines (LBP) and the Development Bank of the Philippines (DBP) as nominal parties so as to render them subject to the writs and processes of the CA.[58]

In its petition, GSIS argued that: (*a*) none of the grounds proffered by PGAI justifies the issuance of a writ of execution pending appeal;[59] and (*b*) all funds and assets of GSIS are exempt from execution and levy in accordance with RA 8291.[60]

On April 4, 2002, the CA issued a temporary restraining order (TRO)[61] enjoining the garnishment of GSIS' funds with LBP and DBP. Nevertheless, since the TRO's effectivity lapsed, GSIS' funds with the LBP were eventually garnished.[62]

On May 26, 2004, the CA rendered a Decision[63] dismissing GSIS' petition, upholding, among others, the validity of the execution pending appeal pursuant to the RTC's February 14, 2002 Order as well as the February 19, 2002 issuances. It found that the impending blacklisting of PGAI constitutes a good reason for allowing the execution pending appeal (also known as "discretionary execution") considering that the imposition of

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[56] *Rollo* (G.R. No. 165585), p. 42.

[57] CA *rollo* (CA-G.R. SP No. 69289), pp. 4-26. Petition (with Urgent Motion for Issuance of TRO and Writ of Preliminary Injunction).

[58] *Id*. at 6.

[59] *Id*. at 13-17.

[60] *Id*. at 17-19.

[61] *Id*. at 172-173.

[62] *Rollo* (G.R. No. 165585), p. 43.

[63] *Id*. at 39-50.

international sanctions on any single local insurance company puts in grave and immediate jeopardy not only the viability of that company but also the integrity of the entire local insurance system including that of the state insurance agency. It pointed out that the insurance business thrives on credibility which is maintained by honoring financial commitments.

On the claimed exemption of GSIS funds from execution, the CA held that such exemption only covers funds under the Social Insurance Fund which remains liable for the payment of benefits like retirement, disability and death compensation and not those covered under the General Insurance Fund, as in this case, which are meant for investment in the business of insurance and reinsurance.[64]

GSIS' motion for reconsideration[65] was denied by the CA in a Resolution[66] dated October 6, 2004. Hence, the petition for review on *certiorari* in **G.R. No. 165585**.[67]

The CA Proceedings Antecedent to G.R. No. 176982

Separately, GSIS also assailed the RTC's January 11, 2002 Order which granted PGAI's Motion for Judgment on the Pleadings through an appeal[68] filed on October 7, 2002, docketed as **CA G.R. CV No. 73965**.

GSIS averred that the RTC gravely erred in: (*a*) rendering judgment on the pleadings since it specifically denied the material allegations in PGAI's complaint; (*b*) ordering execution pending appeal since there are no justifiable reasons for the same; and (*c*) effecting execution against funds and assets of GSIS given that RA 8291 exempts the same from levy, execution and garnishment.[69]

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[64] *Id*. at 47-48.

[65] CA *rollo* (CA G.R. SP No. 69289), pp. 332-346.

[66] *Rollo* (G.R. No. 165585), pp. 51-54.

[67] *Id*. at 3-35.

[68] *Rollo* (G.R. No. 176982), pp. 111-141. Brief for Defendant-Appellant dated October 4, 2002.

[69] *Id*. at 115-116.

For its part, PGAI maintained that: (*a*) the judgment on the pleadings was in order given that GSIS never disputed the facts as alleged in its complaint; (*b*) the discretionary execution was proper in view of the dilatory methods employed by GSIS in order to evade the payment of a valid obligation; and (*c*) the general insurance fund of GSIS, which was attached and garnished by the RTC, is not exempt from execution.[70]

In a Decision[71] dated October 30, 2006, the CA sustained the RTC's January 11, 2002 Order but deleted the awards of interest and attorney's fees for lack of factual and legal basis.[72]

The CA ruled that judgment on the pleadings was proper since GSIS did not specifically deny the genuineness, due execution, and perfection of its reinsurance contract with PGAI.[73] In fact, PGAI even settled reinsurance claims during the covering period rendering the reinsurance contract not only perfected but partially executed as well.[74]

Passing on the issue of the exemption from execution of GSIS funds, the CA, citing *Rubia v. GSIS*[75] (*Rubia*), held that the exemption provided for by RA 8291 is not absolute since it only pertains to the social security benefits of its members; thus, funds used by the GSIS for business investments and commercial ventures, as in this case, may be attached and garnished.[76]

GSIS' motion for reconsideration[77] was denied by the CA in a Resolution[78] dated March 12, 2007. Hence, the present petition for review on *certiorari* in **G.R. No. 176982.**[79]

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[70] *Id.* at 289-290. See Brief for Plaintiff-Appellee dated November 19, 2002.

[71] *Id*. at 143-161.

[72] *Id*. at 160.

[73] *Id*. at 150.

[74] *Id*. at 152-153.

[75] G.R. No. 151439, June 21, 2004, 432 SCRA 529.

[76] *Rollo* (G.R. No. 176982), pp. 157-159.

[77] *Id*. at 163-172. Motion for Reconsideration dated November 21, 2006.

[78] *Id*. at 174.

[79] *Id*. at 9-29.

The Issues Before the Court

In these consolidated petitions, the essential issues are the following: (*a*) in **G.R. No. 165585**, whether the CA erred in (1) upholding the RTC's February 14, 2002 Order authorizing execution pending appeal, and (2) ruling that only the Social Insurance Fund and not the General Fund of the GSIS is exempt from garnishment; and (*b*) in **G.R. No. 176982**, whether the CA erred in sustaining the RTC's January 11, 2002 Order rendering judgment on the pleadings.

The Court's Ruling

The petitions are partly meritorious.

A. Good reasons to allow execution pending appeal and the nature of the exemption under Section 39 of RA 8291.

The execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed.[80] In order to grant the same pursuant to Section 2,[81] Rule 39 of the Rules, the following requisites must concur: (*a*) there must be a motion by the prevailing party with notice to the adverse

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[80] *Diesel Construction Company, Inc. v. Jollibee Foods Corp.*, 380 Phil. 813, 818 (2000).

[81] Sec. 2**.** *Discretionary execution. —*

(a) *Execution of a judgment or final order pending appeal. —* On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

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party; (*b*) there must be a good reason for execution pending appeal; and (*c*) the good reason must be stated in a special order.[82]

Good reasons call for the attendance of compelling circumstances warranting immediate execution for fear that favorable judgment may yield to an empty victory. In this regard, the Rules do not categorically and strictly define what constitutes "good reason," and hence, its presence or absence must be determined in view of the peculiar circumstances of each case. As a guide, jurisprudence dictates that the "good reason" yardstick imports a superior circumstance that will outweigh injury or damage to the adverse party.[83] Corollarily, the requirement of "good reason" does not necessarily entail unassailable and flawless basis but at the very least, an invocation thereof must be premised on solid footing.[84]

In the case at bar, the RTC, as affirmed by the CA, granted PGAI's motion for execution pending appeal on the ground that the impending sanctions against it by foreign underwriters/reinsurers constitute good reasons therefor. It must, however, be observed that PGAI has not proffered any evidence to substantiate its claim, as it merely presented bare allegations thereon. It is hornbook doctrine that mere allegations do not constitute proof. As held in *Real v. Belo*,[85] "[i]t is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence."[86] Hence, without any sufficient basis to support the existence of its alleged "good reasons," it cannot be said that

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[82] *Archinet International, Inc. v. Becco Philippines, Inc.*, G.R. No. 183753, June 19, 2009, 590 SCRA 168, 180-181 (citations omitted).

[83] *Diesel Construction Company v. Jollibee Foods Corp.*, *supra* note 80, at 829.

[84] *National Power Corporation, v. Adiong*, A.M. No. RTJ-07-2060, July 27, 2011, 654 SCRA 391, 404.

[85] 542 Phil. 109 (2007).

[86] *Id*. at 122.

the second requisite to allow an execution pending appeal exists. To reiterate, the requirement of "good reasons" must be premised on solid footing so as to ensure that the "superior circumstance" which would impel immediate execution is not merely contrived or based on speculation. This, however, PGAI failed to demonstrate in the present case. In fine, the Court therefore holds that the CA's affirmance of the RTC's February 14, 2002 Order authorizing execution pending appeal, as well as the February 19, 2002 issuances related thereto, was improper.

Nevertheless, while an execution pending appeal should not lie in view of the above-discussed reasons, it must be noted that the funds and assets of GSIS may – after the resolution of the appeal and barring any provisional injunction thereto – be subject to execution, attachment, garnishment or levy since the exemption under Section 39 of RA 8291[87] does not operate to

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[87] Sec. 39. *Exemption from Tax, Legal Process and Lien.* – It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding any laws to the contrary, the GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges, or duties of all kinds. These exemptions shall continue unless expressly and specifically revoked and any assessment against the GSIS as of the approval of this Act are hereby considered paid. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

Moreover, these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability.

The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act **shall be exempt from attachment, garnishment, execution, levy or other processes issued**

deny private entities from properly enforcing their contractual claims against GSIS.[88] This has been established in the case of *Rubia* wherein the Court held as follows:

> [T]he declared policy of the State in **Section 39** of the GSIS Charter granting GSIS an exemption from tax, lien, attachment, levy, execution, and other legal processes should be read together with the grant of power to the GSIS to invest its "excess funds" under Section 36 of the same Act. Under Section 36, the GSIS is granted the ancillary power to invest in business and other ventures for the benefit of the employees, by using its excess funds for investment purposes. In the exercise of such function and power, the GSIS is allowed to assume a character similar to a private corporation. Thus, it may sue and be sued, as also explicitly granted by its charter. **Needless to say, where proper, under Section 36, the GSIS may be held liable for the contracts it has entered into in the course of its business investments**. For GSIS cannot claim a special immunity from liability in regard to its business ventures under said Section. **Nor can it deny contracting parties, in our view, the right of redress and the enforcement of a claim, particularly as it arises from a purely contractual relationship of a private character between an individual and the GSIS**.[89] (Emphases supplied and citations omitted)

Thus, the petition in **G.R. No. 165585** is partly granted.

B. Propriety of judgment on the pleadings.

Judgment on the pleadings is appropriate when an answer fails to tender an issue, or otherwise admits the material allegations

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by the courts, quasi-judicial agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS. (Emphasis supplied)

[88] See *GSIS v. Regional Trial Court of Pasig City, Branch 71*, G.R. No. 175393 and G.R. No. 177731, December 18, 2009, 608 SCRA 552, 582-584.

[89] *Rubia v. GSIS*, *supra* note 75, at 541-543.

of the adverse party's pleading. The rule is stated in Section 1, Rule 34 of the Rules which reads as follows:

> Sec. 1. *Judgment on the pleadings*. – Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x.

In this relation, jurisprudence dictates that an answer fails to tender an issue if it does not comply with the requirements of a specific denial as set out in Sections 8[90] and 10,[91] Rule 8 of the Rules, resulting in the admission of the material allegations of the adverse party's pleadings.[92] As such, it is a form of judgment that is exclusively based on the submitted pleadings without the introduction of evidence as the factual issues remain uncontroverted.[93]

In this case, records disclose that in its Answer, GSIS admitted the material allegations of PGAI's complaint warranting the

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[90] Sec. 8. *How to contest such documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

[91] Sec. 10. *Specific denial*. — A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

[92] *Mongao v. Pryce Properties Corporation*, G.R. No. 156474, August 16, 2005, 467 SCRA 201, 209.

[93] See *Luzon Development Bank v. Conquilla*, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 549.

grant of the relief prayed for. In particular, GSIS admitted that: (*a*) it made a request for reinsurance cover which PGAI accepted in a reinsurance binder effective for one year;[94] (*b*) it remitted only the first three reinsurance premium payments to PGAI;[95] (*c*) it failed to pay PGAI the fourth and final reinsurance premium installment;[96] and (*d*) it received demand letters from PGAI.[97] It also did not refute the allegation of PGAI that it settled reinsurance claims during the reinsured period. On the basis of these admissions, the Court finds that the CA did not err in affirming the propriety of a judgment on the pleadings.

GSIS' affirmative defense that the non-payment of the last reinsurance premium merely rendered the contract ineffective pursuant to Section 77[98] of PD 612 no longer involves any factual issue, but stands solely as a mere question of law in the light of the foregoing admissions hence allowing for a judgment on the pleadings. Besides, in the case of *Makati Tuscany*, the Court already ruled that the non-payment of subsequent installment premiums would not prevent the insurance contract from taking effect; that the parties intended to make the insurance contract valid and binding is evinced from the fact that the insured paid – and the insurer received – several reinsurance premiums due thereon, although the former refused to pay the remaining balance, *viz.*:

> We hold that the subject policies are valid even if the premiums were paid on installments. The records clearly show that petitioner and private respondent intended subject insurance policies to be

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[94] *Rollo* (G.R. No. 176982), p. 82. See also CA *rollo*, p. 45.

[95] *Id.*

[96] *Id.*

[97] *Id.* at 83.

[98] Sec. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies.

binding and effective notwithstanding the staggered payment of the premiums. The initial insurance contract entered into in 1982 was renewed in 1983, then in 1984. In those three (3) years, the insurer accepted all the installment payments. Such acceptance of payments speaks loudly of the insurer's intention to honor the policies it issued to petitioner. Certainly, basic principles of equity and fairness would not allow the insurer to continue collecting and accepting the premiums, although paid on installments, and later deny liability on the lame excuse that the premiums were not prepaid in full.

We therefore sustain the Court of Appeals. **We quote with approval the well-reasoned findings and conclusion of the appellate court** contained in its Resolution denying the motion to reconsider its Decision —

While the import of Section 77 is that prepayment of premiums is strictly required as a condition to the validity of the contract, We are not prepared to rule that the request to make installment payments duly approved by the insurer, would prevent the entire contract of insurance from going into effect despite payment and acceptance of the initial premium or first installment. Section 78 of the Insurance Code in effect allows waiver by the insurer of the condition of prepayment by making an acknowledgment in the insurance policy of receipt of premium as conclusive evidence of payment so far as to make the policy binding despite the fact that premium is actually unpaid. **Section 77 merely precludes the parties from stipulating that the policy is valid even if premiums are not paid, but does not expressly prohibit an agreement granting credit extension, and such an agreement is not contrary to morals, good customs, public order or public policy** (De Leon, the Insurance Code, at p. 175). So is an understanding to allow insured to pay premiums in installments not so proscribed. **At the very least, both parties should be deemed in estoppel to question the arrangement they have voluntarily accepted**.

[I]n the case before Us, **petitioner paid the initial installment and thereafter made staggered payments resulting in full payment of the 1982 and 1983 insurance policies**. For the 1984 policy, **petitioner paid two (2) installments although it refused to pay the balance**.

It appearing from the peculiar circumstances that the parties actually intended to make three (3) insurance contracts valid,

effective and binding, petitioner may not be allowed to renege on its obligation to pay the balance of the premium after the expiration of the whole term of the third policy (No. AH-CPP-9210651) in March 1985. Moreover, as correctly observed by the appellate court, where the risk is entire and the contract is indivisible, the insured is **not entitled to a refund of the premiums paid if the insurer was exposed to the risk insured for any period, however brief or momentary**.[99] (Emphases supplied and citation omitted)

Thus, owing to the identical complexion of *Makati Tuscany* with the present case, the Court upholds PGAI's right to be paid by GSIS the amount of the fourth and last reinsurance premium pursuant to the reinsurance contract between them. All told, the petition in **G.R. No. 176982** is denied.

WHEREFORE, the petition in **G.R. No. 165585** is **PARTLY GRANTED**. The Decision dated May 26, 2004 and Resolution dated October 6, 2004 of the Court of Appeals in CA-G.R. SP No. 69289 are **MODIFIED** only insofar as it upheld the validity of Prudential Guarantee and Assurance, Inc.'s execution pending appeal. In this respect, the Order dated February 14, 2002 of the Regional Trial Court of Makati, Branch 149 as well as all other issuances related thereto are set aside.

On the other hand, the petition in **G.R. No. 176982** is **DENIED**. The Decision dated October 30, 2006 and Resolution dated March 12, 2007 in CA-G.R. CV No. 73965 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

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[99] *Makati Tuscany Condominium Corp. v. CA, supra* note 40, at 467-468.

SECOND DIVISION

[G.R. No. 170618. November 20, 2013]

FAR EASTERN SURETY AND INSURANCE CO., INC., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THREE WAYS TO APPEAL FROM THE REGIONAL TRIAL COURT'S DECISION, DISTINGUISHED AND EXPLAINED.— Under Rule 41 of the Rules, an appeal from the RTC's decision may be undertaken in three (3) ways, depending on the nature of the attendant circumstances of the case, namely: (1) an **ordinary appeal** to the Court of Appeals (*CA*) in cases decided by the RTC in the exercise of its original jurisdiction; (2) a **petition for review** to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction; and (3) a **petition for review on *certiorari*** directly filed with the Court where only questions of law are raised or involved. The first mode of appeal under Rule 41 of the Rules is available on questions of fact or mixed questions of fact and of law. The second mode of appeal, governed by Rule 42 of the Rules, is brought to the CA on questions of fact, of law, or mixed questions of fact and of law. The third mode of appeal under Rule 45 of the Rules of Court is filed with the Court only on questions of law. It is *only where pure questions of law* are raised or involved can an appeal be brought to the Court *via* a petition for review on *certiorari* under Rule 45. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but

whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

2. ID; ID.; ID.; FACTUAL ISSUES CANNOT BE RESOLVED *VIA* A RULE 45 PETITION; ALLEGATIONS OF FORGERY AND FALSIFICATION OF A BAIL BOND ARE FACTUAL MATTERS WHICH ARE OUTSIDE THE SUPREME COURT'S AUTHORITY TO ACT UPON.— An examination of the present petition shows that **the facts are disputed.** The issues of the authenticity and of the validity of the bail bond's signatures and the authority of its signatories had never been resolved. When the petitioner questioned the RTC's ruling, it was, in fact, raising the issues of falsity and of forgery of the signatures in the bail bond, which questions are purely of fact. x x x [The RTC's order] by its clear terms, did not pass upon the falsity or forgery of the bail bond's signatures. Nothing in the order resolved the question of whether Teodorico's signature had been forged. Neither was there any finding on the validity of the bail bond, nor any definitive ruling on the effects of the unauthorized signature of Paul. Missing as well was any mention of the circumstances that led to the RTC's approval of the bond. We need all these factual bases to make a ruling on what and how the law should be applied. We additionally note that a bail bond is required to be in a public document, *i.e.,* a duly notarized document. As a notarized document, it has the presumption of regularity in its favor, which presumption can only be contradicted by evidence that is clear, convincing and more than merely preponderant; otherwise, the regularity of the document should be upheld. Likewise notable is the settled rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof lies in the party alleging forgery. All these legal realities tell us that we can rule only on the issue of liability, even assuming this to be a purely legal issue, if the matter of forgery and falsification has already been settled. In other words, a finding of forgery (or absence of forgery) is necessary. At the moment, the questions of whether the petitioner's evidence is sufficient and convincing to prove the forgery of Teodorico's signature and whether the evidence is more than merely preponderant to overcome the presumption of validity and the regularity of the notarized

bail bond are unsettled factual matters that the assailed ruling did not squarely rule upon, **and which this Court cannot now resolve *via* a Rule 45 petition**. Simply put, the resolution of these matters is outside this Court's authority to act upon. Similarly, in the absence of factual circumstances relating to the RTC's approval of the bail bond, a finding on whether it erred (and should be blamed for the approval of a falsified bail bond) is a matter we cannot touch. A glaring lapse on the petitioner's part is its failure to consider that while it has been citing A.M. No. 04-7-02-SC, the submission of the bail bond and its alleged approval by the RTC all took place previous to this cited issuance. Thus, even if we are inclined to take equitable considerations into account in light of the alleged previous court approval of the bail bond, we cannot do so for lack of sufficient factual and evidentiary basis. To be fair, we must know what we must be fair about and cannot simply rely on general allegations of overall unfairness. We stress that in reviews on *certiorari* the Court addresses **only the questions of law**. It is not our function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts). We are confined to the review of errors of law that may have been committed in the judgment under review.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PROPER RECOURSE TO QUESTION THE RTC'S RULING ON THE MOTION TO CANCEL THE BOND SHOULD HAVE BEEN A PETITION FOR *CERTIORARI* UNDER RULE 65.— [W]hile we note the irregular procedure adopted by the RTC when it rendered a decision based on implications, we nevertheless hold that the proper remedy to question this irregularity is not through a Rule 45 petition. If indeed there is merit to the claim that the signatures had been forged or that the signatory was unauthorized, or that the RTC failed to observe the mandate of A.M. No. 04-7-02-SC, the proper recourse to question the RTC's ruling on the motion to cancel the bond should have been a petition for *certiorari* under Rule 65, not through the process and medium the petitioner took.

APPEARANCES OF COUNSEL

Hermes E. Gillesania for petitioner.

The Solicitor General for respondent.

D E C I S I O N

BRION,[*] *J.*:

Far Eastern Surety and Insurance Co., Inc. (*petitioner*) assails in this Rule 45 petition for review on *certiorari*[1] the Order[2] dated October 4, 2005, the Judgment of Forfeiture[3] dated October 6, 2005, and the Orders dated October 25, 2005,[4] November 14, 2005[5] and November 22, 2005,[6] all issued by the Regional Trial Court (*RTC*), Branch 64, Tarlac City in Criminal Case No. 12408, entitled "*The People of the Philippines v. Celo Tuazon*."

The petitioner claims that it should not be held liable for a bail bond that it did not issue.

The Factual Antecedents

The petition traces its roots to the personal bail bond, with serial no. JCR (2) 1807, for the provisional release of Celo Tuazon (*accused*) which was filed before the RTC in Criminal Case No. 12408. The personal bail bond was under the signatures of Paul J. Malvar and Teodorico S. Evangelista as the petitioner's authorized signatories. On January 23, 2004, the RTC approved the bail bond.

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[*] In lieu of Associate Justice Antonio T. Carpio, who inhibited from the case.

[1] *Rollo*, pp. 9-26.

[2] *Id*. at 30; penned by Pairing Judge Arsenio P. Adriano.

[3] *Id*. at 31.

[4] *Id*. at 32.

[5] *Id*. at 33.

[6] *Id*. at 34.

On August 16, 2004, the Supreme Court issued A.M. No. 04-7-02-SC requiring all bonding companies to accredit all their authorized agents with the courts. The petitioner applied for its Certification of Accreditation and Authority to transact surety business with the courts and accordingly designated Samuel A. Baui as its authorized representative in Tarlac Province.

Subsequently, the accused failed to appear in the scheduled hearing for Criminal Case No. 12408, prompting the RTC to issue an order requiring the petitioner to produce the body of the accused and to explain why no judgment shall be rendered against the bond.

Samuel, who was then the petitioner's designated representative, filed a Motion for Extension of Time[7] to comply with the RTC's order. He likewise sought the petitioner's assistance for the use of its resources and agents outside Tarlac City because of the difficulty of arresting the accused.

Sometime thereafter, the petitioner allegedly verified from its register that it neither authorized nor sanctioned the issuance of a bail bond, with serial no. JCR (2) 1807, and on this basis, it filed with the RTC a Very Urgent Motion to Cancel Fake/ Falsified Bail Bond. The petitioner alleged that the signature of Teodorico in the bail bond had been forged; it also alleged that Paul was not an authorized signatory; his name was not listed in the Secretary's Certificate submitted to the Court. In support of its motion, it attached copies of the Personal Bail Bond, its Corporate Secretary's Certificate, and the Special Power of Attorney in favor of Medy S. Patricio, and prayed to be relieved from any liability under the bail bond.

The RTC denied the petitioner's motion on the ground that the petitioner had indirectly acknowledged the bond's validity when it filed a motion for extension of time with the trial court. The RTC subsequently issued a Judgment of Forfeiture for ₱200,000.00 against the petitioner. The petitioner sought reconsideration of the judgment, but the RTC denied the motion.

[7] Filed on September 5, 2005.

On October 25, 2005, the RTC issued another order, this time directing the issuance of a writ of execution. The petitioner responded by filing an omnibus motion to hold in abeyance or quash the writ, but the RTC similarly denied this motion. The petitioner thereafter filed this Rule 45 petition to assail the Orders dated October 4, 2005, October 25, 2005, November 14, 2005 and November 22, 2005, and the Judgment of Forfeiture dated October 6, 2005, all of them issued by the RTC.

The Petition

The petitioner principally argues that the RTC erred in ruling that the petitioner indirectly acknowledged the falsified bond's validity when it filed a motion for extension of time to respond to the lower court's order of August 2, 2005. It also disclaims liability under the bond based on the absence of the name of Paul in the Secretary's Certificate of authorized signatories, and based on the alleged forgery of Teodorico's signature. It lastly argues that the RTC failed to observe the mandate of A.M. No. 04-7-02-SC when it did not verify the signatures' authenticity and confirm the petitioner's authorized signatories in the Secretary's Certificate before approving the bond.

The Case for the Respondent

The respondent People of the Philippines, for its part, maintains that the petitioner is already estopped from questioning the bail bond's authenticity. It likewise contends that the petitioner used the wrong mode of review; the proper remedy is a special civil action for *certiorari* under Rule 65, not a petition for review on *certiorari* under Rule 45. It lastly argues that the case involves factual issues that are beyond the scope of a Rule 45 petition.

The Issues

In its petition, the petitioner raises the following issues for our resolution:

I. Whether the RTC erred in ruling that the alleged falsified bond's validity can be indirectly acknowledged.

II. Whether the RTC erred in holding the petitioner liable under the alleged falsified bond.

III. Whether the RTC erred in failing to observe and apply A.M. No. 04-7-02-SC.

IV. Whether the RTC erred in ruling that the alleged falsified bond is binding upon the petitioner.

The Court's Ruling

We deny the petition as we cannot rule on it without the established or undisputed facts on which to base our rulings of law on the presented issues. In short, the petitioner used the wrong mode of appeal, rendering us unable to proceed even if we would want to.

We note that the petitioner directly comes to this Court *via* a Rule 45 petition, in relation with Rule 41 of the Rules of Civil Procedure (*Rules*), on alleged pure questions of law.

Under Rule 41 of the Rules, an appeal from the RTC's decision may be undertaken in three (3) ways, depending on the nature of the attendant circumstances of the case, namely: (1) an **ordinary appeal** to the Court of Appeals (*CA*) in cases decided by the RTC in the exercise of its original jurisdiction; (2) a **petition for review** to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction; and (3) a **petition for review on *certiorari*** directly filed with the Court where only questions of law are raised or involved.

The first mode of appeal under Rule 41 of the Rules is available on questions of fact or mixed questions of fact and of law. The second mode of appeal, governed by Rule 42 of the Rules, is brought to the CA on questions of fact, of law, or mixed questions of fact and of law. The third mode of appeal under Rule 45 of the Rules of Court is filed with the Court only on questions of law.[8] It is *only where pure questions of law* are raised or involved can an appeal be brought to the Court *via* a petition for review on *certiorari* under Rule 45.[9]

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[8] *Latorre v. Latorre*, G.R. No. 183926, March 29, 2010, 617 SCRA 88, 98-99.

[9] Section 2(c).

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[10] For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[11]

An examination of the present petition shows that **the facts are disputed.** The issues of the authenticity and of the validity of the bail bond's signatures and the authority of its signatories had never been resolved. When the petitioner questioned the RTC's ruling, it was, in fact, raising the issues of falsity and of forgery of the signatures in the bail bond, which questions are purely of fact.[12] To quote the pertinent portion of the RTC's order:

> When the case was called, a representative of the bonding company by the person of a certain Samuel Baui appeared. However, there is already a motion by said bonding company thru Samuel Baui to give the bonding company 60 days extension but which the Court granted shortened to 30 days. The expiration of the 30-day period is supposed to be today but, however, the Court was confronted with the motion by the bonding company alleging that the bond posted by the bonding company was falsified. **The Court is of the opinion that by the motion for extension of time within which to produce the body of the accused, the bonding company indirectly acknowledged the validity of the bond posted by the said bonding company**. Wherefore, the motion of the bonding company dated

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[10] *Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 643, 651-652.

[11] *Id.* at 655.

[12] *Cogtong v. Kyoritsu International Inc.*, 555 Phil. 302, 306 (2007).

October 3, 2005 that it be relieved from liability is hereby DENIED.[13] (emphasis ours)

This ruling, by its clear terms, did not pass upon the falsity or forgery of the bail bond's signatures. Nothing in the order resolved the question of whether Teodorico's signature had been forged. Neither was there any finding on the validity of the bail bond, nor any definitive ruling on the effects of the unauthorized signature of Paul. Missing as well was any mention of the circumstances that led to the RTC's approval of the bond. We need all these factual bases to make a ruling on what and how the law should be applied.

We additionally note that a bail bond is required to be in a public document, *i.e.*, a duly notarized document. As a notarized document, it has the presumption of regularity in its favor, which presumption can only be contradicted by evidence that is clear, convincing and more than merely preponderant; otherwise, the regularity of the document should be upheld.[14]

Likewise notable is the settled rule that forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof lies in the party alleging forgery.[15]

All these legal realities tell us that we can rule only on the issue of liability, even assuming this to be a purely legal issue, if the matter of forgery and falsification has already been settled. In other words, a finding of forgery (or absence of forgery) is necessary. At the moment, the questions of whether the petitioner's evidence is sufficient and convincing to prove the forgery of Teodorico's signature and whether the evidence is more than merely preponderant to overcome the presumption of validity and the regularity of the notarized bail bond are unsettled factual matters that the assailed ruling did not squarely rule upon, **and which this Court cannot now resolve *via* a Rule 45 petition**.

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[13] *Supra* note 2.

[14] *Ladignon v. Court of Appeals*, 390 Phil. 1161, 1169 (2000).

[15] *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753, 763 (1998).

Simply put, the resolution of these matters is outside this Court's authority to act upon.

Similarly, in the absence of factual circumstances relating to the RTC's approval of the bail bond, a finding on whether it erred (and should be blamed for the approval of a falsified bail bond) is a matter we cannot touch. A glaring lapse on the petitioner's part is its failure to consider that while it has been citing A.M. No. 04-7-02-SC, the submission of the bail bond and its alleged approval by the RTC all took place previous to this cited issuance. Thus, even if we are inclined to take equitable considerations into account in light of the alleged previous court approval of the bail bond, we cannot do so for lack of sufficient factual and evidentiary basis. To be fair, we must know what we must be fair about and cannot simply rely on general allegations of overall unfairness.

We stress that in reviews on *certiorari* the Court addresses **only the questions of law**. It is not our function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts). We are confined to the review of errors of law that may have been committed in the judgment under review.[16]

In *Madrigal v. Court of Appeals*,[17] we had occasion to stress this rule in these words:

> The Supreme Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The Supreme Court is not a trier of facts. It leaves these matters to the lower court, which [has] more opportunity and facilities to examine these matters. This same Court has declared that it is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth.

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[16] *Dihiansan v. Court of Appeals*, 237 Phil. 695, 701-703 (1987).

[17] 496 Phil. 149, 156-157 (2005), citing *Bernardo v. Court of Appeals*, G.R. No. 101680 , December 7, 1992, 216 SCRA 224.

And again in *Remalante v. Tibe* (158 SCRA 138 [1988]):

The rule in this jurisdiction is that only questions of law may be raised in a petition for *certiorari* under Rule 45 of the Revised Rules of Court. "The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive." [*Chan v. Court of Appeals*, G.R. No. L-27488, June 30, 1970, 33 SCRA 737, reiterating a long line of decisions]. This Court has emphatically declared that "it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court" [*Tiongco v. De la Merced*, G.R. No. L-24426, July 25, 1974, 58 SCRA 89; *Corona v. Court of Appeals*, G.R. No. 62482, April 28, 1983, 121 SCRA 865; *Banigued v. Court of Appeals*, G.R. No. L-47531, February 20, 1984, 127 SCRA 596]. [italics supplied]

We repeated this ruling in *Suarez v. Judge Villarama, Jr.*,[18] this time giving the *doctrine of hierarchy of courts* as our additional reason.

It is axiomatic that a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.

In the instant case, petitioner brought this petition for review on *certiorari* raising mixed questions of fact and law. She impugns the decision of the RTC dismissing her complaint for failure to prosecute. **The resolution of the propriety of dismissal entails a review of the factual circumstances that led the trial court to decide in such manner.** On the other hand, petitioner also questions the lower court's denial of her motion for reconsideration on the ground that it was filed out of time. There is indeed a question as to what and how the law should be applied. **Therefore, petitioner should have brought this case to the Court of Appeals via the first mode of appeal under the aegis of Rule 41.**

Section 4 of Circular No. 2-90, in effect at the time of the antecedents, provides that an appeal taken to either the Supreme

[18] 526 Phil. 68, 74-76 (2006).

Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the 1997 Rules of Civil Procedure.

Moreover, the filing of the case directly with this Court runs afoul of the doctrine of hierarchy of courts. Pursuant to this doctrine, direct resort from the lower courts to the Supreme Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. Thus, a petition for review on *certiorari* assailing the decision involving both questions of fact and law must first be brought before the Court of Appeals. [italics supplied, emphases ours; citations omitted]

As a final point, while we note the irregular procedure adopted by the RTC when it rendered a decision based on implications, we nevertheless hold that the proper remedy to question this irregularity is not through a Rule 45 petition. If indeed there is merit to the claim that the signatures had been forged or that the signatory was unauthorized, or that the RTC failed to observe the mandate of A.M. No. 04-7-02-SC, the proper recourse to question the RTC's ruling on the motion to cancel the bond should have been a petition for *certiorari* under Rule 65, not through the process and medium the petitioner took.

WHEREFORE, premises considered, we hereby **DENY** the petition. Costs against Far Eastern Surety and Insurance Co., Inc.

SO ORDERED.

Del Castillo, Abad,[**] *Perez,* and *Perlas-Bernabe, JJ.*, concur.

[**] Designated as Additional Memer in lieu of Associate Justice Antonio T. Carpio per Raffle dated Novemer 18, 2013.

SECOND DIVISION

[G.R. Nos. 172532 & 172544-45. November 20, 2013]

PRIMO C. MIRO, in his capacity as Deputy Ombudsman for the Visayas, *petitioner, vs.* **MARILYN MENDOZA *VDA. DE* EREDEROS, CATALINA ALINGASA and PORFERIO I. MENDOZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DOCTRINE OF CONCLUSIVENESS OF ADMINISTRATIVE FINDINGS OF FACT IS NOT ABSOLUTE; FACTUAL FINDINGS MAY BE REVERSED IF NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— It is well settled that findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. Their factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction. x x x This rule on conclusiveness of factual findings, however, is not an absolute one. Despite the respect given to administrative findings of fact, the CA may resolve factual issues, review and re-evaluate the evidence on record and reverse the administrative agency's findings if not supported by substantial evidence. Thus, when the findings of fact by the administrative or quasi-judicial agencies (like the Office of the Ombudsman/Deputy Ombudsman) are not adequately supported by substantial evidence, they shall not be binding upon the courts. In the present case, the CA found no substantial evidence to support the conclusion that the respondents are guilty of the administrative charges against them. Mere allegation and speculation is not evidence, and is not equivalent to proof. Since the Deputy Ombudsman's findings were found wanting by the CA of substantial evidence, the same shall not bind this Court.

2. ID.; ID.; PETITION FOR REVIEW UNDER RULE 45; LIMITED TO QUESTIONS OF LAW.— Before proceeding to the merits of the case, this Court deems it necessary to

emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. As held in *Diokno v. Hon. Cacdac*, a re-examination of factual findings is outside the province of a petition for review on *certiorari*[.] x x x There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. Unless the case falls under any of the recognized exceptions, we are limited solely to the review of legal questions.

3. ID.; ID.; ID.; LIMITED TO ERRORS OF APPELLATE COURT.— [T]he "errors" which we may review in a petition for review on *certiorari* are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance. It is imperative that we refrain from conducting further scrutiny of the findings of fact made by trial courts, lest we convert this Court into a trier of facts. As held in *Reman Recio v. Heirs of the Spouses Aguedo and Maria Altamirano, etc., et al.,* our review is limited only to the errors of law committed by the appellate court[.]

4. ID.; ID.; ID.; WHERE A REVIEW OF FINDINGS OF FACT IS WARRANTED IN VIEW OF THE CONFLICTING FACTUAL FINDINGS OF THE DEPUTY OMBUDSMAN AND THE COURT OF APPEALS.— The present petition directly raises, as issue, the propriety of the CA's reversal of the Deputy Ombudsman's decision that found the respondents guilty of grave misconduct. While this issue may be one of law, its resolution also requires us to resolve the underlying issue of whether or not substantial evidence exists to hold the respondents liable for the charge of grave misconduct. The latter question is one of fact, but a review is warranted considering the conflicting findings of fact of the Deputy Ombudsman and of the CA. Accordingly, we now focus on and assess the findings of fact of the Deputy Ombudsman and of the CA for their merits.

5. ID.; EVIDENCE; HEARSAY EVIDENCE; ANY EVIDENCE IS HEARSAY IF ITS PROBATIVE VALUE IS NOT BASED ON THE PERSONAL KNOWLEDGE OF THE WITNESS; APPLICATION.— It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception. A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits. The records show that not one of the complainants actually witnessed the transfer of money from Alingasa to Erederos and Mendoza. Nowhere in their affidavits did they specifically allege that they saw Alingasa remit the collections to Erederos. In fact, there is no specific allegation that they saw or witnessed Erederos or Mendoza receive money. x x x The affidavits also show that the complainants did not allege any specific act of the respondents. All that the affidavits allege is a description of the allegedly anomalous scheme and the arrangement whereby payments were to be made to Alingasa. There is no averment relating to any "personal demand" for the amount of ₱2,500.00. Based on these considerations, we cannot conclude that the complainants have personal knowledge of Erederos' and Mendoza's participation in the anomalous act. At most, their personal knowledge only extends to the acts of Alingasa who is the recipient of all payments for the processing of confirmation certificates. This situation, however, is affected by the complainants' failure to specify Alingasa's act of personally demanding ₱2,500.00 – a crucial element in determining her guilt or innocence of the grave misconduct charged.

6. ID.; ID.; ID.; NON-HEARSAY AND LEGAL HEARSAY, DISTINGUISHED.— To the former belongs the fact that utterances or statements were made; this class of extrajudicial utterances or statements is offered not as an assertion to prove the truth of the matter asserted, but only as to the fact of the utterance made. The latter class, on the other hand, consists of the truth of the facts asserted in the statement; this kind

pertains to extrajudicial utterances and statements that are offered as evidence of the truth of the fact asserted. The difference between these two classes of utterances lies in the applicability of the rule on exclusion of hearsay evidence. The first class, *i.e.*, the fact that the statement was made, is not covered by the hearsay rule, while the second class, *i.e.*, the truth of the facts asserted in the statement, is covered by the hearsay rule. Pedroza's allegation belongs to the first class; hence, it is inadmissible to prove the truth of the facts asserted in the statement.

7. ID.; ID.; ID.; FAILURE TO IDENTIFY THE AFFIDAVITS RENDERS THEM INADMISSIBLE UNDER THE HEARSAY EVIDENCE RULE.— We additionally note that the affidavits were never identified by the complainants. All the allegations contained therein were likewise uncorroborated by evidence, other than the NBI/Progress report. x x x For the affiants' failure to identify their sworn statements, and considering the seriousness of the charges filed, their affidavits must not be accepted at face value and should be treated as inadmissible under the hearsay evidence rule.

8. ID.; ID.; ID.; NBI/PROGRESS REPORT WHICH IS MERELY BASED ON THE AFFIDAVITS IS HEARSAY.— With regard to the NBI/Progress report submitted by the complainants as corroborating evidence, the same should not be given any weight. Contrary to the Ombudsman's assertions, the report cannot help its case under the circumstances of this case as it is insufficient to serve as substantial basis. x x x The NBI/Progress report, having been submitted by the officials in the performance of their duties not on the basis of their own personal observation of the facts reported but merely on the basis of the complainants' affidavits, is hearsay. Thus, the Deputy Ombudsman cannot rely on it.

9. ID.; ID.; NON-APPLICABILITY OF STRICT TECHNICAL RULES OF PROCEDURE IN ADMINISTRATIVE OR QUASI-JUDICIAL BODIES IS NOT A LICENSE TO DISREGARD FUNDAMENTAL EVIDENTIARY RULES.— While administrative or quasi-judicial bodies, such as the Office of the Ombudsman, are not bound by the technical rules of procedure, this rule cannot be taken as a license to disregard fundamental evidentiary rules; the decision

of the administrative agencies and the evidence it relies upon must, at the very least, be substantial.

10. POLITICAL LAW; ADMINISTRATIVE LAW; GRAVE MISCONDUCT, EXPLAINED; FAILURE TO ESTABLISH THE ELEMENTS OF GRAVE MISCONDUCT.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is considered as grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. Based on these rulings, the Deputy Ombudsman failed to establish the elements of grave misconduct. To reiterate, no substantial evidence exists to show that Erederos and Mendoza received collected payments from Alingasa. Their involvement or complicity in the allegedly anomalous scheme cannot be justified under the affidavits of the complainants and the NBI/Progress report, which are both hearsay. With respect to Alingasa, in view of the lack of substantial evidence showing that she personally demanded the payment of ₱2,500.00 – a crucial factor in the wrongdoing alleged – we find that the elements of misconduct, simple or grave, to be wanting and unproven.

APPEARANCES OF COUNSEL

Heidi M. Orbiso for Marilyn Mendoza *Vda. de* Erederos.

Jose Niel Lao Nuñez, Jr. for Catalina Alingasa.

Biaño Gingoyon and Associates for Porferio Mendoza.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the decision[2] dated November 22, 2005 and the resolution[3] dated April 21, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP Nos. 83149, 83150 and 83576.

The CA decision reversed and set aside the joint decision[4] dated January 9, 2004 of the Deputy Ombudsman for the Visayas (*Deputy Ombudsman*), Primo C. Miro, in OMB-V-A-02-0414-H finding respondents Marilyn Mendoza *Vda. de* Erederos, Catalina Alingasa and Porferio I. Mendoza guilty of the administrative charge of Grave Misconduct. The Deputy Ombudsman also found Oscar Peque guilty of Simple Misconduct.

The Factual Antecedents

As culled from the records, the antecedents of the present case are as follows:

Mendoza, Director of the Regional Office VII of the Land Transportation Office, Cebu City (*LTO Cebu*), Erederos, Mendoza's niece and secretary, Alingasa, LTO clerk, and Peque, Officer-in-Charge, Operation Division of LTO Cebu, were administratively charged with Grave Misconduct before the Deputy Ombudsman by private complainants, namely: Maricar G. Huete (Liaison Officer of GCY Parts), Ernesto R. Cantillas (Liaison Officer of Isuzu Cebu, Inc.), Leonardo Villaraso (General Manager of TBS Trading), and Romeo C. Climaco (Corporate Secretary of Penta Star).[5] They were likewise charged with

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[1] Under Rule 45 of the Rules of Civil Procedure; *rollo*, pp. 12-40.

[2] *Id*. at 43-62; penned by Associate Justice Arsenio J. Magpale, and concurred in by Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr.

[3] *Id*. at 65-66.

[4] *Id*. at 67-80.

[5] *Id*. at 44.

criminal complaints for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the "Anti Graft and Corrupt Practices Act."

The administrative and criminal charges arose from the alleged anomalies in the distribution at the LTO Cebu of confirmation certificates, an indispensable requirement in the processing of documents for the registration of motor vehicle with the LTO.

Specifically, the private complainants accused Alingasa of selling the confirmation certificates, supposed to be issued by the LTO free of charge. This scheme allegedly existed upon Mendoza's assumption in office as Regional Director of LTO Cebu. They observed that:

(1) Confirmation certificates were sold for the amount of ₱2,500.00 per pad without official receipt;

(2) Alingasa would usually remit the collections to Erederos who would, in turn, remit all the collections to Mendoza;[6]

(3) The official receipt for the processing of the confirmation certificates issued to the private complainants acknowledged only the amount of ₱40.00 which they paid for each engine, chassis or new vehicle, as MR (Miscellaneous Receipt-LTO Form 67);

(4) Said amount was separate and distinct from the ₱2,500.00 required to be paid for each pad;

(5) The official receipt also served as the basis for the individual stock/sales reports evaluation of Erederos;[7] and

(6) The confirmation certificates processed during the previous administration were no longer honored; thus, the private complainants were constrained to reprocess the same by purchasing new ones.

The NBI/Progress report submitted to the LTO Manila also revealed that the confirmation certificates were given to the

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[6] *Ibid*.

[7] *Ibid*.

representatives of car dealers, who were authorized to supply the needed data therein. In the Requisition and Issue Voucher, it was Roque who received the forms.

On August 19, 2002, Cantillas executed an Affidavit of Desistance on the ground that he was no longer interested in prosecuting the case.

On September 25, 2002, the Deputy Ombudsman ordered the respondents to file their respective counter-affidavits. The respondents complied with the order and made the required submission.

On December 12, 2002, the case was called for preliminary conference. At the conference, the respondents, thru their counsels, manifested their intention to submit the case for decision on the basis of the evidence on record after the submission of their memoranda/position papers.

In the interim, additional administrative and criminal complaints for the same charges were filed by Rova Carmelotes (Liaison Officer of AZC Trading Center), Mildred Regidor (Liaison Officer of Grand Ace Commercial), Estrella dela Cerna (Liaison Officer of JRK Automotive Supply), and Vevencia Pedroza (Liaison Officer of Winstar Motor Sales) against the respondents. These new complaints were consolidated with the complaints already then pending.

In their complaints, the new complainants commonly alleged that they had to pay ₱2,500.00 per pad to Alingasa before they could be issued confirmation certificates by the LTO Cebu. Alingasa would give her collections to Erederos and to Mendoza. When they protested, Erederos and Alingasa pointed to Mendoza as the source of the instructions. They were also told that the confirmation certificates processed during the previous administration would no longer be honored under Mendoza's administration; hence, they had to buy new sets of confirmation certificates to process the registration of their motor vehicles with the LTO.

In his counter-affidavit, Mendoza vehemently denied the accusations. He alleged that the confirmation certificates' actual

distribution and processing were assigned to Alingasa; the processing entails the payment of ₱40.00 per confirmation certificate, as administrative fee; payment is only made when the confirmation certificates are filled up and submitted for processing with the LTO, not upon issuance; and he did not give any instructions to impose additional fees for their distribution.

He also alleged that the case against him was instigated by Assistant Secretary Roberto T. Lastimosa of the LTO Head Office so that a certain Atty. Manuel Iway could replace him as Regional Director of the LTO Cebu.[8]

Mendoza additionally submitted the affidavits of desistance of Carmelotes and Dela Cerna. Carmelotes testified that she has no evidence to support her allegations against Mendoza. Dela Cerna, on the other hand, stated that she was merely told to sign a document which turned out to be an affidavit-complaint against the respondents. Subsequently, however, Dela Cerna executed a second affidavit, retracting her previous statements and narrating how she was threatened by Peque to sign an affidavit of desistance (1st affidavit).

Erederos and Alingasa commonly contended that they did not collect, demand and receive any money from the complainants as payment for the confirmation certificates.

Erederos stated that the case against her was initiated by Huete because she found several discrepancies in the documents she had processed. According to her, the present case was Huete's ploy to avoid any liability.

For their part, Alingasa stressed that her act of maintaining a control book for the releases of the confirmation certificate pads negates her liability, while Peque denied any participation in the distribution and sale of the confirmation certificates.

On January 9, 2004, the Deputy Ombudsman rendered a joint decision on the administrative aspect of the cases filed against

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[8] *Id*. at 50.

the respondents, and a joint resolution on the criminal aspect of the cases.

The Deputy Ombudsman's Ruling

In its joint decision, the Deputy Ombudsman found Mendoza, Erederos and Alingasa guilty of grave misconduct and imposed the penalty of dismissal from the service. Peque, on the other hand, was only found guilty of simple misconduct and was meted the penalty of reprimand.

The Deputy Ombudsman believed the complainants' allegations that Alingasa collected ₱2,500.00 for the issuance of confirmation certificates and, thereafter, remitted the collections to Erederos and to Mendoza. He relied largely on the affidavits supporting the respondents' guilt. He found the affidavits and the NBI/ Progress report strong enough to establish the respondents' guilt. The Deputy Ombudsman also explained that while the distribution of confirmation certificates to authorized car dealers is not prohibited, the demand and the collection of payment during their distribution are anomalous.

The respondents separately moved for reconsideration, but the Deputy Ombudsman denied their motions on March 5, 2004.[9]

The respondents separately appealed to the CA to challenge the rulings against them.

The CA's Ruling

On November 22, 2005, the CA granted the respondents' petition and reversed the Deputy Ombudsman's joint decision in the administrative aspect. The CA ruled that the Deputy Ombudsman's finding of grave misconduct was not supported by substantial evidence because the affidavits, on which the decision was mainly anchored, were not corroborated by any other documentary evidence. Additionally, the affiants did not appear during the scheduled hearings.

The CA also found that the affiants failed to categorically specify that the respondents personally demanded from them

[9] *Id*. at 116-124.

the payment of ₱2,500.00 – an allegation that the appellate court deemed material in establishing their personal knowledge. Without this allegation of personal knowledge, the CA held that the statements in the affidavits were hearsay and, thus, should not be given any evidentiary weight. The dispositive portion of the decision reads:

> WHEREFORE, in light of the foregoing premises, the consolidated petitions are GRANTED and accordingly the assailed Joint Decision dated January 9, 2004 (administrative aspect of the cases filed by the private respondents) is REVERSED and SET ASIDE.
>
> Consequently, the administrative charges against petitioners are DISMISSED for lack of merit.
>
> With respect to the assailed Joint Resolution also dated January 9, 2004 (criminal aspect) issued by the public respondent, this Court has no jurisdiction to review the same.[10]

The Deputy Ombudsman moved for the reconsideration of the decision, but the CA denied the motion in its resolution of April 21, 2006. The denial led to the filing of the present petition.

The Petitioner's Arguments

The Deputy Ombudsman posits that the evidence adduced by the complainants satisfied the requisite quantum of proof. He argues that the complainants' personal knowledge can be gleaned from the preface of their narration; hence, their affidavits could not have been hearsay. Their affidavits read:

> 3. **That in doing my job, I have noticed and witnessed the following anomalies concerning the processing of vehicle registration, x x x, as follows**:
>
> a. That in order to secure the forms of Confirmation of Certificates, you have to buy the same at the present price of ₱2,500.00 per pad from Catalina Alingasa, an LTO personnel, who will remit her collections to a certain Marilyn Mendoza *Vda*. [*de*] Erederos, a niece and the Secretary of the Regional Director, Porferio Mendoza;

[10] *Id.* at 61.

> b. That Confirmation Certificates processed during previous administration would not be honored and under such situations, they would require that the same be reprocessed which means that we have to buy and use the new forms supplied by the present administration[.][11]

The Deputy Ombudsman also argues that his joint decision was not solely based on the complainants' affidavits since he also took into account the NBI/Progress report, which uncovered the alleged anomalies. He posits that these pieces of evidence, taken together, more than satisfy the required quantum of proof to hold the respondents administratively liable for grave misconduct.

The Case for the Respondents

In their respective comments, the respondents separately argue that the complainants' statements in their affidavits lack material details and particulars, particularly on the time, the date, and the specific transactions. They commonly alleged that the affidavits, which contained general averments, and the NBI/Progress report that was based on the same affidavits, failed to meet the quantum of proof required to hold them administratively liable.

For his part, Mendoza argues that since the affidavits failed to categorically state that the complainants personally witnessed the transfer of money from Alingasa to Erederos and eventually to him, his participation in the anomalous scheme has not been sufficiently shown; hence, he should not have been found liable.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in dismissing the administrative charge against the respondents.

The Court's Ruling

We deny the petition. The CA committed no reversible error in setting aside the findings and conclusions of the Deputy

[11] *Id*. at 183.

Ombudsman on the ground that they were not supported by substantial evidence.

Doctrine of conclusiveness of administrative findings of fact is not absolute

It is well settled that findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence.[12] Their factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.

This rule was reiterated in *Cabalit v. Commission on Audit-Region VII*,[13] where we held that:

> When the findings of fact of the Ombudsman are supported by substantial evidence, it should be considered as conclusive. This Court recognizes the expertise and independence of the Ombudsman and will avoid interfering with its findings absent a finding of grave abuse of discretion. Hence, being supported by substantial evidence, we find no reason to disturb the factual findings of the Ombudsman which are affirmed by the CA.

This rule on conclusiveness of factual findings, however, is not an absolute one. Despite the respect given to administrative findings of fact, the CA may resolve factual issues, review and re-evaluate the evidence on record and reverse the administrative agency's findings if not supported by substantial evidence. Thus, when the findings of fact by the administrative or quasi-judicial agencies (like the Office of the Ombudsman/Deputy Ombudsman) are not adequately supported by substantial evidence, they shall not be binding upon the courts.[14]

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[12] Section 27 of Republic Act No. 6770, otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes."

[13] G.R. No. 180236, January 17, 2012, 663 SCRA 133, 152-153; citations omitted.

[14] *Hon. Ombudsman Marcelo v. Bungubung, et al.*, 575 Phil. 538, 557 (2008).

In the present case, the CA found no substantial evidence to support the conclusion that the respondents are guilty of the administrative charges against them. Mere allegation and speculation is not evidence, and is not equivalent to proof.[15] Since the Deputy Ombudsman's findings were found wanting by the CA of substantial evidence, the same shall not bind this Court.

Parameters of a judicial review under a Rule 45 petition

a. Rule 45 petition is limited to questions of law

Before proceeding to the merits of the case, this Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. As held in *Diokno v. Hon. Cacdac*,[16] a re-examination of factual findings is outside the province of a petition for review on *certiorari*, to wit:

> **It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts[.]** xxx The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari.*

There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts.[17] Unless

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[15] *Navarro v. Clerk of Court Cerezo*, 492 Phil. 19, 22 (2002).

[16] 553 Phil. 405, 428 (2007); emphasis ours, italics supplied.

[17] *Philippine Veterans Bank v. Monillas*, G.R. No. 167098, March 28, 2008, 550 SCRA 251, 257.

the case falls under any of the recognized exceptions, we are limited solely to the review of legal questions.[18]

b. Rule 45 petition is limited to errors of the appellate court

Furthermore, the "errors" which we may review in a petition for review on *certiorari* are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance.[19] It is imperative that we refrain from conducting further scrutiny of the findings of fact made by trial courts, lest we convert this Court into a trier of facts. As held in *Reman Recio v. Heirs of the Spouses Aguedo and Maria Altamirano, etc., et al.*,[20] our review is limited only to the errors of law committed by the appellate court, to wit:

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[18] (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. (*Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660).

[19] *Vda. de Dayao v. Heirs of Gavino Robles*, G.R. No. 174830, July 31, 2009, 594 SCRA 620, 626.

[20] G.R. No. 182349, July 24, 2013; citation omitted, emphasis ours.

Under Rule 45 of the Rules of Court, jurisdiction is generally **limited to the review of errors of law committed by the appellate court**. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.

In *Montemayor v. Bundalian*,[21] this Court laid down the guidelines for the judicial review of decisions rendered by administrative agencies in the exercise of their quasi-judicial powers, as follows:

> First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. **Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence.**
>
> Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. **These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned**. [emphases ours]

The present petition directly raises, as issue, the propriety of the CA's reversal of the Deputy Ombudsman's decision that found the respondents guilty of grave misconduct. While this issue may be one of law, its resolution also requires us to resolve the underlying issue of whether or not substantial evidence exists to hold the respondents liable for the charge of grave misconduct.

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[21] 453 Phil. 158, 167; citations omitted.

The latter question is one of fact, but a review is warranted considering the conflicting findings of fact of the Deputy Ombudsman and of the CA. Accordingly, we now focus on and assess the findings of fact of the Deputy Ombudsman and of the CA for their merits.

The Deputy Ombudsman's appreciation of evidence

The Deputy Ombudsman found the respondents guilty of grave misconduct based on the affidavits submitted by the complainants and the NBI/Progress report. In giving credence to the affidavits, the Deputy Ombudsman ruled that the complainants have amply established their accusations by substantial evidence.

The CA's appreciation of evidence

The CA, on the other hand, reversed the Deputy Ombudsman's findings and ruled that no substantial evidence exists to support the latter's decision as the affidavits upon which said decision was based are hearsay evidence. It found that the affidavits lack the important element of personal knowledge and were not supported by corroborating evidence.

We agree with the CA. The findings of fact of the Deputy Ombudsman are not supported by substantial evidence on record.

Substantial evidence, quantum of proof in administrative cases

Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence.[22] The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case,[23] or evidence beyond reasonable doubt,

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[22] *Travelaire & Tours Corp. v. NLRC*, 355 Phil. 932, 936 (1998).

[23] *Marcelo v. Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 608.

as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion.

Section 27 of The Ombudsman Act of 1989[24] provides that:

> Findings of fact by the Officer of the Ombudsman when supported by **substantial evidence** are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable. [emphasis ours]

The only pieces of evidence presented by the complainants to establish the respondents' guilt of the act charged are: **(1) their complaint-affidavits** and the **(2) NBI/Progress report**. As correctly found by the CA, these pieces of evidence do not meet the quantum of proof required in administrative cases.

The Evidence Against Mendoza, Erederos and Alingasa

i. Private complainants' affidavits

The affidavits show that the complainants lack personal knowledge of the participation of Mendoza and Erederos in the allegedly anomalous act. These affidavits indicate that the complainants have commonly "noticed and witnessed" the anomalous sale transaction concerning the confirmation certificates. Without going into details, they uniformly allege that to secure the confirmation certificates, an amount of ₱2,500.00 would be paid to Alingasa, an LTO personnel, "*who will remit her collections to a certain Marilyn Mendoza vda. de Erederos, a niece and the Secretary of the Regional Director, Porferio Mendoza.*"[25] While the payment to Alingasa might be considered based on personal knowledge, the alleged remittance to Erederos and Mendoza – on its face – is hearsay.

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[24] Republic Act No. 6770, otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes."

[25] *Rollo*, p. 26.

Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness

It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception.[26] A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard.[27] Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits.[28]

The records show that not one of the complainants actually witnessed the transfer of money from Alingasa to Erederos and Mendoza. Nowhere in their affidavits did they specifically allege that they saw Alingasa remit the collections to Erederos. In fact, there is no specific allegation that they saw or witnessed Erederos or Mendoza receive money. That the complainants alleged in the preface of their affidavits that they "noticed and witnessed" the anomalous act complained of does not take their statements out of the coverage of the hearsay evidence rule. Their testimonies are still "evidence not of what the witness knows himself but of what he has heard from others."[29] Mere uncorroborated hearsay or rumor does not constitute substantial evidence.[30]

The affidavits also show that the complainants did not allege any specific act of the respondents. All that the affidavits allege

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[26] RULES OF CIVIL PROCEDURE, Section 36.

[27] *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275, 285 (2001).

[28] *Id*. at 285.

[29] *People v. Manhuyod,Jr.,* 352 Phil. 866, 880 (1998).

[30] *Rizal Workers Union v. Hon. Calleja*, 264 Phil. 805, 811 (1990), citing *Ang Tibay v. CIR*, 69 Phil. 635 (1940).

is a description of the allegedly anomalous scheme and the arrangement whereby payments were to be made to Alingasa. There is no averment relating to any "personal demand" for the amount of ₱2,500.00.

Based on these considerations, we cannot conclude that the complainants have personal knowledge of Erederos' and Mendoza's participation in the anomalous act. At most, their personal knowledge only extends to the acts of Alingasa who is the recipient of all payments for the processing of confirmation certificates. This situation, however, is affected by the complainants' failure to specify Alingasa's act of personally demanding ₱2,500.00 – a crucial element in determining her guilt or innocence of the grave misconduct charged.

With respect to Pedroza's allegation in her affidavit[31] that Alingasa and Erederos categorically told them that it was Mendoza who instructed them to collect the ₱2,500.00 for the confirmation certificates, we once again draw a distinction between utterances or testimonies that are merely hearsay in character or "non-hearsay," and those that are considered as legal hearsay.

Non-hearsay v. legal hearsay, distinction

To the former belongs the fact that utterances or statements were made; this class of extrajudicial utterances or statements is offered not as an assertion to prove the truth of the matter asserted, but only as to the fact of the utterance made. The latter class, on the other hand, consists of the truth of the facts asserted in the statement; this kind pertains to extrajudicial utterances and statements that are offered as evidence of the truth of the fact asserted.

The difference between these two classes of utterances lies in the applicability of the rule on exclusion of hearsay evidence. The first class, *i.e.*, the fact that the statement was made, is not covered by the hearsay rule, while the second class, *i.e.*, the truth of the facts asserted in the statement, is covered by the

[31] *Rollo*, p. 359.

hearsay rule. Pedroza's allegation belongs to the first class; hence, it is inadmissible to prove the truth of the facts asserted in the statement.

The following discussion, made in *Patula v. People of the Philippines*,[32] is particularly instructive:

> Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words. This kind of utterance is hearsay in character but is not legal hearsay. The distinction is, therefore, between (a) the fact that the statement was made, to which the hearsay rule does not apply, and (b) the truth of the facts asserted in the statement, to which the hearsay rule applies. [citations omitted]

Failure to identify the affidavits renders them inadmissible under the hearsay evidence rule

We additionally note that the affidavits were never identified by the complainants. All the allegations contained therein were likewise uncorroborated by evidence, other than the NBI/Progress report.

In *Tapiador v. Office of the Ombudsman*,[33] we had the occasion to rule on the implications of the affiants' failure to appear during the preliminary investigation and to identify their respective sworn statements, to wit:

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[32] G.R. No. 164457, April 11, 2012, 669 SCRA 135, 153.

[33] 429 Phil. 47, 55 (2002); citations omitted, emphases ours.

Notably, the instant administrative complaint was resolved by the Ombudsman merely on the basis of the evidence extant in the record of OMB-ADM-0-94-0983. The preliminary conference required under Republic Act No. 6770 was dispensed with after the nominal complainant, then BID Resident Ombudsman Ronaldo P. Ledesma, manifested on July 29, 1996 that he was submitting the case for resolution on the basis of the documents on record while the petitioner agreed to simply file his memorandum. Consequently, the only basis for the questioned resolution of the Ombudsman dismissing the petitioner from the government service was the unverified complaint-affidavit of Walter H. Beck and that of his alleged witness, Purisima Terencio.

A thorough review of the records, however, showed that the subject affidavits of Beck and Terencio were not even identified by the respective affiants during the fact-finding investigation conducted by the BID Resident Ombudsman at the BID office in Manila. Neither did they appear during the preliminary investigation to identify their respective sworn statements despite prior notice before the investigating officer who subsequently dismissed the criminal aspect of the case upon finding that the charge against the petitioner "was not supported by any evidence." **Hence, Beck's affidavit is hearsay and inadmissible in evidence.** On this basis alone, the Administrative Adjudication Bureau of the Office of the Ombudsman should have dismissed the administrative complaint against the petitioner in the first instance. (emphasis supplied)

For the affiants' failure to identify their sworn statements, and considering the seriousness of the charges filed, their affidavits must not be accepted at face value and should be treated as inadmissible under the hearsay evidence rule.

ii. NBI/Progress report

With regard to the NBI/Progress report submitted by the complainants as corroborating evidence, the same should not be given any weight. Contrary to the Ombudsman's assertions, the report cannot help its case under the circumstances of this case as it is insufficient to serve as substantial basis. The pertinent portion of this report reads:

04. P/Sinsp. JESUS KABIGTING and Senior TRO ALFONSO ALIANZA visited JAGNA District Office at Jagna, Bohol wherein they were able to conduct interview with MR. RODOLFO SANTOS, Officer-In-Charge who has assumed his new post only in February 2002. During the conduct of the interview, Mr. SANTOS revealed that the anomalous "*Dos-por-Dos*" transactions have been prevented and eliminated when the previous District Manager in the person of Mr. LEONARDO G. OLAIVAR, who was transferred to Tagbilaran District Office allegedly on a "floating status" and under the direct control and supervision of its District Manager, Mr. GAVINO PADEN, Mr. SANTOS allegations of the existence of "*Dos-por-Dos*" transactions were supported by the records/documents gathered of which the signatures of Mr. OLAIVAR affixed thereof. Copies are hereto attached marked as Annexes "D-D-6."

xxx xxx xxx

06. Submitted Affidavits of Ms. MARICAR G. HUETE, a resident of Lahug, Cebu City and liaison Officer of GCY Parts, Kabancalan Mandaue City and Mr. ERNESTO R. CARTILLAS a resident of Basak, Mandaue City and liaison Officer of Isuzu Cebu, Inc. in Jagobiao, Mandaue City stated among others and both attested that: Annexes "E-E-1."

In order to secure the forms of Confirmation of Certificates, you have to buy the same at the present cost of ₱2,500.00 per pad from CATALINA ALINGASA, an LTO Personnel, who will remit her collections to a certain MARILYN MENDOZA *Vda. De* EREDEROS, a niece and secretary of the Regional Director, PORFERIO MENDOZA.[34]

This quoted portion shows that it was based on complainant Huete's and Cantillas' affidavits. It constitutes double hearsay because the material facts recited were not within the personal knowledge of the officers who conducted the investigation. As held in *Africa, et al. v. Caltex (Phil.) Inc., et al.*,[35] reports of investigations made by law enforcement officers or other public officials are hearsay unless they fall within the scope of Section 44, Rule 130 of the Rules of Court, to wit:

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[34] *Rollo,* pp. 355-356.

[35] 123 Phil. 272, 275-278 (1966).

The first question before Us refers to the admissibility of certain reports on the fire prepared by the Manila Police and Fire Departments and by a certain Captain Tinio of the Armed Forces of the Philippines. xxx.

xxx xxx xxx

There are three requisites for admissibility under the rule just mentioned: (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information. (Moran, Comments on the Rules of Court, Vol. 3 [1957] p. 383.)

Of the three requisites just stated, only the last need be considered here. **Obviously the material facts recited in the reports as to the cause and circumstances of the fire were not within the personal knowledge of the officers who conducted the investigation.** Was knowledge of such facts, however, acquired by them through official information? xxx.

The reports in question do not constitute an exception to the hearsay rule; the facts stated therein were not acquired by the reporting officers through official information, not having been given by the informants pursuant to any duty to do so. [emphases ours]

The NBI/Progress report, having been submitted by the officials in the performance of their duties not on the basis of their own personal observation of the facts reported but merely on the basis of the complainants' affidavits, is hearsay. Thus, the Deputy Ombudsman cannot rely on it.

Non-applicability of strict technical rules of procedure in administrative or quasi-judicial bodies is not a license to disregard certain fundamental evidentiary rules

While administrative or quasi-judicial bodies, such as the Office of the Ombudsman, are not bound by the technical rules

of procedure, this rule cannot be taken as a license to disregard fundamental evidentiary rules; the decision of the administrative agencies and the evidence it relies upon must, at the very least, be substantial.

In *Lepanto Consolidated Mining Company v. Dumapis*,[36] we ruled that:

> While it is true that administrative or quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. **The evidence presented must at least have a modicum of admissibility for it to have probative value.** Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Conclusion

With a portion of the complainants' affidavits and the NBI/ Progress report being hearsay evidence, the only question that remains is whether the respondents' conduct, based on the evidence on record, amounted to grave misconduct, warranting their dismissal in office.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[37] The misconduct is considered as grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary

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[36] G.R. No. 163210, August 13, 2008, 562 SCRA 103, 113-114; citations omitted, emphasis ours.

[37] *Samson v. Restrivera*, G.R. No. 178454, March 28, 2011, 646 SCRA 481, 495-496.

person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[38]

Based on these rulings, the Deputy Ombudsman failed to establish the elements of grave misconduct. To reiterate, no substantial evidence exists to show that Erederos and Mendoza received collected payments from Alingasa. Their involvement or complicity in the allegedly anomalous scheme cannot be justified under the affidavits of the complainants and the NBI/ Progress report, which are both hearsay.

With respect to Alingasa, in view of the lack of substantial evidence showing that she personally demanded the payment of ₱2,500.00 – a crucial factor in the wrongdoing alleged – we find that the elements of misconduct, simple or grave, to be wanting and unproven.

WHEREFORE, in view of the foregoing, we hereby **AFFIRM** the assailed decision dated November 22, 2005 and the resolution dated April 21, 2006 of the Court of Appeals in CA-G.R. SP Nos. 83149, 83150 and 83576.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[38] *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 473 (2008).

THIRD DIVISION

[G.R. No. 181622. November 20, 2013]

GENESIS INVESTMENT, INC., CEBU JAYA REALTY INC., and SPOUSES RHODORA and LAMBERT LIM[*], *petitioners, vs.* **HEIRS of CEFERINO EBARASABAL, NAMELY: ROGELIO EBARASABAL, SPOUSES LIGAYA E. GULIMLIM and JOSE GULIMLIM, SPOUSES VISITACION E. CONEJOS and ELIAS CONEJOS, BEN TEJERO, POCAS TEJERO, GERTRUDES TEJERO, BANING HAYO, LACIO EBARASABAL and JULIETA EBARASABAL; HEIRS OF FLORO EBARASABAL, namely: SOFIA ABELONG, PEPITO EBARASABAL AND ELPIDIO EBARASABAL; HEIRS OF LEONA EBARASABAL-APOLLO, namely: SILVESTRA A. MOJELLO and MARCELINO APOLLO; HEIRS OF PEDRO EBARASABAL, namely: BONIFACIO EBARASABAL, SERGIO EBARASABAL and JAIME EBARASABAL; HEIRS of ISIDRO EBARASABAL, NAMELY: SPOUSES CARLOSA E. NUEVO and FORTUNATO NUEVA[**]; HEIRS of BENITO EBARASABAL, namely: PAULO BAGAAN, SPOUSES CATALINA A. MARIBAO and RENE MARIBAO, VICENTE ABRINICA and PATRON EBARASABAL; HEIRS of JULIAN EBARASABAL, NAMELY: ALFREDO BAGAAN, JUAN BAGAAN, AVELINO BAGAAN, FERDINAND BAGAAN, MAURO BAGAAN, SPOUSES ROWENA B. LASACA and FRANCISCO LACASA[***], SPOUSES MARIA B. CABAG and EMILIO CABAG and ESTELITA BAGAAN, all being represented herein by VICTOR**

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[*] All "Ebarasabal" surnames were also reffered to as "Ebarsabal" in other parts of the records and CA *rollo*.

[**] Referred to as "Nuevo" in other parts of the records.

[***] Referred to as "Lasaca" in other parts of the records.

MOJELLO, FEDERICO BAGAAN and PAULINO EBARASABAL, as their Attorneys-in-Fact, *respondents.*

SYLLABUS

REMEDIAL LAW; COURTS; JURISDICTION; WHERE THE PRINCIPAL ACTION IS FOR NULLIFICATION OF AN EXTRAJUDICIAL SETTLEMENT WITH SALE AND MEMORANDUM OF AGREEMENT, IT IS ONE INCAPABLE OF PECUNIARY ESTIMATION AND FALLS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT.— [I]t is clear from the records that respondents' complaint was for "*Declaration of Nullity of Documents, Recovery of Shares, Partition, Damages and Attorney's Fees*." In filing their Complaint with the RTC, respondents sought to recover ownership and possession of their shares in the disputed parcel of land by questioning the due execution and validity of the Deed of Extrajudicial Settlement with Sale as well as the Memorandum of Agreement entered into by and between some of their co-heirs and herein petitioners. Aside from praying that the RTC render judgment declaring as null and void the said Deed of Extrajudicial Settlement with Sale and Memorandum of Agreement, respondents likewise sought the following: (1) nullification of the Tax Declarations subsequently issued in the name of petitioner Cebu Jaya Realty, Inc.; (2) partition of the property in litigation; (3) reconveyance of their respective shares; and (3) payment of moral and exemplary damages, as well as attorney's fees, plus appearance fees. Clearly, this is a case of joinder of causes of action which comprehends more than the issue of partition of or recovery of shares or interest over the real property in question but includes an action for declaration of nullity of contracts and documents which is incapable of pecuniary estimation. x x x Contrary to petitioners' contention, the principal relief sought by petitioners is the nullification of the subject Extrajudicial Settlement with Sale entered into by and between some of their co-heirs and respondents, insofar as their individual shares in the subject property are concerned. Thus, the recovery of their undivided shares or interest over the disputed lot, which were included in the sale, simply becomes a necessary consequence if the above deed is nullified. Hence, since the principal action sought

> in respondents' Complaint is something other than the recovery of a sum of money, the action is incapable of pecuniary estimation and, thus, cognizable by the RTC. Well entrenched is the rule that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the party is entitled to all or some of the claims asserted.

APPEARANCES OF COUNSEL

Pepito Canete & Dela Cerna Law Firm for petitioners.
Celedonio I.E. Manubag for respondents.

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 Decision[1] and Resolution,[2] dated July 11, 2007 and January 10, 2008, respectively, of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 01017.

The antecedents of the case are as follows:

On November 12, 2003, herein respondents filed against herein petitioners a Complaint[3] for "Declaration of Nullity of Documents, Recovery of Shares, Partition, Damages and Attorney's Fees." The Complaint was filed with the Regional Trial Court (RTC) of Barili, Cebu.

On August 5, 2004, herein petitioners filed a Motion to Dismiss[4] contending, among others, that the RTC has no jurisdiction to try the case on the ground that, as the case involves

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[1] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring; Annex "A", *rollo*, pp. 15-25.

[2] *Rollo*, pp. 26-27.

[3] See Annex "C" of petition, *id.* at 28-44.

[4] See Annex "D" of petition, *id.* at 45-51.

title to or possession of real property or any interest therein and since the assessed value of the subject property does not exceed ₱20,000.00 (the same being only ₱11,990.00), the action falls within the jurisdiction of the Municipal Trial Court (MTC).[5]

In its Order[6] dated September 29, 2004, the RTC granted petitioners' Motion to Dismiss, holding as follows:

xxx xxx xxx

And while the prayer of the plaintiffs for the annulment of documents qualified the case as one incapable of pecuniary estimation thus, rendering it cognizable supposedly by the second level courts but considering that Republic Act No. 7691 expressly provides to cover "all civil actions" which phrase understandably is to include those incapable of pecuniary estimation, like the case at bar, this Court is of the view that said law really finds application here more so that the same case also "involves title to, or possession of, real property, or any interest therein." For being so, the assessed value of the real property involved is determinative of which court has jurisdiction over the case. And the plaintiffs admitting that the assessed value of the litigated area is less than ₱20,000.00, the defendants are correct in arguing that the case is beyond this Court's jurisdiction.[7]

Respondents filed a Motion for Partial Reconsideration,[8] arguing that their complaint consists of several causes of action, including one for annulment of documents, which is incapable

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[5] Under Section 33(3) of Batas Pambansa Blg. 129 (B.P. 129), as amended by Republic Act No. 7691 (R.A. 7691), Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise 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.

[6] See Annex "E" of petition, *rollo*, pp. 52-53.

[7] *Id*. at 53.

[8] See Annex "F" of petition, *id.* at 54-59.

of pecuniary estimation and, as such, falls within the jurisdiction of the RTC.[9]

On March 17, 2005, the RTC issued an Order granting respondents' Motion for Partial Reconsideration and reversing its earlier Order dated September 29, 2004. The RTC ruled, thus:

> On the issue of want of jurisdiction, this court likewise finds to be with merit the contention of the movants as indeed the main case or the primary relief prayed for by the movants is for the declaration of nullity or annulment of documents which unquestionably is incapable of pecuniary estimation and thus within the exclusive original jurisdiction of this court to try although in the process of resolving the controversy, claims of title or possession of the property in question is involved which together with all the other remaining reliefs prayed for are but purely incidental to or as a consequence of the foregoing principal relief sought.[10]

Petitioners filed a Motion for Reconsideration,[11] but the RTC denied it in its Order dated June 23, 2005.

Aggrieved, petitioners filed a petition for *certiorari* with the CA. However, the CA dismissed the petition via its assailed Decision dated July 11, 2007, holding that the subject matter of respondents' complaint is incapable of pecuniary estimation and, therefore, within the jurisdiction of the RTC, considering that the main purpose in filing the action is to declare null and void the documents assailed therein.[12]

Petitioners' Motion for Reconsideration was, subsequently, denied in the CA Resolution dated January 10, 2008.

Hence, the instant petition for review on *certiorari* raising the sole issue, to wit:

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[9] Under Section 19 (1) of B.P. 129, as amended by R.A. 7691, Regional Trial Courts shall exercise exclusive original jurisdiction in all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

[10] See CA Decision, *rollo*, pp. 23-24.

[11] See Annex "H" of petition, *id*. at 63-66.

[12] See *rollo*, pp. 23-24.

Whether or not the Honorable Court of Appeals gravely erred in concluding that the Regional Trial Court, Branch 60 of Barili, Cebu has jurisdiction over the instant case when the ALLEGATIONS IN THE COMPLAINT clearly shows that the main cause of action of the respondents is for the Recovery of their Title, Interest, and Share over a Parcel of Land, which has an assessed value of ₱11,990.00 and thus, within the jurisdiction of the Municipal Trial Court.[13]

The petition lacks merit.

For a clearer understanding of the case, this Court, like the CA, finds it proper to quote pertinent portions of respondents' Complaint, to wit:

xxx xxx xxx

1. Plaintiffs are all Filipino, of legal age, surviving descendants – either as grandchildren or great grandchildren – and heirs and successors-in-interest of deceased Roman Ebarsabal, who died on 07 September 1952 x x x

xxx xxx xxx

8. During the lifetime of Roman Ebarsabal, he acquired a parcel of land situated in Basdaku, Saavedra, Moalboal, Cebu, x x x

xxx xxx xxx

with a total assessed value of ₱2,890.00 x x x. However, for the year 2002, the property was already having (sic) a total assessed value of ₱11,990.00 x x x.

9. Upon the death of said Roman Ebarsabal, his eight (8) children named in par. 7 above, became co-owners of his above-described property by hereditary succession; taking peaceful possession and enjoyment of the same in fee simple pro indiviso, paying the real estate taxes thereon and did not partition the said property among themselves until all of them likewise died, leaving, however, their respective children and descendants and/or surviving heirs and successors-in-interest, and who are now the above-named plaintiffs herein;

10. The plaintiffs who are mostly residents in (sic) Mindanao and Manila, have just recently uncovered the fact that on 28th January

[13] *Rollo*, p. 8.

1997, the children and descendants of deceased Gil Ebarsabal, namely: Pelagio, Hipolito, Precela, Fructuosa, Roberta, Florentino, Erlinda, Sebastian, Cirilo, all surnamed Ebarsabal, have executed among themselves a Deed of Extrajudicial Settlement with Sale of Roman Ebarsabal's entire property described above, by virtue of which they allegedly extrajudicially settled the same and, for ₱2,600,000.00 – although only the sum of ₱950,000.00 was reflected in their Deed of Sale for reason only known to them, they sold the whole property to defendants Genesis Investment Inc. represented by co-defendant Rhodora B. Lim, the wife of Lambert Lim, without the knowledge, permission and consent of the plaintiffs who are the vendors' co-owners of the lot in question, x x x.

11. Surprisingly, however, the defendant Genesis managed to have the Tax Declaration of the property issued in the name of co-defendant Cebu Jaya Realty Incorporated, a firm which, as already intimated above, is also owned by Spouses Lambert and Rhodora B. Lim, instead of in the name of Genesis Investment, Incorporated, which is actually the vendee firm of the lot in question.

xxx xxx xxx

Hence, the reason why Cebu Jaya Realty, Incorporated is joined and impleaded herein as a co-defendant.

12. Without the participation of the plaintiffs who are co-owners of the lot in question in the proceedings, the aforementioned extrajudicial settlement with sale cannot be binding upon the plaintiff-co-owners.

13. Further, where as in this case, the other heirs who are the plaintiffs herein, did not consent to the sale of their ideal shares in the inherited property, the sale was only to be limited to the pro indiviso share of the selling heirs.

xxx xxx xxx

14. By representation, the plaintiffs, are therefore, by law, entitled to their rightful shares from the estate of the deceased Roman Ebarsabal consisting of seven (7) shares that would have been due as the shares of seven (7) other children of Roman Ebarsabal who are also now deceased, namely: Ceferino, Floro, Leona, Pedro, Isidoro, Julian and Benito, all surnamed Ebarsabal.

15. The defendants who had prior knowledge of the existence of the other heirs who are co-owners of the vendors of the property

they purchased, had unlawfully acted in bad faith in insisting to buy the whole property in co-ownership, only from the heirs and successors-in-interest of deceased Gil Ebarsabal, who is only one (1) of the eight (8) children of deceased Roman Ebarsabal, and without notifying thereof in whatever manner the plaintiffs who are the heirs and successors-in-interest of the other co-owners of the property-in-question; thus, have compelled the plaintiffs herein to file this instant case in court to protect their interests, x x x.

xxx xxx xxx

PRAYER

WHEREFORE, in view of all the foregoing, it is most respectfully prayed of this Honorable Court that, after due notice and hearing, judgment shall be rendered in favor of the plaintiffs, as follows, to wit:

1 – Declaring as null and void and not binding upon the plaintiffs, the following documents to wit:

(a) Deed of Extrajudicial Settlement with Sale executed by and between the heirs of deceased Gil Ebarsabal headed by Pedro Ebarsabal, and Genesis Investment, Inc., represented by Rhodora Lim, dated 28th of January, 1997, marked as Annex-A;

(b) Memorandum of Agreement executed between Pedro Ebarsabal and Genesis Investment, Inc., represented by Rhodora Lim dated 27 January, which document is notarized;

(c) Tax Declaration of Real Property issued to Cebu Jaya Realty, Inc., marked as Annex-D;

2 – Ordering the defendants to make partition of the property in litigation with the plaintiffs into eight (8) equal shares; to get one (1) share thereof, which is the only extent of what they allegedly acquired by purchase as mentioned above, and to transfer, restore or reconvey and deliver to the plaintiffs, seven (7) shares thereof, as pertaining to and due for the latter as the heirs and successors-in-interest of the seven (7) brothers and sister of deceased Gil Ebarsabal already named earlier in this complaint;

xxx xxx xxx

Further reliefs and remedies just and equitable in the premises are also herein prayed for.

xxx xxx xxx[14]

It is true that one of the causes of action of respondents pertains to the title, possession and interest of each of the contending parties over the contested property, the assessed value of which falls within the jurisdiction of the MTC. However, a complete reading of the complaint would readily show that, based on the nature of the suit, the allegations therein, and the reliefs prayed for, the action is within the jurisdiction of the RTC.

As stated above, it is clear from the records that respondents' complaint was for "*Declaration of Nullity of Documents, Recovery of Shares, Partition, Damages and Attorney's Fees*." In filing their Complaint with the RTC, respondents sought to recover ownership and possession of their shares in the disputed parcel of land by questioning the due execution and validity of the Deed of Extrajudicial Settlement with Sale as well as the Memorandum of Agreement entered into by and between some of their co-heirs and herein petitioners. Aside from praying that the RTC render judgment declaring as null and void the said Deed of Extrajudicial Settlement with Sale and Memorandum of Agreement, respondents likewise sought the following: (1) nullification of the Tax Declarations subsequently issued in the name of petitioner Cebu Jaya Realty, Inc.; (2) partition of the property in litigation; (3) reconveyance of their respective shares; and (3) payment of moral and exemplary damages, as well as attorney's fees, plus appearance fees.

Clearly, this is a case of joinder of causes of action which comprehends more than the issue of partition of or recovery of shares or interest over the real property in question but includes an action for declaration of nullity of contracts and documents which is incapable of pecuniary estimation.[15]

As cited by the CA, this Court, in the case of *Singson v. Isabela Sawmill*,[16] held that:

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[14] *Id.* at 29-42. (Citations omitted; emphasis in the original)

[15] See *Ungria v. Court of Appeals*, G.R. No. 165777, July 25, 2011, 654 SCRA 314, 324.

[16] 177 Phil. 575 (1979).

In determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable by courts of first instance [now Regional Trial Courts].[17]

This rule was reiterated in *Russell v. Vestil*[18] and *Social Security System v. Atlantic Gulf and Pacific Company of Manila, Inc.*[19]

Contrary to petitioners' contention, the principal relief sought by petitioners is the nullification of the subject Extrajudicial Settlement with Sale entered into by and between some of their co-heirs and respondents, insofar as their individual shares in the subject property are concerned. Thus, the recovery of their undivided shares or interest over the disputed lot, which were included in the sale, simply becomes a necessary consequence if the above deed is nullified. Hence, since the principal action sought in respondents' Complaint is something other than the recovery of a sum of money, the action is incapable of pecuniary estimation and, thus, cognizable by the RTC.[20] Well entrenched is the rule that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the party is entitled to all or some of the claims asserted.[21]

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[17] *Id.* at 588-589.

[18] 364 Phil. 392 (1999).

[19] G.R. No. 175952, April 30, 2008, 553 SCRA 677.

[20] *Heirs of Juanita Padilla v. Magdua*, G.R. No. 176858, September 15, 2010, 630 SCRA 573, 587.

[21] *Id.*

Moreover, it is provided under Section 5 (c), Rule 2 of the Rules of Court that where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the RTC provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein. Thus, as shown above, respondents' complaint clearly falls within the jurisdiction of the RTC.

WHEREFORE, the petition is **DENIED**. The Decision and Resolution dated July 11, 2007 and January 10, 2008, respectively, of the Court of Appeals in CA-G.R. CEB-SP No. 01017 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182913. November 20, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ANTONIO, FELIZA, NEMESIO, ALBERTO, FELICIDAD, RICARDO, MILAGROS and CIPRIANO, ALL SURNAMED BACAS; EMILIANA CHABON, SATURNINO ABDON, ESTELA CHABON, LACSASA DEMON, PEDRITA CHABON, FORTUNATA EMBALSADO, MINDA J. CASTILLO, PABLO CASTILLO, ARTURO P. LEGASPI, and JESSIE I. LEGASPI**, *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; THE REPUBLIC CAN QUESTION EVEN FINAL AND EXECUTORY JUDGMENT WHEN THERE WAS FRAUD.— The governing rule in the application for registration of lands at that time was Section 21 of Act 496 which provided for the form and content of an application for registration, and it reads: **Section 21.** The application shall be in writing, signed and sworn to by applicant, or by some person duly authorized in his behalf. x x x It shall also state the name in full and the address of the applicant, and also the names and addresses of **all adjoining owners and occupants, if known**; and, if not known, it shall state what search has been made to find them. x x x Here, the Chabons did not make any mention of the ownership or occupancy by the Philippine Army. They also did not indicate any efforts or searches they had exerted in determining other occupants of the land. Such omission constituted fraud and deprived the Republic of its day in court. Not being notified, the Republic was not able to file its opposition to the application and, naturally, it was not able to file an appeal either.

2. ID.; ID.; THE REPUBLIC CAN QUESTION A FINAL AND EXECUTORY JUDGMENT WHEN THE LAND REGISTRATION COURT HAD NO JURISDICTION OVER THE LAND IN QUESTION.— The success of the annulment of title does not solely depend on the existence of actual and extrinsic fraud, but also on the fact that a judgment decreeing registration is null and void. In *Collado v. Court of Appeals and the Republic,* the Court declared that any title to an inalienable public land is void *ab initio*. Any procedural infirmities attending the filing of the petition for annulment of judgment are immaterial since the LRC never acquired jurisdiction over the property. All proceedings of the LRC involving the property are null and void and, hence, did not create any legal effect. A judgment by a court without jurisdiction can never attain finality.

3. ID.; ID.; PRESCRIPTION OR ESTOPPEL CANNOT LIE AGAINST THE GOVERNMENT.— In denying the petition of the Republic, the CA reasoned out that 1) once a decree of

registration is issued under the Torrens system and the reglementary period has passed within which the decree may be questioned, the title is perfected and cannot be collaterally questioned later on; 2) there was no commission of extrinsic fraud because the Bacases' allegation of Camp Evangelista's occupancy of their property negated the argument that they committed misrepresentation or concealment amounting to fraud; and 3) the Republic did not appeal the decision and because the proceeding was one *in rem*, it was bound to the legal effects of the decision. Granting that the persons representing the government was negligent, the doctrine of estoppel cannot be taken against the Republic. It is a well-settled rule that the Republic or its government is not estopped by mistake or error on the part of its officials or agents.

4. ID.; ID.; THE SUBJECT LANDS, BEING PART OF A MILITARY RESERVATION, ARE INALIENABLE AND CANNOT BE THE SUBJECTS OF LAND REGISTRATION PROCEEDINGS.— As earlier stated, in 1938, President Quezon issued Presidential Proclamation No. 265, which took effect on March 31, 1938, reserving for the use of the Philippine Army parcels of the public domain situated in the barrios of Bulua and Carmen, then Municipality of Cagayan, Misamis Oriental. The subject parcels of land were withdrawn from sale or settlement or reserved for military purposes, "subject to private rights, if any there be." Such power of the President to segregate lands was provided for in Section 64(e) of the old Revised Administrative Code and C.A. No. 141 or the Public Land Act. Later, the power of the President was restated in Section 14, Chapter 4, Book III of the 1987 Administrative Code. When a property is officially declared a military reservation, it becomes inalienable and outside the commerce of man. It may not be the subject of a contract or of a compromise agreement. A property continues to be part of the public domain, not available for private appropriation or ownership, until there is a formal declaration on the part of the government to withdraw it from being such. x x x Regarding the subject lots, there was a reservation respecting "private rights." In *Republic v. Estonilo,* where the Court earlier declared that Lot No. 4318 was part of the Camp Evangelista Military Reservation and, therefore, not registrable, it noted the proviso in Presidential

Proclamation No. 265 requiring the reservation to be subject to private rights as meaning that persons claiming rights over the reserved land were not precluded from proving their claims. Stated differently, the said proviso did not preclude the LRC from determining whether or not the respondents indeed had registrable rights over the property. As there has been no showing that the subject parcels of land had been segregated from the military reservation, the respondents had to prove that the subject properties were alienable and disposable land of the public domain *prior* to its withdrawal from sale and settlement and reservation for military purposes under Presidential Proclamation No. 265. The question is of primordial importance because it is determinative if the land can in fact be subject to acquisitive prescription and, thus, registrable under the Torrens system. Without first determining the nature and character of the land, all the other requirements such as the length and nature of possession and occupation over such land do not come into play. The required length of possession does not operate when the land is part of the public domain.

5. ID.; ID.; FAILURE OF THE APPLICANT TO PROVE THAT THE LAND WAS ALIENABLE AND DISPOSABLE PUBLIC LAND IS FATAL; MERE POSSESSION AND OCCUPATION FOR A LONG PERIOD OF TIME DO NOT AUTOMATICALLY CONVERT THE LAND INTO A PATRIMONIAL PROPERTY.— In this case, however, the respondents miserably failed to prove that, before the proclamation, the subject lands were already private lands. They merely relied on such "recognition" of possible private rights. In their application, they alleged that at the time of their application, they had been in open, continuous, exclusive, and notorious possession of the subject parcels of land for at least thirty (30) years and became its owners by prescription. There was, however, no allegation or showing that the government had earlier declared it open for sale or settlement, or that it was already pronounced as alienable and disposable. It is well-settled that land of the public domain is not *ipso facto* converted into a patrimonial or private property by the mere possession and occupation by an individual over a long period of time.

6. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENTS MUST YIELD TO THE BASIC RULE THAT A DECISION WHICH IS NULL AND VOID FOR WANT OF JURISDICTION IS NOT A DECISION IN CONTEMPLATION OF LAW AND CAN NEVER BECOME FINAL AND EXECUTORY.— The Court is not unmindful of the principle of immutability of judgments, that nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. Such principle, however, must yield to the basic rule that a decision which is null and void for want of jurisdiction of the trial court is not a decision in contemplation of law and can never become final and executory.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Arturo R. Legaspi for Chabon, *et. al*.
Rey P. Raagas and *Casan B. Macabanding* for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to review, reverse and set aside the November 12, 2007 Decision[1] and the May 15, 2008 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 64142, upholding the decision of the Regional Trial Court, Branch 17, Cagayan de Oro City *(RTC)*, which dismissed the consolidated cases of Civil Case No. 3494, entitled *Republic of the Philippines v. Antonio, et al.* and Civil Case No. 5918, entitled *Republic of the Philippines v. Emiliana Chabon, et al.* Said civil cases were

[1] *Rollo*, pp. 45-60. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias, concurring.

[2] *Id.* at 61-62. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Michael P. Elbinias and Mario V. Lopez, concurring.

filed by the Republic of the Philippines *(Republic)* for the cancellation and annulment of Original Certificate of Title *(OCT*) No. 0-358 and OCT No. O-669, covering certain parcels of land occupied and utilized as part of the Camp Evangelista Military Reservation, Misamis Oriental, presently the home of the 4th Infantry Division of the Philippine Army.

The Antecedents:

In 1938, Commonwealth President Manuel Luis Quezon *(Pres. Quezon)* issued Presidential Proclamation No. 265, which took effect on March 31, 1938, reserving for the use of the Philippine Army three (3) parcels of the public domain situated in the barrios of Bulua and Carmen, then Municipality of Cagayan, Misamis Oriental. The parcels of land were withdrawn from sale or settlement and reserved for military purposes, "subject to private rights, if any there be."

Land Registration Case No. N-275
[Antonio, Feliza, Nemesio, Roberto, and Felicidad, all surnamed Bacas, and the Heirs of Jesus Bacas, Applicants *(The Bacases)*]

The Bacases filed their Application for Registration[3] on November 12, 1964 covering a parcel of land, together with all the improvements found thereon, located in Patag, Cagayan de Oro City, more particularly described and bounded as follows:

A parcel of land, **Lot No. 4354** of the Cadastral Survey of Cagayan, L.R.C. Record No. 1612, situated at Barrio Carmen, Municipality of Cagayan, Province of Misamis Oriental. Bounded on the SE., along lines 1-2-3-4, by Lot 4357; and alongline 4-5, by Lot 3862; on the S., along line 5-6, by Lot 3892; on the W. and NW., along lines 6-7-8, by Lot 4318; on the NE., along line 8-9, by Lot 4319, along line 9-10, by Lot 4353 and long line 10-11, by Lot 4359; and on the SE., along line 11-1, by Lot 4356, all of Cagayan Cadastre; containing an area of THREE HUNDRED FIFTY FOUR THOUSAND THREE HUNDRED SEVENTY SEVEN (354,377) square meters,

[3] RTC records, Vol. I, pp. 453-455.

more or less, under Tax Declaration No. 35436 and assessed at ₱3,540.00.[4]

They alleged ownership in fee simple of the property and indicated in their application the names and addresses of the adjoining owners, as well as a statement that the Philippine Army (Fourth Military Area) recently occupied a portion of the land by their mere tolerance.[5]

The Director of the Bureau of Lands, thru its Special Counsel, Benito S. Urcia *(Urcia)*, registered its written Opposition[6] against the application. Later, Urcia, assisted by the District Land Officer of Cagayan de Oro City, thru the Third Assistant Provincial Fiscal of Misamis Oriental, Pedro R. Luspo *(Luspo)*, filed an Amended Opposition.[7]

On April 10, 1968, based on the evidence presented by the Bacases, the Land Registration Court *(LRC)* rendered a decision[8] holding that the applicants had conclusively established their ownership in fee simple over the subject land and that their possession, including that of their predecessor-in-interest, had been open, adverse, peaceful, uninterrupted, and in concept of owners for more than forty (40) years.

No appeal was interposed by the Republic from the decision of the LRC. Thus, the decision became final and executory, resulting in the issuance of a decree and the corresponding certificate of title over the subject property.

Land Registration Case No. N-521 [Emiliana Chabon, Estela Chabon and Pedrita Chabon, Applicants *(The Chabons)*]

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[4] *Id*. at 453-455.

[5] *Id*. at 458.

[6] *Id*. at 458-459.

[7] *Id*. at 460-462.

[8] *Id*. at 463-466.

The Chabons filed their Application for Registration[9] on May 8, 1974 covering a parcel of land located in Carmen-District, Cagayan de Oro City, known as Lot 4357, Cagayan Cadastre, bounded and described as:

A parcel of land (**Lot 4357**, Cagayan Cadastre, plan Ap-12445), situated in the District of Carmen, City of Cagayan de Oro. Bounded on the NE. by property of Potenciano Abrogan vs. Republic of the Philippines (Public Land); on the SE. by properties of Geronimo Wabe and Teofilo Batifona or Batipura; on the SW. by property of Teofilo Batifona or Batipura; and on the NW. by property of Felipe Bacao or Bacas vs. Republic of the Philippines (Public Land). Point "1" is N. 10 deg. 39'W., 379.88 M. from B.L.L.M. 14, Cagayan Cadastre. Area SIXTY NINE THOUSAND SIX HUNDRED THIRTY TWO (69,632) SQUARE METERS, more or less.[10]

They alleged ownership in fee simple over the property and indicated therein the names and addresses of the adjoining owners, but no mention was made with respect to the occupation, if any, by the Philippine Army. The Chabons likewise alleged that, to the best of their knowledge, no mortgage or encumbrance of any kind affecting said land with the exception of 18,957 square meters sold to Minda J. Castillo and 1,000 square meters sold and conveyed to Atty. Arturo R. Legaspi.[11]

On February 18, 1976, there being no opposition made, even from the government, hearing on the application ensued. The LRC then rendered a decision[12] holding that Chabons' evidence established their ownership in fee simple over the subject property and that their possession, including that of their predecessor-in-interest, had been actual, open, public, peaceful, adverse, continuous, and in concept of owners for more than thirty (30) years.

The decision then became final and executory. Thus, an order[13] for the issuance of a decree and the corresponding certificate of title was issued.

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[9] RTC records, Vol. II, pp. 782-783.

[10] *Id*. at 786.

[11] *Id*. at 782-782A.

[12] *Id*. at 788-790.

[13] *Id*. at 791.

The present cases

As a consequence of the LRC decisions in both applications for registration, the Republic filed a complaint for annulment of titles against the Bacases and the Chabons before the RTC. More specifically, on September 7, 1970 or one (1) year and ten (10) months from the issuance of OCT No. 0-358, a civil case for annulment, cancellation of original certificate of title, reconveyance of lot or damages was filed by the Republic against the Bacases, which was docketed as Civil Case No. 3494. On the other hand, on April 21, 1978 or two (2) years and seven (7) months after issuance of OCT No. 0-669, the Republic filed a civil case for annulment of title and reversion against the Chabons, docketed as Civil Case No. 5918.

Civil Case No. 3494 against the Bacases

The Republic claimed in its petition for annulment before the RTC[14] that the certificate of title issued in favor of the Bacases was null and void because they fraudulently omitted to name the military camp as the actual occupant in their application for registration. Specifically, the Republic, through the Fourth Military Area, was the actual occupant of **Lot No. 4354** and also the owner and possessor of the adjoining Lots Nos. 4318[15] and 4357. Further, the Bacases failed to likewise state that Lot No. 4354 was part of Camp Evangelista. These omissions constituted fraud which vitiated the decree and certificate of title issued.

Also, the Republic averred that the subject land had long been reserved in 1938 for military purposes at the time it was applied for and, so, it was no longer disposable and subject to registration.[16]

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[14] RTC records, Vol. I, pp. 1-9.

[15] Adjudged as part of Camp Evangelista in *Republic v. Estonilo*, 512 Phil. 644 (2005).

[16] RTC records, Vol. I, p. 4.

Civil Case No. 5918 against the Chabons

In this case, the Republic claimed that it was the absolute owner and possessor of **Lot No. 4357**. The said lot, together with Lots 4318[17] and 4354, formed part of the military reservation known as Camp Evangelista in Cagayan de Oro City, which was set aside and reserved under Presidential Proclamation No. 265 issued by President Quezon on March 31, 1938.[18]

In its petition for annulment before the RTC,[19] the Republic alleged that OCT No. 0-669 issued in favor of the Chabons and all transfer certificates of titles, if any, proceeding therefrom, were null and void for having been vitiated by fraud and/or lack of jurisdiction.[20] The Chabons concealed that the fact that Lot 4357 was part of Camp Evangelista and that the Republic, through the Armed Forces of the Philippines, was its actual occupant and possessor.[21] Further, Lot 4357 was a military reservation, established as such as early as March 31, 1938 and, thus, could not be the subject of registration or private appropriation.[22] As a military reservation, it was beyond the commerce of man and the registration court did not have any jurisdiction to adjudicate the same as private property.[23]

Decision of the Regional Trial Court

As the facts and issues in both cases were substantially the same and identical, and the pieces of evidence adduced were applicable to both, the cases were consolidated and jointly tried. Thereafter, a joint decision *dismissing* the two complaints of the Republic was rendered.

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[17] Adjudged as part of Camp Evangelista in *Republic v. Estonilo, supra* note 15.

[18] RTC records, Vol. II, p. 4.

[19] *Id.* at 2-12.

[20] *Id.* at 6.

[21] *Id.* at 7.

[22] *Id.* at 6.

[23] *Id.* at 7.

In dismissing the complaints, the RTC explained that the stated fact of occupancy by Camp Evangelista over certain portions of the subject lands in the applications for registration by the respondents was a substantial compliance with the requirements of the law.[24] It would have been absurd to state Camp Evangelista as an adjoining owner when it was alleged that it was an occupant of the land.[25] Thus, the RTC ruled that the respondents did not commit fraud in filing their applications for registration.

Moreover, the RTC was of the view that the Republic was then given all the opportunity to be heard as it filed its opposition to the applications, appeared and participated in the proceedings. It was, thus, estopped from contesting the proceedings.

The RTC further reasoned out that assuming *arguendo* that respondents were guilty of fraud, the Republic lost its right to a relief for its failure to file a petition for review on the ground of fraud within one (1) year after the date of entry of the decree of registration.[26] Consequently, it would now be barred by prior judgment to contest the findings of the LRC.[27]

Finally, the RTC agreed with the respondents that the subject parcels of land were exempted from the operation and effect of the Presidential Proclamation No. 265 pursuant to a proviso therein that the same would not apply to lands with existing "private rights." The presidential proclamation did not, and should not, apply to the respondents because they did not apply to acquire the parcels of land in question from the government, but simply for confirmation and affirmation of their rights to the properties so that the titles over them could be issued in their favor.[28] What the proclamation prohibited was the sale or disposal of the parcels of land involved to private persons as

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[24] *Rollo*, p. 71.

[25] *Id*.

[26] *Id*.; Sec. 38, Act 495, The Land Registration Act.

[27] *Rollo*, p. 73.

[28] *Id*. at 74-75.

a means of acquiring ownership of the same, through the modes provided by law for the acquisition of disposable public lands.[29]

The Republic filed its Notice of Appeal before the RTC on July 5, 1991. On the other hand, the Bacases and the Chabons filed an *Ex-Parte* Motion for the Issuance of the Writ of Execution and Possession on July 16, 1991. An amended motion was filed on July 31, 1991. The RTC then issued the Order,[30] dated February 24, 1992, disapproving the Republic's appeal for failure to perfect it as it failed to notify the Bacases and granting the writ of execution.

Action of the Court of Appeals and the Court regarding the Republic's Appeal

The Republic filed a Notice of Appeal on April 1, 1992 from the February 24, 1992 of the RTC. The same was denied in the RTC Order,[31] dated April 23, 1992. The Republic moved for its reconsideration but the RTC was still denied it on July 8, 1992.[32]

Not satisfied, the Republic filed a petition before the CA, docketed as CA-G.R. SP No. 28647, entitled *Republic vs. Hon. Cesar M. Ybañez*,[33] questioning the February 24, 1992 Order of the RTC denying its appeal in Civil Case No. 3494. The CA sustained the government and, accordingly, annulled the said RTC order.

The respondents appealed to the Court, which later found no commission of a reversible error on the part of the CA. Accordingly, the Court dismissed the appeal as well as the

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[29] *Id.* at 74.

[30] RTC records, Vol. I, pp. 620-625.

[31] *Id.* at 645-647.

[32] *Id.* at 680.

[33] CA *rollo*, p. 00184.

subsequent motions for reconsideration. An entry of judgment was then issued on February 16, 1995.[34]

Ruling of the Court of Appeals

The appeal allowed, the CA docketed the case as CA G.R. CV No. 64142.

On November 12, 2007, the CA affirmed the ruling of the RTC. It explained that once a decree of registration was issued under the Torrens system and the reglementary period had passed within which the decree may be questioned, the title was perfected and could not be collaterally questioned later on.[35] Even assuming that an action for the nullification of the original certificate of title may still be instituted, the review of a decree of registration under Section 38 of Act No. 496 [Section 32 of Presidential Decree (P.D.) No. 1529] would only prosper upon proof that the registration was procured through actual fraud,[36] which proceeded from an intentional deception perpetrated through the misrepresentation or the concealment of a material fact.[37] The CA stressed that "[t]he fraud must be actual and extrinsic, not merely constructive or intrinsic; the evidence thereof must be clear, convincing and more than merely preponderant, because the proceedings which are assailed as having been fraudulent are judicial proceedings which by law, are presumed to have been fair and regular."[38]

Citing the rule that "[t]he fraud is extrinsic if it is employed to deprive parties of their day in court and, thus, prevent them from asserting their right to the property registered in the name of the applicant,"[39] the CA found that there was none. The CA agreed with the RTC that there was substantial compliance with

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[34] *Id*.

[35] *Rollo*, p. 50.

[36] *Id.* at 51.

[37] *Id*.

[38] *Id*.

[39] *Id*.

the requirement of the law. The allegation of the respondent that Camp Evangelista occupied portions of their property negated the complaint that they committed misrepresentation or concealment amounting to fraud.[40]

As regards the issue of exemption from the proclamation, the CA deemed that a discussion was unnecessary because the LRC already resolved it. The CA stressed that the proceeding was one *in rem*, thereby binding everyone to the legal effects of the same and that a decree of registration that had become final should be deemed conclusive not only on the questions actually contested and determined, but also upon all matters that might be litigated or decided in the land registration proceeding.[41]

Not in conformity, the Republic filed a motion for reconsideration which was denied on May 15, 2008 for lack of merit.

Hence, this petition.

GROUNDS RELIED UPON WARRANTING REVIEW OF THE PETITION

1. THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT THE LAND REGISTRATION COURT HAD JURISDICTION OVER THE APPLICATION FOR REGISTRATION FILED BY RESPONDENTS DESPITE THE LATTER'S FAILURE TO COMPLY WITH THE MANDATORY REQUIREMENT OF INDICATING ALL THE ADJOINING OWNERS OF THE PARCELS OF LAND SUBJECT OF THE APPLICATION.

2. THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT

[40] *Id*. at 55.

[41] *Id*. at 59.

RESPONDENTS HAVE A REGISTRABLE RIGHT OVER THE SUBJECT PARCELS OF LAND WHICH ARE WITHIN THE CAMP EVANGELISTA MILITARY RESERVATION.

3. IN G.R. NO. 157306 ENTITLED *"REPUBLIC OF THE PHILIPPINES VS. ANATALIA ACTUB TIU ESTONILO, ET AL.,"* WHICH INVOLVES PRIVATE INDIVIDUALS CLAIMING RIGHTS OVER PORTIONS OF THE CAMP EVANGELISTA MILITARY RESERVATION, THIS HONORABLE COURT HELD THAT THESE INDIVIDUALS COULD NOT HAVE VALIDLY OCCUPIED THEIR CLAIMED LOTS BECAUSE THE SAME WERE CONSIDERED INALIENABLE FROM THE TIME OF THEIR RESERVATION IN 1938. HERE, THE CERTIFICATES OF TITLE BEING SUSTAINED BY THE COURT OF APPEALS WERE ISSUED PURSUANT TO THE DECISIONS OF THE LAND REGISTRATION COURT IN APPLICATIONS FOR REGISTRATION FILED IN 1964 AND 1974. VERILY, THE COURT OF APPEALS, IN ISSUING THE HEREIN ASSAILED DECISION DATED NOVEMBER 15, 2007 AND RESOLUTION DATED MAY 15, 2008, HAS DECIDED THAT INSTANT CONTROVERSY IN A MANNER THAT IS CONTRARY TO LAW AND JURISPRUDENCE.[42]

Position of the Republic

In advocacy of its position, the Republic principally argues that (1) the CA erred in holding that the LRC acquired jurisdiction over the applications for registration of the reserved public lands filed by the respondents; and (2) the respondents do not have a registrable right over the subject parcels of land which are within the Camp Evangelista Military Reservation.

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[42] *Id*. at 16-17.

With respect to the first argument, the Republic cites Section 15 of P.D. No. 1529, which requires that applicants for land registration must disclose the names of the occupants of the land and the names and addresses of the owners of the adjoining properties. The respondents did not comply with that requirement which was mandatory and jurisdictional. Citing *Pinza v. Aldovino*,[43] it asserts that the LRC had no jurisdiction to take cognizance of the case. Moreover, such omission constituted fraud or willful misrepresentation. The respondents cannot invoke the indefeasibility of the titles issued since a "grant tainted with fraud and secured through misrepresentation is null and void and of no effect whatsoever."[44]

On the second argument, the Republic points out that Presidential Proclamation No. 265 reserved for the use of the Philippine Army certain parcels of land which included Lot No. 4354 and Lot No. 4357. Both lots were, however, allowed to be registered. Lot No. 4354 was registered as OCT No. 0-0358 and Lot No. 4357 as OCT No. O-669.

The Republic asserts that being part of the military reservation, these lots are inalienable and cannot be the subject of private ownership. Being so, the respondents do not have registrable rights over them. Their possession of the land, however long, could not ripen into ownership, and they have not shown proof that they were entitled to the land before the proclamation or that the said lots were segregated and withdrawn as part thereof.

Position of the Respondents

The Bacases

The Bacases anchor their opposition to the postures of the Republic on three principal arguments:

First, there was no extrinsic fraud committed by the Bacases in their failure to indicate Camp Evangelista as

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[43] 134 Phil. 217 (1968).

[44] Citing *Director of Lands v. Abanilla*, 209 Phil. 294, 304 (1983).

an adjoining lot owner as their application for registration substantially complied with the legal requirements. More importantly, the Republic was not prejudiced and deprived of its day in court.

Second, the LRC had jurisdiction to adjudicate whether the Bacases had "private rights" over Lot No. 4354 in accordance with, and therefore exempt from the coverage of, Presidential Proclamation No. 265, as well as to determine whether such private rights constituted registrable title under the land registration law.

Third, the issue of the registrability of the title of the Bacases over Lot No. 4354 is *res judicata* and cannot now be subject to a re-litigation or reopening in the annulment proceedings.[45]

Regarding the first ground, the Bacases stress that there was no extrinsic fraud because their application substantially complied with the requirements when they indicated that Camp Evangelista was an occupant by mere tolerance of Lot No. 4354. Also, the Republic filed its opposition to the respondents' application and actively participated in the land registration proceedings by presenting evidence, through the Director of Lands, who was represented by the Solicitor General. The Republic, therefore, was not deprived of its day in court or prevented from presenting its case. Its insistence that the non-compliance with the requirements of Section 15 of P.D. No. 1529 is an argument that is at once both empty and dangerous.[46]

On jurisdiction, the Bacases assert that even in the case of *Republic v. Estonilo,*[47] it was recognized in Presidential Proclamation No. 265 that the reservation was subject to private rights. In other words, the LRC had authority to hear and adjudicate their application for registration of title over Lot

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[45] *Rollo,* pp. 254-266.

[46] *Id*.

[47] 512 Phil. 694 (2005) (where Lot 4318 was adjudged as part of Camp Evangelista).

No. 4354 if they would be able to prove that their private rights under the presidential proclamation constituted registrable title over the said lot. They claim that there is completely no basis for the Republic to argue that the LRC had no jurisdiction to hear and adjudicate their application for registration of their title to Lot No. 4354 just because the proclamation withdrew the subject land from sale and settlement and reserved the same for military purposes. They cited the RTC statement that "the parcels of land they applied for in those registration proceedings and for which certificates of title were issued in their favor are precisely exempted from the operation and effect of said presidential proclamation when the very same proclamation in itself made a proviso that the same will not apply to lands with existing 'private rights' therein."[48]

The Bacases claim that the issue of registrability is no longer an issue as what is only to be resolved is the question on whether there was extrinsic or collateral fraud during the land registration proceedings. There would be no end to litigation on the registrability of their title if questions of facts or law, such as, whether or not Lot No. 4354 was alienable and disposable land of the public domain prior to its withdrawal from sale and settlement and reservation for military purposes under Presidential Proclamation No. 265; whether or not their predecessors-in-interest had prior possession of the lot long before the issuance of the proclamation or the establishment of Camp Evangelista in the late 1930's; whether or not such possession was held in the concept of an owner to constitute recognizable "private rights" under the presidential proclamation; and whether or not such private rights constitute registrable title to the lot in accordance with the land registration law, which had all been settled and duly adjudicated by the LRC in favor of the Bacases, would be re-examined under this annulment case.[49]

The issue of registrability of the Bacases' title had long been settled by the LRC and is *res judicata* between the Republic

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[48] *Rollo*, p. 261.

[49] *Id.* at 254-266.

and the respondents. The findings of the LRC became final when the Republic did not appeal its decision within the period to appeal or file a petition to reopen or review the decree of registration within one year from entry thereof.[50]

To question the findings of the court regarding the registrability of then title over the land would be an attempt to reopen issues already barred by *res judicata.* As correctly held by the RTC, it is estopped and barred by prior judgment to contest the findings of the LRC.[51]

The Chabons

In traversing the position of the Republic, the Chabons insist that the CA was correct when it stated that there was substantial compliance[52] with the requirements of the P.D. No. 1529 because they expressly stated in their application that Camp Evangelista was occupying a portion of it. It is contrary to reason or common sense to state that Camp Evangelista is an adjoining owner when it is occupying a portion thereof.

And as to the decision, it was a consequence of a proceeding *in rem* and, therefore, the decree of registration is binding and conclusive against all persons including the Republic who did not appeal the same. It is now barred forever to question the validity of the title issued. Besides, *res judicata* has set in because there is identity of parties, subject matter and cause of action.[53]

The Chabons also assailed the proclamation because when it was issued, they were already the private owners of the subject parcels of land and entitled to protection under the Constitution. The taking of their property in the guise of a presidential proclamation is not only oppressive and arbitrary but downright confiscatory.[54]

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[50] *Id.*

[51] *Id.*

[52] *Id.* at 240 to 251.

[53] *Id.* at 240 to 251.

[54] *Id.*

The Issues

The ultimate issues to be resolved are: 1) whether or not the decisions of the LRC over the subject lands can still be questioned; and 2) whether or not the applications for registration of the subject parcels of land should be allowed.

The Court's Ruling

The Republic can question even final and executory judgment when there was fraud.

The governing rule in the application for registration of lands at that time was Section 21 of Act 496[55] which provided for the form and content of an application for registration, and it reads:

> **Section 21.** The application shall be in writing, signed and sworn to by applicant, or by some person duly authorized in his behalf. x x x It shall also state the name in full and the address of the applicant, and also the names and addresses of **all adjoining owners and occupants, if known**; and, if not known, it shall state what search has been made to find them. x x x

The reason behind the law was explained in the case of *Fewkes vs. Vasquez*,[56] where it was written:

> Under Section 21 of the Land Registration Act an application for registration of land is required to contain, among others, a description of the land subject of the proceeding, the name, status and address of the applicant, as well as the names and addresses of all occupants of the land and of all adjoining owners, if known, or if unknown, of the steps taken to locate them. When the application is set by the court for initial hearing, it is then that **notice (of the hearing), addressed to all persons appearing to have an interest in the lot being registered and the adjoining owners,** and indicating the location, boundaries and technical description of the land being

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[55] An act to provide for the adjudication and registration of titles to lands in the Philippine Islands (The Land Registration Act).

[56] 148-A Phil. 448, 452-453 (1971).

registered, shall be published in the Official Gazette for two consecutive times. It is this publication of the notice of hearing that is considered one of the essential bases of the jurisdiction of the court in land registration cases, for the proceedings being *in rem*, it is only when there is constructive seizure of the land, effected by the publication and notice, that jurisdiction over the *res* is vested on the court. Furthermore, it is such notice and publication of the hearing that **would enable all persons concerned, who may have any rights or interests in the property, to come forward and show to the court why the application for registration thereof is not to be granted.**

Here, the Chabons did not make any mention of the ownership or occupancy by the Philippine Army. They also did not indicate any efforts or searches they had exerted in determining other occupants of the land. Such omission constituted fraud and deprived the Republic of its day in court. Not being notified, the Republic was not able to file its opposition to the application and, naturally, it was not able to file an appeal either.

The Republic can also question a final and executory judgment when the LRC had no jurisdiction over the land in question

With respect to the Bacases, although the lower courts might have been correct in ruling that there was substantial compliance with the requirements of law when they alleged that Camp Evangelista was an occupant, the Republic is not precluded and estopped from questioning the validity of the title.

The success of the annulment of title does not solely depend on the existence of actual and extrinsic fraud, but also on the fact that a judgment decreeing registration is null and void. In *Collado v. Court of Appeals and the Republic*,[57] the Court declared that any title to an inalienable public land is void *ab initio*. Any procedural infirmities attending the filing of the petition

[57] 439 Phil. 149 (2002), citing *Martinez vs. Court of Appeals*, 155 Phil. 591 (1974).

for annulment of judgment are immaterial since the LRC never acquired jurisdiction over the property. All proceedings of the LRC involving the property are null and void and, hence, did not create any legal effect. A judgment by a court without jurisdiction can never attain finality.[58] In *Collado*, the Court made the following citation:

> The **Land Registration Court has no jurisdiction over non-registrable properties**, such as public navigable rivers which are parts of the public domain, and cannot validly adjudge the registration of title in favor of private applicant. Hence, the judgment of the Court of First Instance of Pampanga as regards the Lot No. 2 of certificate of Title No. 15856 in the name of petitioners **may be attacked at any time**, either **directly or collaterally**, by the State which is **not bound by any prescriptive period** provided for by the Statute of Limitations.[59]

Prescription or estoppel cannot lie against the government

In denying the petition of the Republic, the CA reasoned out that 1) once a decree of registration is issued under the Torrens system and the reglementary period has passed within which the decree may be questioned, the title is perfected and cannot be collaterally questioned later on;[60] 2) there was no commission of extrinsic fraud because the Bacases' allegation of Camp Evangelista's occupancy of their property negated the argument that they committed misrepresentation or concealment amounting to fraud;[61] and 3) the Republic did not appeal the decision and because the proceeding was one *in rem*, it was bound to the legal effects of the decision.

Granting that the persons representing the government was negligent, the doctrine of estoppel cannot be taken against the

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[58] *Padre v. Badillo, et al.*, G.R. No. 165423, January 19, 2011, 640 SCRA 50, 66.

[59] *Martinez v. Court of Appeals*, 155 Phil. 591 (1974).

[60] *Rollo*, p. 50.

[61] *Id*. at 55.

Republic. It is a well-settled rule that the Republic or its government is not estopped by mistake or error on the part of its officials or agents. In *Republic v. Court of Appeals*,[62] it was written:

> In any case, even granting that the said official was negligent, the **doctrine of estoppel cannot operate against the State**. "It is a well-settled rule in our jurisdiction that the Republic or its government is usually **not estopped by mistake or error on the part of its officials or agents** (Manila Lodge No. 761 vs. CA, 73 SCRA 166, 186; Republic vs. Marcos, 52 SCRA 238, 244; Luciano *vs.* Estrella, 34 SCRA 769).
>
> Consequently, **the State may still seek the cancellation of the title** issued to Perpetuo Alpuerto and his successors-interest pursuant to Section 101 of the Public Land Act. Such title has not become indefeasible, for prescription cannot be invoked against the State (*Republic vs. Animas, supra*).

The subject lands, being part of a military reservation, are inalienable and cannot be the subjects of land registration proceedings

The application of the Bacases and the Chabons were filed on **November 12, 1964** and **May 8, 1974**, respectively. Accordingly, the law governing the applications was Commonwealth Act *(C.A.)* No. 141,[63] as amended by RA 1942,[64] particularly Sec. 48(b) which provided that:

> Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of **agricultural lands of the public domain**, **under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for**

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[62] 188 Phil. 142 (1980).

[63] Public Land Act (1936).

[64] An act to amend subsection (b) of section forty-eight of commonwealth act numbered one hundred forty-one, otherwise known as the Public Land Act (1957).

confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

As can be gleaned therefrom, the necessary requirements for the grant of an application for land registration are the following:

1. The applicant must, by himself or through his predecessors-in-interest, have been in possession and occupation of the subject land;
2. The possession and occupation must be open, continuous, exclusive and notorious;
3. The possession and occupation must be under a *bona fide* claim of ownership for at least thirty years immediately preceding the filing of the application; and
4. The subject land must be an agricultural land of the public domain.

As earlier stated, in 1938, President Quezon issued Presidential Proclamation No. 265, which took effect on March 31, 1938, reserving for the use of the Philippine Army parcels of the public domain situated in the barrios of Bulua and Carmen, then Municipality of Cagayan, Misamis Oriental. The subject parcels of land were withdrawn from sale or settlement or reserved for military purposes, "subject to private rights, if any there be."[65]

Such power of the President to segregate lands was provided for in Section 64(e) of the old Revised Administrative Code and C.A. No. 141 or the Public Land Act. Later, the power of the President was restated in Section 14, Chapter 4, Book III of the 1987 Administrative Code. When a property is officially declared a military reservation, it becomes inalienable and outside the commerce of man.[66] It may not be the subject of a contract

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[65] *Republic v. Estonilo,* 512 Phil. 644 (2005).

[66] *Republic v. Southside Homeowners Association*, 534 Phil. 8 (2006).

or of a compromise agreement.[67] A property continues to be part of the public domain, not available for private appropriation or ownership, until there is a formal declaration on the part of the government to withdraw it from being such.[68] In the case of *Republic v. Court of Appeals and De Jesus*,[69] it was even stated that

> Lands covered by reservation are not subject to entry, and no lawful settlement on them can be acquired. The claims of persons who have settled on, occupied, and improved a parcel of public land which is later included in a reservation are considered worthy of protection and are usually respected, but where the President, as authorized by law, issues a proclamation reserving certain lands and warning all persons to depart therefrom, this terminates any rights previously acquired in such lands by a person who was settled thereon in order to obtain a preferential right of purchase. **And patents for lands which have been previously granted, reserved from sale, or appropriate, are void**.

Regarding the subject lots, there was a reservation respecting "private rights." In *Republic v. Estonilo*,[70] where the Court earlier declared that Lot No. 4318 was part of the Camp Evangelista Military Reservation and, therefore, not registrable, it noted the proviso in Presidential Proclamation No. 265 requiring the reservation to be subject to private rights as meaning that persons claiming rights over the reserved land were not precluded from proving their claims. Stated differently, the said proviso did not preclude the LRC from determining whether or not the respondents indeed had registrable rights over the property.

As there has been no showing that the subject parcels of land had been segregated from the military reservation, the respondents had to prove that the subject properties were alienable and disposable land of the public domain *prior* to its withdrawal

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[67] *Id*.

[68] *Laurel v. Garcia*, G.R. No. 92013, July 25, 1990, 187 SCRA 797, 808.

[69] 165 Phil. 142 (1976).

[70] *Supra* note 65.

from sale and settlement and reservation for military purposes under Presidential Proclamation No. 265. The question is of primordial importance because it is determinative if the land can in fact be subject to acquisitive prescription and, thus, registrable under the Torrens system. Without first determining the nature and character of the land, all the other requirements such as the length and nature of possession and occupation over such land do not come into play. The required length of possession does not operate when the land is part of the public domain.

In this case, however, the respondents miserably failed to prove that, before the proclamation, the subject lands were already private lands. They merely relied on such "recognition" of possible private rights. In their application, they alleged that at the time of their application,[71] they had been in open, continuous, exclusive, and notorious possession of the subject parcels of land for at least thirty (30) years and became its owners by prescription. There was, however, no allegation or showing that the government had earlier declared it open for sale or settlement, or that it was already pronounced as inalienable and disposable.

It is well-settled that land of the public domain is not *ipso facto* converted into a patrimonial or private property by the mere possession and occupation by an individual over a long period of time. In the case of *Diaz v. Republic*,[72] it was written:

> But **even assuming that the land in question was alienable land before it was established as a military reservation**, there was nevertheless still a dearth of evidence with respect to its occupation by petitioner and her predecessors-in-interest for more than 30 years. x x x.
>
> xxx xxx xxx.
>
> A mere casual cultivation of portions of the land by the claimant, and the raising thereon of cattle, do not constitute possession under

[71] On November 12, 1964, in the case of the Bacases and May 8, 1974, in the case of the Chabons.

[72] G.R. No. 181502, February 2, 2010, 611 SCRA 403, 419.

claim of ownership. In that sense, possession is not exclusive and notorious as to give rise to a presumptive grant from the State. While grazing livestock over land is of course to be considered with other acts of dominion to show possession, the mere occupancy of land by grazing livestock upon it, without substantial enclosures, or other permanent improvements, is not sufficient to support a claim of title thru acquisitive prescription. The possession of public land, however long the period may have extended, never confers title thereto upon the possessor because the statute of limitations with regard to public land does not operate against the State unless the occupant can prove possession and occupation of the same under claim of ownership for the required number of years to constitute a grant from the State. [Emphases supplied]

In the recent case of *Heirs of Mario Malabanan vs. Republic of the Philippines*,[73] the Court emphasized that fundamental is the rule that lands of the public domain, unless declared otherwise by virtue of a statute or law, are inalienable and can never be acquired by prescription. No amount of time of possession or occupation can ripen into ownership over lands of the public domain. All lands of the public domain presumably belong to the State and are inalienable. Lands that are not clearly under private ownership are also presumed to belong to the State and, therefore, may not be alienated or disposed.[74]

Another recent case, *Diaz v. Republic*,[75] also held that possession even for more than 30 years cannot ripen into ownership.[76] Possession is of no moment if applicants fail to sufficiently and satisfactorily show that the subject lands over which an application was applied for was indeed an alienable and disposable agricultural land of the public domain. It would

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[73] G.R. No. 179987, September 3, 2013 (Resolution denying Motion for Reconsideration).

[74] *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987, September 3, 2013.

[75] G.R. No. 181502, February 2, 2010, 611 SCRA 403.

[76] *Id*.

not matter even if they declared it for tax purposes. In *Republic v. Heirs of Juan Fabio*,[77] the rule was reiterated. Thus:

> Well-entrenched is the rule that **unless a land is reclassified and declared alienable and disposable, occupation in the concept of an owner, no matter how long, cannot ripen into ownership and be registered as a title.** Consequently, respondents could not have occupied the Lot in the concept of an owner in 1947 and subsequent years when respondents declared the Lot for **taxation purposes,** or even earlier when respondents' predecessors-in-interest possessed the Lot, because the Lot was considered inalienable from the time of its declaration as a military reservation in 1904. Therefore, respondents failed to prove, by clear and convincing evidence, that the Lot is alienable and disposable.
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> Public lands not shown to have been classified as alienable and disposable land remain part of the inalienable public domain. In view of the lack of sufficient evidence showing that the Lot was already classified as alienable and disposable, the Lot applied for by respondents is inalienable land of the public domain, not subject to registration under Section 14(1) of PD 1529 and Section 48(b) of CA 141, as amended by PD 1073. Hence, there is no need to discuss the other requisites dealing with respondents' occupation and possession of the Lot in the concept of an owner.
>
> While it is an acknowledged policy of the State to promote the distribution of alienable public lands to spur economic growth and in line with the ideal of social justice, the law imposes stringent safeguards upon the grant of such resources lest they fall into the wrong hands to the prejudice of the national patrimony. We must not, therefore, relax the stringent safeguards relative to the registration of imperfect titles. [Emphases Supplied]

In *Estonilo*,[78] where the Court ruled that persons claiming the protection of "private rights" in order to exclude their lands from military reservations must show by clear and convincing evidence that the properties in question had been acquired by a legal method of acquiring public lands, the respondents therein

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[77] G.R. No. 159589, December 23, 2008, 575 SCRA 51.

[78] *Republic v. Estonilo, supra* note 65, [where the Court adjudged Lot 4318 as part of Camp Evangelista].

failed to clearly prove that the lands over which they lay a claim were alienable and disposable so that the same belonged and continued to belong to the State and could not be subject to the commerce of man or registration. Specifically, the Court wrote:

Land that has not been acquired from the government, either by purchase or by grant, belongs to the State as part of the public domain. For this reason, imperfect titles to agricultural lands are subjected to rigorous scrutiny before judicial confirmation is granted. In the same manner, **persons claiming the protection of "private rights" in order to exclude their lands from military reservations must show by clear and convincing evidence that the pieces of property in question have been acquired by a legal method of acquiring public lands.**

In granting respondents judicial confirmation of their imperfect title, the trial and the appellate courts gave much weight to the tax declarations presented by the former. However, while the tax declarations were issued under the names of respondents' predecessors-in-interest, the earliest one presented was issued only in 1954. *The Director, Lands Management Bureau v. CA* held thus:

"x x x. **Tax receipts and tax declarations are not incontrovertible evidence of ownership. They are mere *indicia* of [a] claim of ownership.** In *Director of Lands vs. Santiago*:

> 'x x x [I]f it is true that the original owner and possessor, Generosa Santiago, had been in possession since 1925, why were the subject lands declared for taxation purposes for the first time only in 1968, and in the names of Garcia and Obdin? For although tax receipts and declarations of ownership for taxation purposes are not incontrovertible evidence of ownership, they constitute at least proof that the holder had a claim of title over the property.'"

In addition, the lower courts credited the alleged prior possession by *Calixto and Rosendo Bacas*, from whom respondents' predecessors had purportedly bought the property. This alleged prior possession, though, was totally devoid of any supporting evidence on record. Respondents' evidence hardly supported the conclusion that their predecessors-in-interest had been in possession of the land since "time immemorial."

Moreover, as correctly observed by the Office of the Solicitor General, the evidence on record merely established the transfer of the property from *Calixto Bacas to Nazaria Bombeo*. The evidence did not show the nature and the period of the alleged possession by *Calixto and Rosendo Bacas*. It is important that **applicants for judicial confirmation of imperfect titles must present specific acts of ownership to substantiate their claims; they cannot simply offer general statements that are mere conclusions of law rather than factual evidence of possession.**

It must be stressed that respondents, as applicants, have the burden of proving that they have an imperfect title to Lot 4318. **Even the absence of opposition from the government does not relieve them of this burden**. Thus, it was erroneous for the trial and the appellate courts to hold that the failure of the government to dislodge respondents, judicially or extrajudicially, from the subject land since 1954 already amounted to a title. [Emphases supplied]

The ruling reiterated the long standing rule in the case of *Director, Lands Management Bureau v. Court of Appeals*,[79]

x x x. The petitioner is not necessarily entitled to have the land registered under the Torrens system simply because no one appears to oppose his title and to oppose the registration of his land. He must show, **even though there is no opposition**, to the satisfaction of the court, that he is the absolute owner, in fee simple. Courts are not justified in registering property under the Torrens system, simply because there is no opposition offered. Courts may, even in the absence of any opposition, deny the registration of the land under the Torrens system, upon the ground that the facts presented did not show that the petitioner is the owner, in fee simple, of the land which he is attempting to have registered.

The Court is not unmindful of the principle of immutability of judgments, that nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable.[80] Such principle, however, must yield to the basic

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[79] 381 Phil. 761(2000), citing *Director of Lands v. Agustin*, 42 Phil. 227, 229 (1921).

[80] *Serrano v. Ambassador Hotel, Inc.*, G.R. No. 197003, February 11, 2013, 690 SCRA 226.

rule that a decision which is null and void for want of jurisdiction of the trial court is not a decision in contemplation of law and can never become final and executory.[81]

Had the LRC given primary importance on the status of the land and not merely relied on the testimonial evidence of the respondents without other proof of the alienability of the land, the litigation would have already been ended and finally settled in accordance with law and jurisprudence a long time ago.

WHEREFORE, the petition is **GRANTED.** The November 12, 2007 Decision and the May 15, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 64142 are hereby **REVERSED** and **SET ASIDE**. Judgment is rendered declaring the proceedings in the Land Registration Court as **NULL and VOID** for lack of jurisdiction. Accordingly, Original Certificate of Title Nos. 0-358 and 0-669 issued by the Registry of Deeds of Cagayan de Oro City are **CANCELLED**. Lot No. 4354 and Lot No. 4357 are ordered reverted to the public domain.

SO ORDERED.

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

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[81] *Lagunilla v. Velasco*, G.R. No. 169276, June 16, 2009, 589 SCRA 224, 231.

SECOND DIVISION

[G.R. No. 184565. November 20, 2013]

MANOLITO DE LEON and LOURDES E. DE LEON, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; A PARTY WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT; APPLICATION.— Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense. In this case, respondent BPI, as plaintiff, had to prove that petitioner-spouses failed to pay their obligations under the Promissory Note. Petitioner-spouses, on the other hand, had to prove their defense that the obligation was extinguished by the loss of the mortgaged vehicle, which was insured.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIAL EVIDENCE MUST BE CREDIBLE, REASONABLE, AND IN ACCORD WITH HUMAN EXPERIENCE; APPLICATION.— Testimonial evidence, to be believed, must come not only from the mouth of a credible witness, but must also "be credible, reasonable, and in accord with human experience." A credible witness must, therefore, be able to narrate a convincing and logical story. In this case, petitioner Manolito's testimony that he sent notice and proof of loss of the mortgaged vehicle to Citytrust through fax lacks credibility especially since he failed to present the facsimile report evidencing the transmittal. His failure to keep the facsimile report or to ask for a written acknowledgement from Citytrust of its receipt of the transmittal gives us reason to doubt the truthfulness of his testimony. His testimony on the alleged theft is likewise suspect. To begin

with, no police report was presented. Also, the insurance policy was renewed even after the mortgaged vehicle was allegedly stolen. And despite repeated demands from respondent BPI, petitioner-spouses made no effort to communicate with the bank in order to clarify the matter. The absence of any overt act on the part of petitioner-spouses to protect their interest from the time the mortgaged vehicle was stolen up to the time they received the summons defies reason and logic. Their inaction is obviously contrary to human experience. In addition, we cannot help but notice that although the mortgaged vehicle was stolen in November 1997, petitioner-spouses defaulted on their monthly amortizations as early as August 10, 1997. All these taken together cast doubt on the truth and credibility of his testimony. Thus, we are in full accord with the findings of the MeTC and the CA that petitioner Manolito's testimony lacks credence as it is dubious and self-serving. Failing to prove their defense, petitioner-spouses are liable to pay their remaining obligation.

APPEARANCES OF COUNSEL

Exconde Langcay & Tatad Law Offices for petitioners.
Benedicto Versoza Felipe Burkley & Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"[I]n the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff."[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the November 16, 2007 Decision[3]

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[1] *Jison v. Court of Appeals*, 350 Phil. 138, 173 (1998).

[2] *Rollo,* pp. 11-37.

[3] *Id*. at 39-46; penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Apolinario D. Bruselas, Jr.

and the September 19, 2008 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 91217.

Factual Antecedents

On June 13, 1995, petitioner-spouses Manolito and Lourdes de Leon executed a Promissory Note[5] binding themselves to pay Nissan Gallery Ortigas the amount of ₱458,784.00 in 36 monthly installments of ₱12,744.00, with a late payment charge of five percent (5%) per month.[6] To secure the obligation under the Promissory Note, petitioner-spouses constituted a Chattel Mortgage[7] over a 1995 Nissan Sentra 1300 4-Door LEC with Motor No. GA-13-549457B and Serial No. BBAB-13B69336.[8]

On the same day, Nissan Gallery Ortigas, with notice to petitioner-spouses, executed a Deed of Assignment[9] of its rights and interests under the Promissory Note with Chattel Mortgage in favor of Citytrust Banking Corporation (Citytrust).[10]

On October 4, 1996, Citytrust was merged with and absorbed by respondent Bank of the Philippine Islands (BPI).[11]

Petitioner-spouses, however, failed to pay their monthly amortizations from August 10, 1997 to June 10, 1998.[12] Thus, respondent BPI, thru counsel, sent them a demand letter[13] dated October 16, 1998.

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[4] *Id*. at 48-51; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Japar B. Dimaampao.

[5] CA *rollo*, p. 84.

[6] *Id*.

[7] *Id*. at 85-88.

[8] *Id*. at 85.

[9] *Id*. at 86.

[10] *Id*.

[11] *Rollo*, p. 40.

[12] *Id*. at 57.

[13] CA *rollo*, p. 90.

On November 19, 1998, respondent BPI filed before the Metropolitan Trial Court (MeTC) of Manila a Complaint[14] for Replevin and Damages, docketed as Civil Case No. 161617 and raffled to Branch 6, against petitioner-spouses.[15] The summons, however, remained unserved, prompting the MeTC to dismiss the case without prejudice.[16] Respondent BPI moved for reconsideration on the ground that it was still verifying the exact address of petitioner-spouses.[17] On March 21, 2002, the MeTC set aside the dismissal of the case.[18] On April 24, 2002, summons was served on petitioner-spouses.[19]

Petitioner-spouses, in their Answer,[20] averred that the case should be dismissed for failure of respondent BPI to prosecute the case pursuant to Section 3[21] of Rule 17 of the Rules of Court;[22] that their obligation was extinguished because the mortgaged vehicle was stolen while the insurance policy was still in force;[23] that they informed Citytrust of the theft of the mortgaged vehicle through its employee, Meldy Endaya (Endaya);[24] and that respondent BPI should have collected the

[14] *Id.* at 75-83.

[15] *Rollo*, pp. 52.

[16] *Id.* at 53.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] CA *rollo*, pp. 92-99.

[21] Section 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.

[22] CA *rollo*, pp. 93-94.

[23] *Id.* at 94-98.

[24] *Id.* at 96.

insurance proceeds and applied the same to the remaining obligation.[25]

On November 11, 2003, respondent BPI presented its evidence *ex parte*.[26] It offered as evidence the testimony of its Account Consultant, Lilie Coria Ultu (Ultu), who testified on the veracity of the Promissory Note with Chattel Mortgage, the Deed of Assignment, the demand letter dated October 16, 1998, and the Statement of Account[27] of petitioner-spouses.[28]

For their part, petitioner-spouses offered as evidence the Alarm Sheet issued by the Philippine National Police on December 3, 1997, the *Sinumpaang Salaysay* executed by Reynaldo Llanos (Llanos), the Subpoena for Llanos, the letter of Citytrust dated July 30, 1996, the letters of respondent BPI dated January 6, 1998 and June 25, 1998, and the testimonies of Ultu and petitioner Manolito.[29]

Ruling of the Metropolitan Trial Court

On November 17, 2004, the MeTC rendered a Decision[30] in favor of respondent BPI and declared petitioner-spouses liable to pay their remaining obligation for failure to notify Citytrust or respondent BPI of the alleged theft of the mortgaged vehicle and to submit proof thereof.[31] The MeTC considered the testimony of petitioner Manolito dubious and self-serving.[32] Pertinent portions of the Decision read:

[Petitioner Manolito] declared on the witness stand that he sent to [Citytrust], through "fax," the papers necessary to formalize his

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[25] *Id.* at 96-98.

[26] *Rollo*, p. 55.

[27] CA *rollo*, p. 91.

[28] *Rollo*, p. 55.

[29] *Id.* at 55-56.

[30] *Id.* at 52-60; penned by Presiding Judge Ma. Theresa Dolores C. Gomez-Estoesta.

[31] *Id.* at 58-59.

[32] *Id.*

report on the loss of [the] subject motor vehicle, which included the Alarm Sheet (Exhibit "1") and the Sinumpaang Salaysay of one Reynaldo Llanos *y* Largo (TSN dated August 3, 2004, pp. 17-19).

However, [his claim that] such documents were indeed received by [Citytrust] only remains self-serving and gratuitous. No facsimile report has been presented that such documents were indeed transmitted to Citytrust. No formal letter was made to formalize the report on the loss. For an individual such as [petitioner Manolito], who rather appeared sharp and intelligent enough to know better, an apparent laxity has been displayed on his part. Heedless of the consequences, [petitioner Manolito] simply satisfied himself with making a telephone call, if indeed one was made, to [a rank and file employee] of Citytrust or [respondent BPI] x x x and did not exercise x x x due diligence to verify any feedback or action on the part of the banking institution.

Worse, [petitioners] x x x failed to prove that they indeed submitted proof of the loss or theft of the motor vehicle. [Petitioner-spouses] merely [presented] an Alarm Sheet and the Sinumpaang Salaysay of one Reynaldo Llanos *y* Largo. But a formal police report on the matter is evidently missing. It behooved [petitioner-spouses] to establish the alleged theft of the motor vehicle by submitting a police action on the matter, but this, they did not do.

Haplessly, therefore, the required notice and proof of such loss have not been satisfied.[33]

Thus, the MeTC disposed of the case in this wise:

WHEREFORE, judgment is hereby rendered in favor of [respondent BPI] and against [petitioner-spouses] Lourdes E. De Leon and Jose Manolito De Leon, as follows:

(i) Ordering [petitioner-spouses] to jointly and severally pay the sum of ₱130,018.08 plus 5% interest per month as late payment charges from date of default on August 10, 1997, until fully paid;

(ii) Ordering [petitioner-spouses] to jointly and severally pay attorney's fees fixed in the reasonable sum of ₱10,000.00; and

(iii) Ordering [petitioner-spouses] to jointly and severally pay the costs of suit.

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[33] *Id.* at 58.

SO ORDERED.[34]

Ruling of the Regional Trial Court (RTC)

On appeal,[35] the RTC, Branch 34, reversed the MeTC Decision. Unlike the MeTC, the RTC gave credence to the testimony of petitioner Manolito that he informed Citytrust of the theft of the mortgaged vehicle by sending through fax all the necessary documents.[36] According to the RTC, since there was sufficient notice of the theft, respondent BPI should have collected the proceeds of the insurance policy and applied the same to the remaining obligation of petitioner-spouses.[37] The *fallo* of the RTC Order[38] dated July 18, 2005 reads:

WHEREFORE, premised from the above considerations and findings, the decision appealed from is hereby reversed and set aside.

The Complaint and the counterclaim are hereby DISMISSED for lack of merit.

SO ORDERED.[39]

Ruling of the Court of Appeals

Aggrieved, respondent BPI elevated the case to the CA *via* a Petition for Review under Rule 42 of the Rules of Court.

On November 16, 2007, the CA reversed and set aside the RTC Order and reinstated the MeTC Decision, thus:

WHEREFORE, the instant petition for review is GRANTED. The Order issued by the Regional Trial Court of Manila (Branch 34), dated July 18, 2005, in Civil Case No. 05-111630, is REVERSED and SET ASIDE and the Decision of the Metropolitan Trial Court

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[34] *Id.* at 60.

[35] Docketed as Civil Case No. 05-111630.

[36] *Rollo*, pp. 65-67.

[37] *Id.* at 67-68.

[38] *Id.* at 61-68; penned by Judge Romulo A. Lopez.

[39] *Id.* at 68.

of Manila (Branch 6) is REINSTATED. No pronouncement as to costs.

SO ORDERED.[40]

Petitioner-spouses moved for reconsideration, which the CA partly granted in its September 19, 2008 Resolution,[41] the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, our decision of 16 November 2007 is deemed amended only to the extent herein discussed and the dispositive portion of said decision should now read as follows:

> "WHEREFORE, the instant petition for review is GRANTED. The Order issued by the Regional Trial Court of Manila (Branch 34), dated July 18, 2005, in Civil Case No. 05-111630, is REVERSED and SET ASIDE and the Decision of the Metropolitan Trial Court of Manila (Branch 6) is REINSTATED with the [lone] modification that the therein ordered payment of 5% interest per month as late payment charges, is reduced to 1% interest per month from date of default on August 10, 1997 until fully paid.
>
> No pronouncement as to costs."

IT IS SO ORDERED.[42]

Issue

Hence, this recourse by petitioner-spouses arguing that:

THE REVERSAL BY THE [CA] OF THE DECISION OF THE [RTC] OF MANILA (BRANCH 34) THAT THE PETITIONERS HAVE SATISFIED THE REQUIRED NOTICE OF LOSS TO [CITYTRUST] IS CONTRARY TO LAW AND THE DECISIONS OF THIS HONORABLE COURT.[43]

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[40] *Id.* at 46.

[41] *Id.* at 48-51.

[42] *Id.* at 50-51.

[43] *Id.* at 22.

Ultimately, the issue boils down to the credibility of petitioner Manolito's testimony.

Petitioner-spouses' Arguments

Petitioner-spouses contend that the CA erred in not giving weight and credence to the testimony of petitioner Manolito.[44] They claim that his credibility was never an issue before the MeTC[45] and that his testimony, that he sent notice and proof of loss to Citytrust through fax, need not be supported by the facsimile report since it was not controverted by respondent BPI.[46] Hence, they insist that his testimony together with the documents presented is sufficient to prove that Citytrust received notice and proof of loss of the mortgaged vehicle.[47] Having done their part, they should be absolved from paying their remaining obligation.[48] Respondent BPI, on the other hand, should bear the loss for failing to collect the proceeds of the insurance.[49]

Respondent BPI's Arguments

Respondent BPI counter-argues that the burden of proving the existence of an alleged fact rests on the party asserting it.[50] In this case, the burden of proving that the mortgaged vehicle was stolen and that Citytrust received notice and proof of loss of the mortgaged vehicle rests on petitioner-spouses.[51] Unfortunately, they failed to present clear and convincing evidence to prove these allegations.[52] In any case, even if they were able to prove by clear and convincing evidence that notice and proof

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[44] *Id.* at 124-128.

[45] *Id.* at 132.

[46] *Id.* at 131-134.

[47] *Id.* at 124-125

[48] *Id.* at 125.

[49] *Id.*

[50] *Id.* at 143.

[51] *Id.* at 143-144.

[52] *Id.* at 144.

of loss of the mortgaged vehicle was indeed faxed to Citytrust, this would not absolve them from liability because the original documents were not delivered to Citytrust or respondent BPI.[53] Without the original documents, Citytrust or respondent BPI would not be able to file an insurance claim.[54]

Our Ruling

The Petition is bereft of merit.

The party who alleges a fact has the burden of proving it.

Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.[55] Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense.[56]

In this case, respondent BPI, as plaintiff, had to prove that petitioner-spouses failed to pay their obligations under the Promissory Note. Petitioner-spouses, on the other hand, had to prove their defense that the obligation was extinguished by the loss of the mortgaged vehicle, which was insured.

However, as aptly pointed out by the MeTC, the mere loss of the mortgaged vehicle does not automatically relieve petitioner-spouses of their obligation[57] as paragraph 7 of the Promissory Note with Chattel Mortgage provides that:

7. The said MORTGAGOR covenants and agrees to procure and maintain through the MORTGAGEE, a comprehensive insurance

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[53] *Id.*

[54] *Id.*

[55] *Aznar v. Citibank, N.A. (Philippines)*, 548 Phil. 218, 230 (2007).

[56] *Jison v. Court of Appeals, supra* note 1.

[57] *Rollo*, pp. 57-58.

from a duly accredited and responsible insurance company approved by the MORTGAGEE, over the personalty hereinabove mortgaged to be insured against loss or damage by accident, theft, and fire for a period of one (1) year from date hereof and every year thereafter until the mortgage DEBTS are fully paid with an insurance company or companies acceptable to the MORTGAGEE in an amount not less than the outstanding balance of the mortgage DEBTS; that he/it will make all loss, if any, under such policy or policies payable to the MORTGAGEE forthwith. x x x

xxx xxx xxx

MORTGAGOR shall immediately notify MORTGAGEE in case of los[s], damage or accident suffered by herein personalty mortgaged and submit proof of such los[s], damages or accident. Said los[s], damage or accident for any reason including fortuitous event shall not suspend, abate, or extinguish [petitioner spouses'] obligation under the promissory note or sums due under this contract x x x

In case of loss or damage, the MORTGAGOR hereby irrevocabl[y] appoints the MORTGAGEE as his/its attorney-in-fact with full power and authority to file, follow-up, prosecute, compromise or settle insurance claims; to sign, execute and deliver the corresponding papers, receipts and documents to the insurance company as may be necessary to prove the claim and to collect from the latter the insurance proceeds to the extent of its interest. Said proceeds shall be applied by the MORTGAGEE as payment of MORTGAGOR's outstanding obligation under the Promissory Note and such other sums and charges as may be due hereunder or in other instruments of indebtedness due and owing by the MORTGAGOR to the MORTGAGEE and the excess, if any, shall thereafter be remitted to the MORTGAGOR. MORTGAGEE however shall be liable in the event there is a deficiency.

xxx xxx xxx[58]

Based on the foregoing, the mortgagor must notify and submit proof of loss to the mortgagee. Otherwise, the mortgagee would not be able to claim the proceeds of the insurance and apply the same to the remaining obligation.

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[58] CA *rollo*, p. 87.

This brings us to the question of whether petitioner-spouses sent notice and proof of loss to Citytrust or respondent BPI.

Testimonial evidence must also be credible, reasonable, and in accord with human experience.

Testimonial evidence, to be believed, must come not only from the mouth of a credible witness, but must also "be credible, reasonable, and in accord with human experience."[59] A credible witness must, therefore, be able to narrate a convincing and logical story.

In this case, petitioner Manolito's testimony that he sent notice and proof of loss of the mortgaged vehicle to Citytrust through fax lacks credibility especially since he failed to present the facsimile report evidencing the transmittal.[60] His failure to keep the facsimile report or to ask for a written acknowledgement from Citytrust of its receipt of the transmittal gives us reason to doubt the truthfulness of his testimony. His testimony on the alleged theft is likewise suspect. To begin with, no police report was presented.[61] Also, the insurance policy was renewed even after the mortgaged vehicle was allegedly stolen.[62] And despite repeated demands from respondent BPI, petitioner-spouses made no effort to communicate with the bank in order to clarify the matter. The absence of any overt act on the part of petitioner-spouses to protect their interest from the time the mortgaged vehicle was stolen up to the time they received the summons defies reason and logic. Their inaction is obviously contrary to human experience. In addition, we cannot help but notice that although the mortgaged vehicle was stolen in November 1997, petitioner-spouses defaulted on their monthly amortizations as early as August 10, 1997. All these taken together cast doubt on the truth and credibility of his testimony.

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[59] *People v. Padrones*, 508 Phil. 439, 461 (2005).

[60] *Rollo*, p. 58.

[61] *Id.*

[62] *Id.* at 59.

Thus, we are in full accord with the findings of the MeTC and the CA that petitioner Manolito's testimony lacks credence as it is dubious and self-serving.[63] Failing to prove their defense, petitioner-spouses are liable to pay their remaining obligation.

WHEREFORE, the Petition is hereby **DENIED**. The assailed November 16, 2007 Decision and the September 19, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 91217 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188395. November 20, 2013]

HEIRS OF THE LATE FELIX M. BUCTON, namely: NICANORA G. BUCTON, ERLINDA BUCTON-EBLAMO, AGNES BUCTON-LUGOD, WILMA BUCTON-YRAY and DON G. BUCTON, *petitioners, vs.* **SPOUSES GONZALO and TRINIDAD GO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE TESTIMONY OF WITNESSES PREVAILS OVER THE PRESUMPTION OF REGULARITY ATTACHED TO A NOTARIZED DOCUMENT.— While it is true that a notarized document

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[63] *Id.* at 45 and 58.

carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity, this presumption, however, is not absolute. It may be rebutted by clear and convincing evidence to the contrary. The testimony of Constantino and Nicanora, had it been properly appreciated, is sufficient to overcome the presumption of regularity attached to public documents and to meet the stringent requirements to prove forgery. Constantino pointed out in open court the manifest disparity between the strokes of the letters of Felix's purported signature on the assailed SPA and the latter's genuine signature which led him to conclude that the standard signature and the one appearing in the SPA were not written by one and the same person. To further fortify their claim, Nicanora herself took the witness stand and testified that she is familiar with her husband's signature for they had been married for more than 50 years. She denied having signed her name on the SPA and averred that the signature appearing above the name of Felix was not that of her husband. Evidently, the foregoing testimonial evidence adduced by the Heirs of Felix are proof opposite to that which is required to show the genuineness of a handwriting[.]

2. ID.; ID.; WHERE THE DISSIMILARITY BETWEEN THE GENUINE AND FALSE SPECIMENS OF WRITING IS VISIBLE TO THE NAKED EYE, RESORT TO TECHNICAL RULES AND HANDWRITING EXPERTS IS NO LONGER NECESSARY; APPLICATION.— In upholding the validity of the SPA, the Court of Appeals brushed aside the foregoing testimonial evidence of the expert witness and made an independent examination of the questioned signatures, and based thereon, ruled that there is no forgery. The appellate court attributed the variations to the passage of time and the person's increase in age and dismissed the findings of the expert witness because it failed to comply with the rules set forth in jurisprudence that the standard should embrace the time of origin of the document, so that one part comes from the time before the origin and one part from the time after the origin. We are not unmindful of the principle that in order to bring about an accurate comparison and analysis, the standard of comparison must be as close as possible in point of time to the suspected signature. However, when the dissimilarity between the genuine and false specimens of writing

is visible to the naked eye and would not ordinarily escape notice or detection from an unpracticed observer, resort to technical rules is no longer necessary and the instrument may be stricken off for being spurious. More so when, as in this case, the forgery was testified to and thus established by evidence other than the writing itself. When so established and is conspicuously evident from its appearance, the opinion of handwriting experts on the forged document is no longer necessary.

3. CIVIL LAW; SPECIAL CONTRACTS; SALES; INNOCENT PURCHASER FOR VALUE, EXPLAINED.— An innocent purchaser for value is one who buys the property of another without notice that some other person has a right to or interest in it, and who pays a full and fair price at the time of the purchase or before receiving any notice of another person's claim. The burden of proving the status of a purchaser in good faith and for value lies upon one who asserts that status. This *onus probandi* cannot be discharged by mere invocation of the ordinary presumption of good faith.

4. ID.; ID.; ID.; ID.; THE PROTECTION ACCORDED TO AN INNOCENT PURCHASER FOR VALUE CANNOT BE EXTENDED TO A PURCHASER WHO IS NOT DEALING WITH THE REGISTERED OWNER OF THE LAND.— While this Court protects the right of the innocent purchaser for value and does not require him to look beyond the certificate of title, this protection is not extended to a purchaser who is not dealing with the registered owner of the land. In case the buyer does not deal with the registered owner of the real property, the law requires that a higher degree of prudence be exercised by the purchaser.

5. ID.; ID.; ID.; ID.; BUYERS WHO FAILED TO ASCERTAIN THE GENUINENESS OF THE AGENT'S AUTHORITY TO SELL THE LAND, CANNOT CLAIM THAT THEY ACTED IN GOOD FAITH.— An assiduous examination of the records of this case pointed to the utter lack of good faith of the Spouses Go. There is no question that the Spouses Go dealt not with the registered owner of the property, but with a certain Belisario, who represented himself as an agent of Felix. An ordinary prudent man in this situation would have first inquired with the registered owner if he is indeed selling

his property and if he authorized the purported agent to negotiate and to sell the said property on his behalf. It is inconceivable for the Spouses Go to have been without any opportunity to contact Felix before the transaction, given that the Spouses Go personally knew the Buctons' for they are residents of the same locality and both Felix and Gonzalo were members of the Knights of Columbus. Instead, the Spouses Go entered into a sale contract with an agent according full faith and credence to the SPA he was presented with thereby exposing the evident dearth of merit in their claim that they exercised prudence in entering into the sale in question. It was only after the sale was consummated that Gonzalo called Felix to inform him that he already bought the subject property from Belisario who was surprised to learn about the transaction. In an effort to extricate themselves from this quandary, the Spouses Go claimed that they authorized their lawyer to inspect the title of the property including the property itself for any possible burdens. Such assertion could have saved the day for the Spouses Go if they were dealing directly with the registered owner and not with a mere agent. As buyers of the property dealing with an agent, the Spouses Go are chargeable with knowledge of agent's authority or the lack thereof, and their failure to ascertain the genuineness and authenticity of the latter's authority do not entitle them to invoke the protection the law accords to purchasers in good faith and for value. They cannot close their eyes to facts that should put a reasonable man on his guard and still claim that he acted in good faith. Certainly, we cannot ascribe good faith to those who have not shown any diligence in protecting their rights.

6. ID.; PRESCRIPTION; WHERE THE BUYERS FAILED TO MEET THE REQUIREMENT OF GOOD FAITH AND JUST TITLE THEY CANNOT INVOKE THE TEN-YEAR PRESCRIPTIVE PERIOD AS A DEFENSE; EXTRAORDINARY ACQUISITIVE PRESCRIPTION VESTS OWNERSHIP OVER THE PROPERTY ONLY UPON PROOF OF UNINTERRUPTED ADVERSE POSSESSION OF THIRTY YEARS WITHOUT NEED OF TITLE OR GOOD FAITH.— [T]he Spouses Go miserably failed to meet the requirements of good faith and just title, thus, the ten-year prescriptive period is a defense unavailable

to them. It must be stressed that possession by virtue of a spurious title cannot be considered constructive possession for the purpose of reckoning the ten-year prescriptive period. The conclusion of the appellate court that prescription has already set in is erroneously premised on the absence of forgery and the consequent validity of the deed of sale. And, extraordinary acquisitive prescription cannot, similarly, vest ownership over the property upon the Spouses Go since the law requires 30 years of uninterrupted adverse possession without need of title or of good faith before real rights over immovable prescribes. The Spouses Go purportedly took possession of the subject property since March 1981 but such possession was effectively interrupted with the filing of the instant case before the RTC on 19 February 1996. This period is 15 years short of the thirty-year requirement mandated by Article 1137.

APPEARANCES OF COUNSEL

Arcol and Musni Law Offices for petitioners.
Dela Serna & Associates Law Offices for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Revised Rules of Court, assailing the 27 May 2009 Decision[2] rendered by the Special Twenty-First (21st) Division of the Court of Appeals in CA-G.R. CV No. 00888-MIN. In its assailed decision, the appellate court affirmed the Judgment[3] of the Regional Trial Court (RTC) of Misamis Oriental, Branch

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[1] *Rollo,* pp. 10-41.

[2] Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Edgardo A. Camello and Michael P. Elbinias, concurring. *Id*. at 43-70.

[3] Presided by Presiding Judge Florencia D. Sealana-Abbu. Records, pp. 578-586.

17, which upheld the title of the respondents Spouses Gonzalo and Trinidad Go (Spouses Go) over the subject property.

The Facts

The suit concerns a parcel of land with an area of 6,407 square meters situated in Lapasan, Cagayan de Oro City and presently registered under Transfer Certificate of Title (TCT) No. T-34210[4] by the Registry of Deeds of Cagayan de Oro City in the names of the Spouses Go. The said property was originally registered in the name of Felix M. Bucton (Felix), married to Nicanora Gabar (Nicanora) and covered by TCT No. T-9830.[5]

Sometime in March 1981, Felix received a phone call from Gonzalo Go (Gonzalo) informing him that he has bought the subject property thru a certain Benjamin Belisario (Belisario) who represented himself as the attorney-in-fact of Felix. Surprised to learn about the transaction, Felix made an inquiry whereby he learned that the owner's duplicate certificate of title of the subject property was lost while in the possession of his daughter, Agnes Bucton-Lugod (Agnes). By an unfortunate turn of events, the said certificate of title fell into the hands of Belisario, Josefa Pacardo (Pacardo) and Salome Cabili (Cabili), who allegedly conspired with each other to unlawfully deprive Felix of his ownership of the above-mentioned property.

As shown in the annotation at the back of the title, the Spouses Bucton purportedly authorized Belisario to sell the subject property to third persons, as evidenced by a Special Power of Attorney (SPA)[6] allegedly signed by the Spouses Bucton on 27 February 1981. On the strength of the said SPA, Belisario, on 2 March 1981, executed a Deed of Absolute Sale[7] in favor of the Spouses Go. Consequently, the Registry of Deeds of Cagayan de Oro City cancelled TCT No. T-9830 in the name of Felix

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[4] *Id*. at 19.

[5] *Id*. at 15-16.

[6] *Id*. at 17.

[7] *Id*. at 18.

and issued a new one under TCT No. T-34210 in the names of the Spouses Go.

Meanwhile, Felix passed away leaving Nicanora, Erlinda Bucton-Eblamo, Agnes, Wilma Bucton-Yray and Don Bucton (Heirs of Felix), as his intestate heirs.

Claiming that the signatures of the Spouses Bucton on the SPA were forged, the Heirs of Felix, on 19 February 1996, filed against the Spouses Go a complaint for Annulment of the SPA, Deed of Absolute Sale and TCT No. T-34210, Recovery of Ownership and Possession, Damages, with Prayer for Writ of Preliminary Injunction or Temporary Restraining Order before the RTC of Misamis Oriental, Branch 17.[8] In their Complaint docketed as Civil Case No. 96-093, the Heirs of Felix mainly alleged that since the SPA was spurious, no valid title was conveyed to the Spouses Go.[9] Such being the case, the Heirs of Felix argued that the cancellation of the certificate of title in the names of the Spouses Go and the reconveyance of the ownership and possession of the disputed property, are warranted in the instant case.[10]

In their Answer,[11] the Spouses Go refuted the allegations in the complaint by asserting that they are buyers in good faith and for value, and that they are in actual possession of the property from the time it was purchased in 1981. In insisting that their title is valid and binding, the Spouses Go argued that under the Torrens system, a person dealing with the registered land may safely rely on the correctness of the certificate of title without the need of further inquiry. For this reason, they posited that the Court cannot disregard the right of an innocent third person who relies on the correctness of the certificate of title and they are entitled to the protection of the law.

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[8] *Id*. at 2-12.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 33-36.

After the pre-trial conference was terminated without the parties having reached at an amicable settlement, the RTC went on to receive testimonial and documentary evidence adduced by the parties in support of their respective positions.

On 25 June 2005, the RTC issued a Judgment,[12] finding that the complaint filed by the Heirs of Felix is already barred by laches and prescription. The court *a quo* observed that from the time the alleged fraudulent transaction was discovered in 1981 up to 1996 the complainants failed to take any legal step to assail the title of the Spouses Go. The trial court thus disposed in the following wise:

> WHEREFORE, premises considered, the court finds for the defendants. Accordingly, the case is hereby dismissed as it is hereby dismissed on grounds that plaintiffs were barred by laches and prescription. With costs against plaintiffs.[13]

Elevated by the Heirs of Felix on appeal before the Court of Appeals, under CA-G.R. CV No. 00888-MIN, the foregoing decision was affirmed by the appellate court in its 27 May 2009 Decision.[14] In upholding the dismissal of the complaint, the Court of Appeals found that the evidence adduced by the Heirs of Felix failed to preponderantly establish that the questioned SPA was a forgery.[15] The appellate court further declared that the Spouses Go were innocent purchasers for value who acquired the property without any knowledge that the right of Belisario as attorney-in-fact was merely simulated.[16] It determined that the Spouses Go can rely in good faith on the face of the certificate of title, and in the absence of any sign that might arouse suspicion, the buyers are under no obligation to undertake further

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[12] *Id*. at 578-586.

[13] *Id*. at 586.

[14] *Rollo*, pp. 43-70.

[15] *Id*.

[16] *Id*.

investigation.[17] The dispositive portion of the assailed Court of Appeals Decision reads:

> WHEREFORE, in view of all the foregoing, the instant appeal is hereby DISMISSED and the assailed June 25, 2005 Decision of the Regional Trial Court (RTC) of Misamis Oriental, Branch 17, 10th Judicial Region, Cagayan de Oro City, in Civil Case No. 96-093, is hereby AFFIRMED *in toto*.[18]

The Heirs of Felix are now before this Court assailing the above-quoted Court of Appeals Decision and raising the following issues:

The Issues

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN RULING THAT THE SIGNATURES OF THE SPOUSES BUCTON IN THE SPA WERE NOT FORGED;

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT THE SPOUSES GO ARE INNOCENT PURCHASERS FOR VALUE; AND

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT HELD THAT ACTION OF THE HEIRS OF FELIX ARE ALREADY BARRED BY LACHES AND PRESCRIPTION.[19]

The Court's Ruling

We find the petition impressed with merit.[20]

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[17] *Id*.

[18] *Id*. at 69.

[19] *Id*. at 13-14.

[20] Factual findings of trial courts, especially when affirmed by the Court of Appeals, as in this case, are binding on the Supreme Court. Indeed, the review of such findings is not a function that this Court normally undertakes. It should be stressed that under the 1997 Rules of Civil Procedure, as amended, only questions of law may be raised in a petition for review

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in the instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged.[21]

To prove forgery, the Heirs of Felix offered the testimony of an expert witness, Eliodoro Constantino (Constantino) of the National Bureau of Investigation who testified that significant differences existed between the signatures of Felix on the standard documents from the one found in the SPA of Belisario. His testimony, however, was disregarded both by the RTC and the Court of Appeals which upheld the validity of the SPA on the ground that it enjoys the presumption of regularity of a public document.

While it is true that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity, this presumption, however, is not absolute.[22] It may be rebutted by clear and convincing evidence to the contrary.[23] The testimony of

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before this Court. However, this Rule is not absolute; it admits of exceptions, such as (1) when the findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case, or fail to notice certain relevant facts which — if properly considered — will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. See *Philippine Rabbit Bus Lines, Inc. v. Macalinao,* 491 Phil. 249, 255-256 (2005).

[21] *Citibank, N.A. v. Sabeniano,* 535 Phil. 384, 471-472 (2006).

[22] *Eulogio v. Apeles*, G.R. No. 167884, 20 January 2009, 576 SCRA 561, 571.

[23] *Id*.

Constantino and Nicanora, had it been properly appreciated, is sufficient to overcome the presumption of regularity attached to public documents and to meet the stringent requirements to prove forgery.

Constantino pointed out in open court the manifest disparity between the strokes of the letters of Felix's purported signature on the assailed SPA and the latter's genuine signature which led him to conclude that the standard signature and the one appearing in the SPA were not written by one and the same person.[24] To further fortify their claim, Nicanora herself took the witness stand and testified that she is familiar with her husband's signature for they had been married for more than 50 years. She denied having signed her name on the SPA and averred that the signature appearing above the name of Felix was not that of her husband.[25]

Evidently, the foregoing testimonial evidence adduced by the Heirs of Felix are proof opposite to that which is required to show the genuineness of a handwriting as set forth by the Rules of Court:

> Rule 132. Sec. 22. *How genuineness of handwriting proved.* The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, or has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.[26]

In upholding the validity of the SPA, the Court of Appeals brushed aside the foregoing testimonial evidence of the expert witness and made an independent examination of the questioned

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[24] TSN, 20 June 2000, pp. 2-35.

[25] TSN, 31 August 2000, pp. 2-19.

[26] *Sanson v. Court of Appeals*, 449 Phil. 343, 355 (2003).

signatures, and based thereon, ruled that there is no forgery. The appellate court attributed the variations to the passage of time and the person's increase in age and dismissed the findings of the expert witness because it failed to comply with the rules set forth in jurisprudence that the standard should embrace the time of origin of the document, so that one part comes from the time before the origin and one part from the time after the origin.[27] We are not unmindful of the principle that in order to bring about an accurate comparison and analysis, the standard of comparison must be as close as possible in point of time to the suspected signature.[28] However, when the dissimilarity between the genuine and false specimens of writing is visible to the naked eye and would not ordinarily escape notice or detection from an unpracticed observer, resort to technical rules is no longer necessary and the instrument may be stricken off for being spurious. More so when, as in this case, the forgery was testified to and thus established by evidence other than the writing itself. When so established and is conspicuously evident from its appearance, the opinion of handwriting experts on the forged document is no longer necessary.[29]

Far more important from the testimony of the witnesses is the fact that in 1984, Felix filed a criminal case for falsification of public document against Belisario, Pacardo and Cabili docketed as Criminal Case No. 4679 before the RTC of Misamis Oriental, Branch 22.[30] The case was, however, archived after the accused jumped bail and could not be arrested.[31]

Indubitably, the foregoing testimonial and circumstantial evidence cast doubt on the integrity, genuineness, and veracity on the questioned SPA and impels this Court to tilt the scale in favor of the Heirs of Felix. Although there is no direct evidence

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[27] *Cogtong v. Kyoritsu International, Inc.*, 555 Phil. 302, 307 (2007).

[28] *Id*.

[29] *Gamido v. Court of Appeals*, 321 Phil. 463, 472-473 (1995).

[30] Records, p. 579.

[31] *Id*.

to prove forgery, preponderance of evidence indubitably favors the Heirs of Felix. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence."[32] Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[33]

We now proceed to determine whether the Spouses Go are innocent purchasers for value. It has been consistently held that a forged deed can become a source of a valid title when the buyers are in good faith.[34]

An innocent purchaser for value is one who buys the property of another without notice that some other person has a right to or interest in it, and who pays a full and fair price at the time of the purchase or before receiving any notice of another person's claim.[35] The burden of proving the status of a purchaser in good faith and for value lies upon one who asserts that status.[36] This *onus probandi* cannot be discharged by mere invocation of the ordinary presumption of good faith.[37]

As a general rule, every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefore and the law will no way oblige him to go beyond the certificate to determine the condition of the property.[38] However, this principle admits exceptions:

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[32] *Id*.

[33] *Id*.

[34] *Rufloe v. Burgos*, G.R. No. 143573, 30 January 2009, 577 SCRA 264, 273.

[35] *Id*.

[36] *Id*.

[37] *Id*.

[38] *Cayana v. Court of Appeals*, 469 Phil. 830, 846 (2004).

x x x (a) person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of inquiring further except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of the certificate. One who falls within the exception can neither be denominated [as] innocent purchaser for value nor a purchaser in good faith; and hence does not merit the protection of the law.[39]

While this Court protects the right of the innocent purchaser for value and does not require him to look beyond the certificate of title, this protection is not extended to a purchaser who is not dealing with the registered owner of the land. In case the buyer does not deal with the registered owner of the real property, the law requires that a higher degree of prudence be exercised by the purchaser. As succinctly pointed out in *San Pedro v. Ong*:[40]

The Court has stressed time and again that every person dealing with an agent is put upon inquiry, and must discover upon his peril the authority of the agent, and this is especially true where the act of the agent is of unusual nature. **If a person makes no inquiry, he is chargeable with knowledge of the agent's authority, and his ignorance of that authority will not be any excuse**. (Emphasis and underscoring supplied).

An assiduous examination of the records of this case pointed to the utter lack of good faith of the Spouses Go. There is no question that the Spouses Go dealt not with the registered owner of the property, but with a certain Belisario, who represented himself as an agent of Felix. An ordinary prudent man in this situation would have first inquired with the registered owner if

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[39] *Id*.

[40] G.R. No. 177598, 17 October 2008, 569 SCRA 767, 785.

he is indeed selling his property and if he authorized the purported agent to negotiate and to sell the said property on his behalf. It is inconceivable for the Spouses Go to have been without any opportunity to contact Felix before the transaction, given that the Spouses Go personally knew the Buctons' for they are residents of the same locality and both Felix and Gonzalo were members of the Knights of Columbus. Instead, the Spouses Go entered into a sale contract with an agent according full faith and credence to the SPA he was presented with thereby exposing the evident dearth of merit in their claim that they exercised prudence in entering into the sale in question. It was only after the sale was consummated that Gonzalo called Felix to inform him that he already bought the subject property from Belisario who was surprised to learn about the transaction. In an effort to extricate themselves from this quandary, the Spouses Go claimed that they authorized their lawyer to inspect the title of the property including the property itself for any possible burdens. Such assertion could have saved the day for the Spouses Go if they were dealing directly with the registered owner and not with a mere agent. As buyers of the property dealing with an agent, the Spouses Go are chargeable with knowledge of agent's authority or the lack thereof, and their failure to ascertain the genuineness and authenticity of the latter's authority do not entitle them to invoke the protection the law accords to purchasers in good faith and for value. They cannot close their eyes to facts that should put a reasonable man on his guard and still claim that he acted in good faith. Certainly, we cannot ascribe good faith to those who have not shown any diligence in protecting their rights.[41]

Likewise worthy of credence is the claim of the Heirs of Felix that the instant case is not barred by laches or prescription. As held in *Titong v. Court of Appeals*,[42] ownership and real rights over real property are acquired by ordinary prescription through

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[41] *Rufloe v. Burgos*, *supra* note 34 at 275-276.

[42] 350 Phil. 544 (1998).

possession of ten years,[43] provided that the occupant is in good faith and with just title, *viz:*

> x x x [A] prescriptive title to real estate is not acquired by mere possession thereof under claim of ownership for a period of ten years unless such possession was acquired *con justo tilulo y buena fe* (with color of title and good faith). The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership. For purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights but the grantor was not the owner or could not transmit any right.[44]

As pointed out earlier, the Spouses Go miserably failed to meet the requirements of good faith and just title, thus, the ten-year prescriptive period is a defense unavailable to them. It must be stressed that possession by virtue of a spurious title cannot be considered constructive possession for the purpose of reckoning the ten-year prescriptive period. The conclusion of the appellate court that prescription has already set in is erroneously premised on the absence of forgery and the consequent validity of the deed of sale. And, extraordinary acquisitive prescription cannot, similarly, vest ownership over the property upon the Spouses Go since the law requires 30 years of uninterrupted adverse possession without need of title or of good faith before real rights over immovable prescribes.[45] The Spouses Go purportedly took possession of the subject property since March 1981 but such possession was effectively interrupted with the filing of the instant case before the RTC on 19 February 1996.[46]

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[43] Civil Code, Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

[44] *Titong v. Court of Appeals, supra* note 42 at 556.

[45] *Id.* at 556-557.

[46] Records, pp. 2-12.

This period is 15 years short of the thirty-year requirement mandated by Article 1137.[47]

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision of the Court of Appeals is hereby **REVERSED and SET ASIDE**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194307. November 20, 2013]

BIRKENSTOCK ORTHOPAEDIE GMBH AND CO. KG (formerly BIRKENSTOCK ORTHOPAEDIE GMBH*), petitioner, vs.* **PHILIPPINE SHOE EXPO MARKETING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; MAY BE RELAXED IN MERITORIOUS CASES TO RELIEVE A LITIGANT OF AN INJUSTICE NOT COMMENSURATE WITH THE DEGREE OF HIS THOUGHTLESSNESS IN NOT COMPLYING WITH THE PROCEDURE PRESCRIBED.— It is well-settled that "the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of

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[47] Civil Code, Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities." "Indeed, the primordial policy is a faithful observance of [procedural rules], and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." This is especially true with quasi-judicial and administrative bodies, such as the IPO, which are not bound by technical rules of procedure. x x x In the case at bar, while petitioner submitted mere photocopies as documentary evidence in the Consolidated Opposition Cases, it should be noted that the IPO had already obtained the originals of such documentary evidence in the related Cancellation Case earlier filed before it. Under this circumstance and the merits of the instant case x x x, the Court holds the IPO Director General's relaxation of procedure was a valid exercise of his discretion in the interest of substantial justice.

2. MERCANTILE LAW; INTELLECTUAL PROPERTY LAWS; REPUBLIC ACT NO. 166; TRADEMARKS; FAILURE TO FILE THE DECLARATION OF ACTUAL USE WITHIN THE REQUISITE PERIOD RESULTS IN THE AUTOMATIC CANCELLATION OF REGISTRATION OF A TRADEMARK.— Republic Act No. (RA) 166, the governing law for Registration No. 56334, requires the filing of a DAU on specified periods x x x. The aforementioned provision clearly reveals that failure to file the DAU within the requisite period results in the automatic cancellation of registration of trademark. In turn, such failure is tantamount to the abandonment or withdrawal of any right or interest the registrant has over his trademark. In this case, respondent admitted that it failed to file the 10th Year DAU for Registration No. 56334 within the requisite period, or on or before October 21, 2004. As a consequence, it was deemed to have abandoned or withdrawn any right or interest over the mark "BIRKENSTOCK." Neither can it invoke Section 236 of the

IP Code which pertains to intellectual property rights obtained under previous intellectual property laws, *e.g.*, RA 166, precisely because it already lost any right or interest over the said mark.

3. ID.; ID.; ID.; ID.; TO REGISTER A TRADEMARK, ONE MUST BE THE OWNER THEREOF AND MUST HAVE ACTUALLY USED THE MARK IN COMMERCE IN THE PHILIPPINES FOR TWO MONTHS PRIOR TO REGISTRATION.— Under Section 2 of RA 166, which is also the law governing the subject applications, in order to register a trademark, one must be the owner thereof and must have actually used the mark in commerce in the Philippines for two (2) months prior to application for registration. Section 2-A of the same law sets out to define how one goes about acquiring ownership thereof. Under the same section, it is clear that actual use in commerce is also the test of ownership but the provision went further by saying that the mark must not have been so appropriated by another. Significantly, to be an owner, Section 2-A does not require that the actual use of trademark must be within the Philippines. Thus, under RA 166, one may be an owner of a mark due to its actual use but may not yet have the right to register such ownership here due to the owner's failure to use the same in the Philippines for two (2) months prior to registration.

4. ID.; ID.; TRADEMARKS; IT IS NOT THE REGISTRATION OF A TRADEMARK THAT VESTS OWNERSHIP THEREOF, BUT IT IS THE OWNERSHIP OF A TRADEMARK THAT CONFERS THE RIGHT TO REGISTER THE SAME.— [R]egistration of a trademark, by itself, is not a mode of acquiring ownership. If the applicant is not the owner of the trademark, he has no right to apply for its registration. Registration merely creates a *prima facie* presumption of the validity of the registration, of the registrant's ownership of the trademark, and of the exclusive right to the use thereof. Such presumption, just like the presumptive regularity in the performance of official functions, is rebuttable and must give way to evidence to the contrary. Clearly, it is not the application or registration of a trademark that vests ownership thereof, but it is the ownership of a trademark that confers the right to register the same. A trademark is an industrial property over which its owner is entitled to

property rights which cannot be appropriated by unscrupulous entities that, in one way or another, happen to register such trademark ahead of its true and lawful owner. The presumption of ownership accorded to a registrant must then necessarily yield to superior evidence of actual and real ownership of a trademark.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Brondial Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the Court of Appeals' (CA) Decision[2] dated June 25, 2010 and Resolution[3] dated October 27, 2010 in CA-G.R. SP No. 112278 which reversed and set aside the Intellectual Property Office (IPO) Director General's Decision[4] dated December 22, 2009 that allowed the registration of various trademarks in favor of petitioner Birkenstock Orthopaedie GmbH & Co. KG.

The Facts

Petitioner, a corporation duly organized and existing under the laws of Germany, applied for various trademark registrations before the IPO, namely: (*a*) "BIRKENSTOCK" under Trademark Application Serial No. (TASN) 4-1994-091508 for goods falling under Class 25 of the International Classification of Goods and Services (Nice Classification) with filing date of

[1] *Rollo*, pp. 11-74.

[2] *Id*. at 98-126. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino, concurring.

[3] *Id*. at 128-129.

[4] *Id*. at 132-146. Penned by Director General Adrian S. Cristobal, Jr.

March 11, 1994; (*b*) "BIRKENSTOCK BAD HONNEF-RHEIN & DEVICE COMPRISING OF ROUND COMPANY SEAL AND REPRESENTATION OF A FOOT, CROSS AND SUNBEAM" under TASN 4-1994-091509 for goods falling under Class 25 of the Nice Classification with filing date of March 11, 1994; and (*c*) "BIRKENSTOCK BAD HONNEF-RHEIN & DEVICE COMPRISING OF ROUND COMPANY SEAL AND REPRESENTATION OF A FOOT, CROSS AND SUNBEAM" under TASN 4-1994-095043 for goods falling under Class 10 of the Nice Classification with filing date of September 5, 1994 (subject applications).[5]

However, registration proceedings of the subject applications were suspended in view of an existing registration of the mark "BIRKENSTOCK AND DEVICE" under Registration No. 56334 dated October 21, 1993 (Registration No. 56334) in the name of Shoe Town International and Industrial Corporation, the predecessor-in-interest of respondent Philippine Shoe Expo Marketing Corporation.[6] In this regard, on May 27, 1997 petitioner filed a petition for cancellation of Registration No. 56334 on the ground that it is the lawful and rightful owner of the Birkenstock marks (Cancellation Case).[7] During its pendency, however, respondent and/or its predecessor-in-interest failed to file the required 10th Year Declaration of Actual Use (10th Year DAU) for Registration No. 56334 on or before October 21, 2004,[8] thereby resulting in the cancellation of such mark.[9] Accordingly, the cancellation case was dismissed for being moot and academic.[10]

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[5] *Id*. at 99.

[6] On February 24, 2004, Shoe Town International and Industrial Corporation formally assigned the mark "BIRKENSTOCK AND DEVICE" under Registration No. 56334 in favor of respondent; *id*. at 102.

[7] *Id*. at 20.

[8] *Id*. at 102.

[9] *Id*. at 142.

[10] *Id*. at 21.

The aforesaid cancellation of Registration No. 56334 paved the way for the publication of the subject applications in the IPO e-Gazette on February 2, 2007. [11] In response, respondent filed three (3) separate verified notices of oppositions to the subject applications docketed as *Inter Partes* Case Nos. 14-2007-00108, 14-2007-00115, and 14-2007-00116, [12] claiming, *inter alia*, that: (*a*) it, together with its predecessor-in-interest, has been using Birkenstock marks in the Philippines for more than 16 years through the mark "BIRKENSTOCK AND DEVICE"; (*b*) the marks covered by the subject applications are identical to the one covered by Registration No. 56334 and thus, petitioner has no right to the registration of such marks; (*c*) on November 15, 1991, respondent's predecessor-in-interest likewise obtained a Certificate of Copyright Registration No. 0-11193 for the word "BIRKENSTOCK"; (*d*) while respondent and its predecessor-in-interest failed to file the 10th Year DAU, it continued the use of "BIRKENSTOCK AND DEVICE" in lawful commerce; and (*e*) to record its continued ownership and exclusive right to use the "BIRKENSTOCK" marks, it has filed TASN 4-2006-010273 as a "re-application" of its old registration, Registration No. 56334.[13] On November 13, 2007, the Bureau of Legal Affairs (BLA) of the IPO issued Order No. 2007-2051 consolidating the aforesaid *inter partes* cases (Consolidated Opposition Cases).[14]

The Ruling of the BLA

In its Decision[15] dated May 28, 2008, the BLA of the IPO sustained respondent's opposition, thus, ordering the rejection of the subject applications. It ruled that the competing marks of the parties are confusingly similar since they contained the word "BIRKENSTOCK" and are used on the same and related goods.

[11] *Id*. at 99.

[12] *Id*. at 99-100.

[13] *Id*. at 101-105.

[14] *Id*. at 111 and 133.

[15] *Id*. at 111. Decision No. 2008-102.

It found respondent and its predecessor-in- interest as the prior user and adopter of "BIRKENSTOCK" in the Philippines, while on the other hand, petitioner failed to present evidence of actual use in the trade and business in this country. It opined that while Registration No. 56334 was cancelled, it does not follow that prior right over the mark was lost, as proof of continuous and uninterrupted use in trade and business in the Philippines was presented. The BLA likewise opined that petitioner's marks are not well-known in the Philippines and internationally and that the various certificates of registration submitted by petitioners were all photocopies and, therefore, not admissible as evidence.[16]

Aggrieved, petitioner appealed to the IPO Director General.

The Ruling of the IPO Director General

In his Decision[17] dated December 22, 2009, the IPO Director General reversed and set aside the ruling of the BLA, thus allowing the registration of the subject applications. He held that with the cancellation of Registration No. 56334 for respondent's failure to file the 10th Year DAU, there is no more reason to reject the subject applications on the ground of prior registration by another proprietor.[18] More importantly, he found that the evidence presented proved that petitioner is the true and lawful owner and prior user of "BIRKENSTOCK" marks and thus, entitled to the registration of the marks covered by the subject applications.[19] The IPO Director General further held that respondent's copyright for the word "BIRKENSTOCK" is of no moment since copyright and trademark are different forms of intellectual property that cannot be interchanged.[20]

Finding the IPO Director General's reversal of the BLA unacceptable, respondent filed a petition for review with the CA.

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[16] *Id*. at 113 and 139.

[17] *Id*. at 132-146.

[18] *Id*. at 142.

[19] *Id*. at 144-145.

[20] *Id*. at 146.

Ruling of the CA

In its Decision[21] dated June 25, 2010, the CA reversed and set aside the ruling of the IPO Director General and reinstated that of the BLA. It disallowed the registration of the subject applications on the ground that the marks covered by such applications "are confusingly similar, if not outright identical" with respondent's mark.[22] It equally held that respondent's failure to file the 10th Year DAU for Registration No. 56334 "did not deprive petitioner of its ownership of the 'BIRKENSTOCK' mark since it has submitted substantial evidence showing its continued use, promotion and advertisement thereof up to the present."[23] It opined that when respondent's predecessor-in-interest adopted and started its actual use of "BIRKENSTOCK," there is neither an existing registration nor a pending application for the same and thus, it cannot be said that it acted in bad faith in adopting and starting the use of such mark.[24] Finally, the CA agreed with respondent that petitioner's documentary evidence, being mere photocopies, were submitted in violation of Section 8.1 of Office Order No. 79, Series of 2005 (Rules on *Inter Partes* Proceedings).

Dissatisfied, petitioner filed a Motion for Reconsideration[25] dated July 20, 2010, which was, however, denied in a Resolution[26] dated October 27, 2010. Hence, this petition.[27]

Issues Before the Court

The primordial issue raised for the Court's resolution is whether or not the subject marks should be allowed registration in the name of petitioner.

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[21] *Id*. at 98-126.

[22] *Id*. at 119.

[23] *Id*. at 121.

[24] *Id*. at 125.

[25] *Id*. at 147-182.

[26] *Id*. at 128-129.

[27] *Id*. 11-74

The Court's Ruling

The petition is meritorious.

A. Admissibility of Petitioner's Documentary Evidence.

In its Comment[28] dated April 29, 2011, respondent asserts that the documentary evidence submitted by petitioner in the Consolidated Opposition Cases, which are mere photocopies, are violative of Section 8.1 of the Rules on *Inter Partes* Proceedings, which requires certified true copies of documents and evidence presented by parties in lieu of originals.[29] As such, they should be deemed inadmissible.

The Court is not convinced.

It is well-settled that "the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities."[30] "Indeed, the primordial policy is a faithful observance of [procedural rules], and their relaxation or suspension should only be for

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[28] *Id*. at 190-221.

[29] Section 8.1 of the Rules on *Inter Partes* Proceedings states:

8.1. Within three (3) working days from receipt of the petition or opposition, the Bureau shall issue an order for the respondent to file an answer together with the affidavits of witnesses and originals of documents, and at the same time shall notify all parties required to be notified in the IP Code and these Regulations, provided that in case of public documents, certified true copies may be substituted in lieu of the originals. The affidavits and documents shall be marked consecutively as "exhibits" beginning with the number "1".

[30] *Alcantara v. Philippine Commercial and International Bank*, G.R. No. 151349, October 20, 2010, 634 SCRA 48, 61.

persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed."[31] This is especially true with quasi-judicial and administrative bodies, such as the IPO, which are not bound by technical rules of procedure.[32] On this score, Section 5 of the Rules on *Inter Partes* Proceedings provides:

> Sec. 5. *Rules of Procedure to be followed in the conduct of hearing of Inter Partes cases.* – The rules of procedure herein contained primarily apply in the conduct of hearing of *Inter Partes* cases. The Rules of Court may be applied suppletorily. The Bureau **shall not be bound by strict technical rules of procedure and evidence but may adopt, in the absence of any applicable rule herein, such mode of proceedings which is consistent with the requirements of fair play and conducive to the just, speedy and inexpensive disposition of cases**, and which will give the Bureau the greatest possibility to focus on the contentious issues before it. (Emphasis and underscoring supplied)

In the case at bar, while petitioner submitted mere photocopies as documentary evidence in the Consolidated Opposition Cases, it should be noted that the IPO had already obtained the originals of such documentary evidence in the related Cancellation Case earlier filed before it. Under this circumstance and the merits of the instant case as will be subsequently discussed, the Court holds that the IPO Director General's relaxation of procedure was a valid exercise of his discretion in the interest of substantial justice.[33]

Having settled the foregoing procedural matter, the Court now proceeds to resolve the substantive issues.

B. Registration and ownership of "BIRKENSTOCK."

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[31] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 188051, November 22, 2010, 635 SCRA 637, 645.

[32] See *E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.*, G.R. No. 184850, October 20, 2010, 634 SCRA 363, 378.

[33] See *id.* at 378-381.

Republic Act No. (RA) 166,[34] the governing law for Registration No. 56334, requires the filing of a DAU on specified periods,[35] to wit:

Section 12. *Duration*. – Each certificate of registration shall remain in force for twenty years: Provided, **That registrations under the provisions of this Act shall be cancelled by the Director, unless within one year following the fifth, tenth and fifteenth**

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[34] Entitled, "AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE- NAMES AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES."

[35] Such rule was carried over in Sections 124.2 and 145 of RA 8293, otherwise known as the Intellectual Property Code of the Philippines (IP Code), *viz.*:

Sec. 124. *Requirements of Application*. – x x x

xxx xxx xxx

124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

Sec. 145. *Duration*. – A certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office.

In the same manner, Rules 204 and 801 of the Rules and Regulations on Trademarks provide:

Rule 204. *Declaration of Actual Use*. – The Office will not require any proof of use in commerce in the processing of trademark applications. However, without need of any notice from the Office, all applicants or registrants shall file a declaration of actual use of the mark with evidence to that effect within three years, without possibility of extension, from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the register by the Director *motu proprio*.

Rule 801. *Duration*. – A certificate of registration shall remain in force for ten (10) years, Provided, That without need of any notice from the

anniversaries of the date of issue of the certificate of registration, the registrant shall file in the Patent Office an affidavit showing that the mark or trade-name is still in use or showing that its non-use is due to special circumstance which excuse such non-use and is not due to any intention to abandon the same, and pay the required fee.

The Director shall notify the registrant who files the above-prescribed affidavits of his acceptance or refusal thereof and, if a refusal, the reasons therefor. (Emphasis and underscoring supplied)

The aforementioned provision clearly reveals that failure to file the DAU within the requisite period results in the automatic cancellation of registration of a trademark. In turn, such failure is tantamount to the abandonment or withdrawal of any right or interest the registrant has over his trademark.[36]

In this case, respondent admitted that it failed to file the 10th Year DAU for Registration No. 56334 within the requisite period, or on or before October 21, 2004. As a consequence, it was deemed to have abandoned or withdrawn any right or interest over the mark "BIRKENSTOCK." Neither can it invoke Section 236[37] of the IP Code which pertains to intellectual property rights obtained under previous intellectual property laws, *e.g.*, RA 166, precisely because it already lost any right or interest over the said mark.

Office, the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by these Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the Office shall remove the mark from the Register. Within one (1) month from receipt of the declaration of actual use or reason for nonuse, the Examiner shall notify the registrant of the action taken thereon such as acceptance or refusal.

[36] See *Mattel, Inc. v. Francisco*, G.R. No. 166886, July 30, 2008, 560 SCRA 504, 513-514.

[37] Section 236 of the IP Code provides:

Sec. 236. *Preservation of Existing Rights*. – Nothing herein shall adversely affect the rights on the enforcement of rights in patents, utility models, industrial designs, marks and works, acquired in good faith prior to the effective date of this Act.

Besides, petitioner has duly established its true and lawful ownership of the mark "BIRKENSTOCK."

Under Section 2[38] of RA 166, which is also the law governing the subject applications, in order to register a trademark, one must be the owner thereof and must have actually used the mark in commerce in the Philippines for two (2) months prior to the application for registration. Section 2-A[39] of the same law sets out to define how one goes about acquiring ownership thereof. Under the same section, it is clear that actual use in commerce is also the test of ownership but the provision went further by saying that the mark must not have been so appropriated by another. Significantly, to be an owner, Section 2-A does not require that the actual use of a trademark must be within the Philippines. Thus, under RA 166, one may be an owner of a mark due to its actual use but may not yet have the right to register such ownership here due to the owner's failure to use

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[38] Section 2 of RA 166 provides:

Sec. 2. What are registrable. – Trademarks, trade names and service marks owned by persons, corporations, partnerships or associations domiciled in the Philippines and by persons, corporations, partnerships or associations domiciled in any foreign country may be registered in accordance with the provisions of this Act: Provided, That said trademarks, trade names, or service marks are actually in use in commerce and services not less than two months in the Philippines before the time the applications for registration are filed; And provided, further, That the country of which the applicant for registration is a citizen grants by law substantially similar privileges to citizens of the Philippines, and such fact is officially certified, with a certified true copy of the foreign law translated into the English language, by the government of the foreign country to the Government of the Republic of the Philippines.

[39] Section 2-A, which was added by RA 638 to RA 166, provides:

Sec. 2-A. *Ownership of trademarks, trade names and service marks; how acquired*. – Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trademark, a trade name , or a service mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession

the same in the Philippines for two (2) months prior to registration.[40]

It must be emphasized that registration of a trademark, by itself, is not a mode of acquiring ownership. If the applicant is not the owner of the trademark, he has no right to apply for its registration. Registration merely creates a *prima facie* presumption of the validity of the registration, of the registrant's ownership of the trademark, and of the exclusive right to the use thereof. Such presumption, just like the presumptive regularity in the performance of official functions, is rebuttable and must give way to evidence to the contrary.[41]

Clearly, it is not the application or registration of a trademark that vests ownership thereof, but it is the ownership of a trademark that confers the right to register the same. A trademark is an industrial property over which its owner is entitled to property rights which cannot be appropriated by unscrupulous entities that, in one way or another, happen to register such trademark ahead of its true and lawful owner. The presumption of ownership accorded to a registrant must then necessarily yield to superior evidence of actual and real ownership of a trademark. The Court's pronouncement in *Berris Agricultural Co., Inc. v. Abyadang*[42] is instructive on this point:

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made

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of a trademark, trade name, service mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to this law.

[40] *Ecole de Cuisine Manille (The Cordon Bleu of the Philippines), Inc. v. Renaud Cointreau & Cie and Le Cordon Bleu Int'l., B.V.*, G.R. No. 185830, June 5, 2013, citing *Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938, March 31, 2006, 486 SCRA 405, 426.

[41] *Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938, March 31, 2006, 486 SCRA 405, 420-421.

[42] G.R. No. 183404, October 13, 2010, 633 SCRA 196.

available to the purchasing public. x x x A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. x x x In other words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome in an appropriate action, x x x **by evidence of prior use by another person, *i.e.*, it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce.**[43] (Emphasis and underscoring supplied)

In the instant case, petitioner was able to establish that it is the owner of the mark "BIRKENSTOCK." It submitted evidence relating to the origin and history of "BIRKENSTOCK" and its use in commerce long before respondent was able to register the same here in the Philippines. It has sufficiently proven that "BIRKENSTOCK" was first adopted in Europe in 1774 by its inventor, Johann Birkenstock, a shoemaker, on his line of quality footwear and thereafter, numerous generations of his kin continuously engaged in the manufacture and sale of shoes and sandals bearing the mark "BIRKENSTOCK" until it became the entity now known as the petitioner. Petitioner also submitted various certificates of registration of the mark "BIRKENSTOCK" in various countries and that it has used such mark in different countries worldwide, including the Philippines.[44]

On the other hand, aside from Registration No. 56334 which had been cancelled, respondent only presented copies of sales invoices and advertisements, which are not conclusive evidence of its claim of ownership of the mark "BIRKENSTOCK" as these merely show the transactions made by respondent involving the same.[45]

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[43] *Id.* at 204-205.

[44] *Rollo*, p. 143.

[45] *Id*.

In view of the foregoing circumstances, the Court finds the petitioner to be the true and lawful owner of the mark "BIRKENSTOCK" and entitled to its registration, and that respondent was in bad faith in having it registered in its name. In this regard, the Court quotes with approval the words of the IPO Director General, *viz.*:

> The facts and evidence fail to show that [respondent] was in good faith in using and in registering the mark BIRKENSTOCK. BIRKENSTOCK, obviously of German origin, is a highly distinct and arbitrary mark. It is very remote that two persons did coin the same or identical marks. To come up with a highly distinct and uncommon mark previously appropriated by another, for use in the same line of business, and without any plausible explanation, is incredible. The field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, [respondent] had to come up with a mark identical or so closely similar to the [petitioner's] if there was no intent to take advantage of the goodwill generated by the [petitioner's] mark. Being on the same line of business, it is highly probable that the [respondent] knew of the existence of BIRKENSTOCK and its use by the [petitioner], before [respondent] appropriated the same mark and had it registered in its name.[46]

WHEREFORE, the petition is **GRANTED**. The Decision dated June 25, 2010 and Resolution dated October 27, 2010 of the Court of Appeals in CA-G.R. SP No. 112278 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated December 22, 2009 of the IPO Director General is hereby **REINSTATED**.

SO ORDERED.

Brion (Acting Chairperson), del Castillo, Perez, and *Reyes,*[*] *JJ.,* concur.

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[46] *Id.* at 144-145.

[*] Designated Additional Member per Raffle dated October 17, 2012.

SECOND DIVISION

[G.R. No. 203204. November 20, 2013]

HEIRS OF ROMULO D. SANDUETA, namely: GLORIA SANDUETA ELOPRE, HEIRS OF JOSEPHINE S. NADALA, represented by ROY S. NADALA, HOFBOWER SANDUETA, NERISA SANDUETA MICUBO, OSCAR SANDUETA, MARILYN SANDUETA VELASCO, RONALD SANDUETA, and NAPOLEON SANDUETA, *petitioners, vs.* **DOMINGO ROBLES, HEIRS OF TEODORO ABAN, namely: NERIO ABAN, VIRGINIO ABAN, SUSANA ABAN, and DAVID ABAN; HEIRS OF EUFRECENA[*] GALEZA, namely: CESAR GALEZA, NESTOR GALEZA, ANGELA GALEZA, JUSTO GALEZA, KIA GALEZA PONCE, PORFERIA GALEZA NALZARO, ROSARIO GALEZA VELASCO, HERMINIA GALEZA GUERRERO, and NONA GALEZA NACARIO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; AGRARIAN REFORM; RIGHT OF RETENTION; APPLICABLE ONLY WHEN THE LAND FALLS UNDER THE COVERAGE OF THE OPERATION LAND TRANSFER PROGRAM.— The right of retention, as protected and enshrined in the Constitution, balances the effects of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards. Necessarily, since the said right is granted to limit the effects of compulsory land acquisition against the landowner, it is a prerequisite that the land falls under the coverage of the OLT Program of the government. If the land is beyond the ambit of the OLT Program, the landowner need not — as he should not — apply for retention since the appropriate remedy would be for him to apply for exemption.

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[*] "Eufrecina" in some parts of the records. See CA *rollo*, p. 63.

2. ID.; ID.; ID.; ID.; RETENTION LIMITS.— If the land is covered by the OLT Program which hence, renders the right of retention operable, PD 27 – issued on October 21, 1972 – confers in favor of covered landowners who cultivate or intend to cultivate an area of their tenanted rice or corn land the right to retain an area of not more than seven (7) has. thereof. Subsequently, or on June 10, 1998, Congress passed RA 6657 which modified the retention limits under PD 27. In particular, Section 6 of RA 6657 states that covered landowners are allowed to retain a portion of their tenanted agricultural land not, however, to exceed an area of five (5) has. and, further thereto, provides that an additional three (3) has. may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm. In the case of *Heirs of Aurelio Reyes v. Garilao* (*Reyes)*, however, the Court held that a landowner's retention rights under RA 6657 are restricted by the conditions set forth in LOI 474 issued on October 21, 1976 x x x. LOI 474 amended PD 27 by removing **any right of retention** from persons who own: (*a*) **other agricultural lands of more than seven (7) has. in aggregate areas;** or (*b*) lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families. To clarify, in *Santiago v. Ortiz-Luis*, the Court, citing the cases of *Ass'n. of Small Landowners* and *Reyes*, stated that while landowners who have not yet exercised their retention rights under PD 27 are entitled to new retention rights provided for by RA 6657, the limitations under LOI 474 would equally apply to a landowner who filed an application under RA 6657. In this case, records reveal that aside from 4.6523-hectare tenanted riceland covered by the OLT Program, *i.e.*, the subject portion, petitioners' predecessors–in-interest, Sps. Sandueta, own other agricultural lands with a total area of 14.0910 has. which therefore triggers the application of the first disqualifying condition under LOI 474 as above-highlighted. As such, petitioners, being mere successors-in-interest, cannot be said to have acquired **any retention right** to the subject portion. Accordingly, the subject portion would fall under the complete coverage of the OLT Program hence, the 5 and 3-hectare retention limits as well as the landowner's

right to choose the area to be retained under Section 6 of RA 6657 would not apply altogether.

APPEARANCES OF COUNSEL

Benedicto O. Cainta for petitioner.
Osias Ochavo for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated April 26, 2012 of the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. SP No. 03333 which affirmed DARCO Order No. RT-0911-414 [3] dated November 24, 2009 (November 24, 2009 DARCO Order) issued by former Department of Agrarian Reform (DAR) Secretary Nasser C. Pangandaman (Secretary Pangandaman).

The Facts

Petitioners are the heirs of Romulo and Isabel Sandueta (Sps. Sandueta) who died intestate in 1987 and 1996, respectively, and accordingly inherited several agricultural lands situated in Dipolog City, Zamboanga del Norte, with a total land area of 18.7433 hectares (has.).[4] One of these parcels of land is Lot No. 3419, with an area of 13.7554 has[5] covered by Transfer Certificate of Title (TCT) No. T-5988.[6] The 4.6523-

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[1] *Rollo*, pp. 10-30.

[2] *Id*. at 31-38. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Zenaida T. Galapate-Laguilles and Maria Elisa Sempio Diy, concurring.

[3] CA *rollo*, pp. 37-43. Signed by Secretary Nasser C. Pangandaman.

[4] *Id*. at 23.

[5] *Id*. at 38.

[6] *Id*. at 62. Including the dorsal portion.

hectare riceland portion (subject portion) of the foregoing lot was tenanted by Eufrecena Galeza, Teodoro Aban, and Domingo Pableo[7] (tenants) who were instituted as such by the original owner, Diosdado Jasmin, prior to its sale to Sps. Sandueta.[8]

The subject portion was placed under the government's Operation Land Transfer (OLT) Program pursuant to Presidential Decree No. (PD) 27[9] and consequently awarded to the above-named tenants who were issued the corresponding Emancipation Patents (EPs).[10]

The Proceedings Before the DAR

On July 7, 2005, petitioners filed before the DAR District Office in Dipolog City a petition[11] seeking to exercise their right of retention over the subject portion pursuant to Section 6 of Republic Act No. (RA) 6657,[12] known as the Comprehensive Agrarian Reform Law of 1988, and as enumerated in the case of *Ass'n. of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform*[13] (*Ass'n. of Small Landowners*). They also sought to annul the EPs of the tenants as well as compel the tenants to pay back rentals.[14]

The Provincial Protest Application and Resolution Unit referred the case to the Municipal Agrarian Reform Officer of Dipolog

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[7] *Id.* at 23-24.

[8] *Id.* at 25.

[9] "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR."

[10] CA *rollo*, pp. 23-24.

[11] *Id.* at 52-59. Dated June 30, 2005.

[12] "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES."

[13] 256 Phil. 777 (1989).

[14] CA *rollo*, pp. 56-57.

City who, after investigation, recommended the denial of the petition.[15] On the other hand, the Provincial Agrarian Reform Officer (PARO), while similarly recommending the denial of the petition for retention, nevertheless recommended the grant of a 5-hectare retention area for petitioners to be taken from the portion of Lot No. 3419 not covered by the OLT Program.[16]

On April 5, 2006, the DAR Regional Office No. IX, through Regional Director Julita R. Ragandang (Director Ragandang) issued an Order[17] (April 5, 2006 Order) adopting the PARO's recommendation. Director Ragandang explained that a landowner who failed to exercise his right of retention under PD 27 can avail of the right to retain an area not exceeding 5 has. pursuant to Section 6 of RA 6657,[18] adding that this award is different from that which may be granted to the children of the landowner, to the extent of 3 has. each, in their own right as beneficiaries.[19] However, to be entitled thereto, each child must meet the age qualification and requirement of actual cultivation of the land or direct management of the farm under Section 6, as well as the other conditions under Section 22[20] of RA 6657. As

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[15] *Id.* at 32-33.

[16] *Id.* at 39.

[17] *Id.* at 22-30.

[18] *Id.* at 27.

[19] *Id.* at 29.

[20] SEC. 22. *Qualified Beneficiaries.* — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farm workers;
(c) seasonal farm workers;
(d) other farm workers;
(e) actual tillers or occupants of public lands;
(f) collective or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

Provided, however, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution

petitioners were absentee landowners who had left the cultivation of the subject portion entirely to the tenants, Director Ragandang therefore concluded that they are not entitled to exercise retention rights thereon[21] and, hence, denied their petition for retention. Despite such denial, Director Ragandang granted the decedent Romulo Sandueta the right to retain 5 has. from the portion of Lot No. 3419 not covered by the OLT Program.

Dissatisfied, petitioners filed a motion for reconsideration, essentially arguing that their right to choose the retention area is guaranteed by Section 6 of RA 6657. In an Order[22] dated July 14, 2006, Director Ragandang denied the motion and explained that landowners covered by PD 27 who failed to exercise their right of retention which subsequently led to the distribution of the EPs to the tenants, have no right to choose the area to be retained.[23] Moreover, she pointed out that under Letter of

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of the land of their parents; and: *Provided, further*, that actual tenant-tillers in the landholding shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under their program.

A basic qualification of a beneficiary shall be his willingness, aptitude and ability to cultivate and make land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

[21] CA *rollo*, p. 29.

[22] *Id.* at 32-36.

[23] *Id.* at 35. In consonance with DAR Administrative Order No. 05, series of 2000 (Revised Rules and Procedures for the Exercise of Retention Right by Landowners).

Instruction No. 474 (LOI 474), landowners who own less than 24 has. of tenanted rice lands but additionally own more than 7 has. of other agricultural lands may not retain their tenanted rice lands.[24] Since petitioners failed to exercise their right or manifest their intention of retention prior to the issuance of their tenants' EPs and considering further that they own about 14.0910 has. of other agricultural lands, Director Ragandang declared them to have no right to choose their retained area of 5 has., which can be accommodated in their other landholdings not covered under the OLT Program.[25]

On appeal, Secretary Pangandaman issued the November 24, 2009 DARCO Order affirming *in toto* Director Ragandang's April 5, 2006 Order.

The CA Ruling

In a Decision[26] dated April 26, 2012, the CA (*a*) held that the subject portion was appropriately covered by the OLT Program pursuant to LOI 474; (*b*) declared that petitioners do not have the absolute right to choose their retention area considering their ownership of 14.0910 has. of other agricultural lands; and (*c*) affirmed Secretary Pangandaman's dismissal of the petition for retention under Section 6 of RA 6657.[27]

On May 31, 2012, petitioners filed a motion for reconsideration[28] which was denied by the CA in a Resolution[29] dated August 14, 2012. Hence, the instant petition.

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[24] *Id.* at 34.

[25] *Id.* at 34-35.

[26] *Rollo*, pp. 31-38.

[27] *Id.* at 37-38.

[28] CA *rollo*, pp. 156-160. Dated May 21, 2012.

[29] *Id.* at 39-40. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edgardo A. Camello and Maria Elisa Sempio Diy, concurring.

The Issue Before the Court

The essential issue in this case is whether or not petitioners are entitled to avail of any retention right under Section 6 of RA 6657.

The Court's Ruling

The right of retention, as protected and enshrined in the Constitution, balances the effects of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards.[30] Necessarily, since the said right is granted to limit the effects of compulsory land acquisition against the landowner, it is a prerequisite that the land falls under the coverage of the OLT Program of the government. If the land is beyond the ambit of the OLT Program, the landowner need not – as he should not – apply for retention since the appropriate remedy would be for him to apply for exemption. As explained in the case of *Daez v. CA*[31] (*Daez*):

Exemption and retention in agrarian reform are two (2) distinct concepts.

P.D. No. 27, which implemented the Operation Land Transfer (OLT) Program, covers tenanted rice or corn lands. The requisites for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system

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[30] *Santiago v. Ortiz-Luis*, G.R. Nos. 186184 & 186988, September 20, 2010, 630 SCRA 670, 678, citing Section 4, Article XIII of the 1987 Philippine Constitution which reads as follows: "The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, **subject to such priorities and reasonable retention limits as the Congress may prescribe**, taking into account ecological, developmental or equity considerations and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing." (Emphasis supplied)

[31] 382 Phil. 742 (2000).

of share-crop or lease-tenancy obtaining therein. If either requisite is absent, a landowner may apply for exemption. **If either of these requisites is absent, the land is not covered under OLT. Hence, a landowner need not apply for retention where his ownership over the entire landholding is intact and undisturbed**. (Emphasis and underscoring supplied)

If the land is covered by the OLT Program which hence, renders the right of retention operable, PD 27 – issued on October 21, 1972 – confers in favor of covered landowners who cultivate or intend to cultivate an area of their tenanted rice or corn land the right to retain an area of not more than seven (7) has. Thereof.[32] Subsequently, or on June 10, 1998, Congress passed RA 6657 which modified the retention limits under PD 27. In particular, Section 6 of RA 6657 states that covered landowners are allowed to retain a portion of their tenanted agricultural land not, however, to exceed an area of five (5) has. and, further thereto, provides that an additional three (3) has. may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm.[33] In the

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[32] PD 27 provides:

xxx xxx xxx

The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated;

In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it;

xxx xxx xxx.

[33] SEC. 6. *Retention Limits.* — Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually

case of *Heirs of Aurelio Reyes v. Garilao*[34] (*Reyes*), however, the Court held that a landowner's retention rights under RA 6657 are restricted by the conditions set forth in LOI 474 issued on October 21, 1976 which reads:

WHEREAS, last year I ordered that **small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families**;

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

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tilling the land or directly managing the farm: Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; Provided, further, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain, to the landowner: Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

[34] See G.R. No. 136466, November 25, 2009, 605 SCRA 294, 304.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

1. **You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families**.

2. Landowners who may choose to be paid the cost of their lands by the Land Bank of the Philippines shall be paid in accordance with the mode of payment provided in Letter of Instructions No. 273 dated May 7, 1973.[35] (Emphases and underscoring supplied)

Based on the above-cited provisions, it may be readily observed that LOI 474 amended PD 27 by removing **any right of retention** from persons who own:

(a) **other agricultural lands of more than seven (7) has. in aggregate areas;** or

(b) lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

To clarify, in *Santiago v. Ortiz-Luis*,[36] the Court, citing the cases of *Ass'n. of Small Landower*[37] and *Reyes*,[38] stated that while landowners who have not yet exercised their retention rights under PD 27 are entitled to new retention rights provided for by RA 6657, the limitations under LOI 474 would equally apply to a landowner who filed an application under RA 6657.

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[35] LOI 474 dated October 21, 1976. See also Ministry Memorandum Circular No. 18-81 entitled, "Clarificatory Guidelines on Coverage of P.D. No. 27 and Retention by Small Landowners."

[36] *Supra* note 30, at 681.

[37] *Supra* note 13, at 826.

[38] *Supra* note 34, at 313.

In this case, records reveal that aside from the 4.6523-hectare tenanted riceland covered by the OLT Program, *i.e.*, the subject portion, petitioners' predecessors-in-interest, Sps. Sandueta, own other agricultural lands with a total area of 14.0910 has. which therefore triggers the application of the first disqualifying condition under LOI 474 as above-highlighted. As such, petitioners, being mere successors-in-interest, cannot be said to have acquired **any retention right** to the subject portion. Accordingly, the subject portion would fall under the complete coverage of the OLT Program hence, the 5 and 3-hectare retention limits as well as the landowner's right to choose the area to be retained under Section 6 of RA 6657 would not apply altogether.

Nevertheless, while the CA properly upheld the denial of the petition for retention, the Court must point out that the November 24, 2009 DARCO Order inaccurately phrased Romulo Sandueta's entitlement to the remaining 14.0910-hectare landholding, outside of the 4.6523-hectare subject portion, as a vestige of his retention right. Since the 14.0910-hectare landholding was not shown to be tenanted and hence, outside the coverage of the OLT Program, there would be no right of retention, in its technical sense, to speak of. Keeping with the Court's elucidation in *Daez*, retention is an agrarian reform law concept which is only applicable when the land is covered by the OLT Program; this is not, however, the case with respect to the 14.0910- hectare landholding. Thus, if only to correct any confusion in terminology, Romulo Sandueta's right over the 14.0910-hectare landholding should not be deemed to be pursuant to any retention right but rather to his ordinary right of ownership as it appears from the findings of the DAR that the landholding is not covered by the OLT Program.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated April 26, 2012 of the Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 03333 insofar as it upheld the denial of the petition for retention in this case is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

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— R.A. No. 9946 applies retroactively to those who died or were killed while they were in government service. *(Id.)*

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— For the spouse to qualify for survivorship pension, the deceased judge or justice must (1) be at least 60 years old, (2) have rendered at least fifteen years in the Judiciary or in any other branch of government, and in case of eligibility for optional retirement, (3) have served the last three years continuously in the Judiciary. *(Id.)*

— Heirs of a deceased judge are entitled to death gratuity benefits under Sec. 24, R.A. No. 9946 notwithstanding prior receipt of benefits under R.A. No. 910. *(Id.)*

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— The law also protects the welfare of the heirs and surviving spouses of employees who die before or after retirement. *(Id.)*

— The implementation of the General Appropriation Act (GAA) belongs exclusively to the President and cannot be exercised by Congress. *(Id.)*

— The power to release funds authorized to be paid under the GAS is an executive function and any post-enactment intervention by the legislature, its committees or members other than through legislation is an encroachment on executive power and in violation of the separation of powers. *(Id.)*

— The realignment of funds under special provision No. 4 of the 2013 General Appropriations Act which is subject to certain conditions before the President can realign savings in the executive branch violates the separation of powers and is unconstitutional. *(Id.)*

Check and balance — Since the restriction only pertains to "any role in the implementation or enforcement of the law," Congress may still exercise its oversight function which is a mechanism of check and balances that the Constitution itself allows; any post-enactment measure allowing legislator participation beyond oversight is bereft of any constitutional basis and hence, tantamount to impermissible interference and/or assumption of executive functions. (Belgica *vs*. Exec. Sec. Ochoa, G.R. No. 208566, Nov. 19, 2013) p. 416

— The aims of the budgetary practice cannot be achieved to the eventual detriment of the people the government serves, if intrusion into powers and the relaxation of built-in checks are allowed. (Belgica *vs*. Exec. Sec. Ochoa, G.R. No. 208566, Nov. 19, 2013; *Brion, J., concurring and dissenting opinion*) p. 416

Principle of — Any system where members of Congress participate in the execution of projects in any way compromises them as it encroaches on their ability to do their constitutional duties. (Belgica *vs*. Exec. Sec. Ochoa, G.R. No. 208566, Nov. 19, 2013; *Leonen, J., concurring opinion*) p. 416

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